

CAP. XLVIII.

An Act to amend the Code of Civil Procedure respecting appeals.

[Assented to 30th December, 1890.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. Article 494 of the Code of Civil Procedure is amended by adding in the first paragraph after the words "from which an appeal lies" the following words "and upon all judgments of the Circuit Court in actions from one hundred to two hundred dollars, save the exception contained in the second paragraph of article 1053 of this Code." C. C. P. art. 494 amended.

2. Chapter first of Book Fourth of the Second Part of the said Code is repealed and replaced by the following : Chapter 1 of Book fourth of Second Part of C. C. P. replaced.

" CHAPTER I.

" OF ERROR AND APPEAL FROM JUDGMENTS OF THE SUPERIOR COURT.

" **1114.** Error may be brought, against any judgment of the Superior Court founded upon a general verdict given by a special jury. Error when and how brought.

It must be brought before the Court of Queen's Bench sitting in appeal. Where brought.

Questions of law only can be argued in error. On law only.

" **1115.** Unless otherwise provided by statute, an appeal lies to the same court upon any other final judgment rendered by the Superior Court, except in cases of *certiorari*, and in matters concerning municipal corporations or offices, as provided in article 1033. In what cases appeals lie. Exception.

Nevertheless an appeal does not lie in cases in which the sum claimed is under two hundred dollars and in which judgment has been rendered by the Superior Court sitting in review ; nor shall a person, who has inscribed in review before three judges any cause of the Superior Court, and on such inscription proceeded to judgment, be entitled to appeal to the Court of Queen's Bench from the judgment of the Superior Court sitting in review, if such judgment confirms that rendered in the first instance.

" **1116.** An appeal also lies from interlocutory judgments in the following cases : Appeals from interlocutory judgments.

1. When they in part decide the issues ;

2. When they order the doing of anything which cannot be remedied by the final judgment ;

3. When they unnecessarily delay the trial of the suit.

Where proceedings in error and appeal are heard.

“ 1117. Proceedings in error or in appeal from judgments rendered in the districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville and Beauharnois are heard and determined in the city of Montreal, and the like proceedings against judgments rendered in the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska are heard and determined in the city of Quebec.

When proceedings must be brought.

“ 1118. Proceedings in error or in appeal must be brought within six months from the date of the judgment, saving the cases provided for by articles 823, 1033 and 1037 ; this delay of six months is binding even upon minors, women under coverture, persons of unsound mind or interdicted, and upon persons absent from the Province of Quebec, when those who represent them, or whose duty it is to assist them, have been duly brought into the suit.

If party dies.

If the party dies before appealing, the delay is reckoned only from the day of his death, against his heirs or legal representatives.

Proceedings during delay to review.

Proceedings in error or in appeal may be taken during the delay allowed for demanding a review before three judges, and after proceedings in review have been commenced if the party who has taken such proceedings discontinues the same.

In cases of judgment by default.

In cases of judgment by default, the delay for appealing runs only from the expiration of the time allowed for filing an opposition thereto.

Appeal to be first allowed, if from an interlocutory judgment.

“ 1119. If the appeal is from an interlocutory judgment, it must be first allowed by the Court of Queen's Bench, upon a motion, supported with copies of such portions of the record as may be necessary to decide whether the judgment in question is susceptible of appeal, and falls within one of the cases specified in article 1116.

When motion to be made.

The motion must be made during the term next after such rendering of the judgment, and cannot be received afterwards ; saving, however, the party's right to urge his reasons against such judgment upon an appeal from or proceedings in error against the final judgment.

Service on opposite party.

“ 1120. The motion must be served upon the opposite party, and, if required, is followed by a rule, calling upon such opposite party to give his reasons against the granting of the appeal ; and the service of such rule upon him

has the effect of suspending all proceedings before the court below.

“ 1121. Proceedings in error or in appeal are brought by means of an inscription filed in the office of the prothonotary of the court which rendered the judgment, of which notice must be served upon the opposite party or his attorney. How proceedings in error or in appeal are taken.

Such inscription must contain a description of the parties, the date of the judgment appealed from, a description of the sureties proposed, and a notice of the date, hour and place when and where the sureties are to appear to sign the bond. Inscription what to contain.

The delay for giving such security shall not be more than five days after the production at the office of the inscription. Delay for giving security.

“ 1122. On the said day so fixed in the notice, the appellant or plaintiff in error must give good and sufficient security that he will efficiently prosecute the appeal or proceedings in error, and that he will satisfy the condemnation and pay all costs and damages adjudged in case the judgment appealed from is confirmed; or else he must declare in writing in the office of the prothonotary of the court, whose judgment is appealed from, that he does not object to the judgment rendered against him being executed according to law, in which case he is only bound to give security for the payment of the costs in appeal, if he fails; and, if the judgment is reversed, the respondent, who has caused the judgment to be executed, is bound to refund to the appellant the net amount only of the moneys levied by execution, together with legal interest, or to restore the property of which he was put in possession, together with the rents, issues and profits since. Security how given and for what.

Consent to execution of judgment.

Refund if judgment reversed after execution by consent.

“ 1123. The security must be received before one of the judges or the prothonotary of the court in which the judgment was rendered, and such judge or prothonotary may swear the sureties offered and ask them any pertinent questions with respect to their sufficiency. Security before whom given.

Sureties may be sworn as to sufficiency.

“ 1124. As soon as the sureties have been received and the bond executed, it is the duty of the prothonotary of the court in which the judgment was rendered to make up and complete the record in the case according to the forms prescribed by the court of appeals, with a list of all the papers which form part of it and a transcript of all the entries in the register, the whole certified under his signature and the seal of the court, and upon being Duty of prothonotary after security is given.

Charges, &c., to be paid before record is transmitted. Receipt to be sent by clerk of appeals.

paid his fees, charges and costs of transmission, to remit them to the court of appeals at Quebec or Montreal as the case may require.

The clerk of the court of appeals on receiving the record shall send to the prothonotary transmitting the same a receipt therefor.

If record not remitted and prothonotary is in default.

“ 1125. If the record is not remitted within fifteen days after the bond has been executed and the prothonotary is in default, the appellant may obtain, from the Superior Court which rendered the judgment or one of the judges thereof, a rule against him, ordering him to transmit such record.

Appearance in appeal.

“ 1126. The appellant and respondent are both bound to file an appearance in the office of the clerk of appeals before the expiration of five days after the record has been received by the clerk of appeals on pain of being foreclosed.

Judgment of *non pros* if record not transmitted.

“ 1127. In default of the record being transmitted within fifteen days after the bond has been executed, the respondent may, upon producing a certificate from the clerk of appeals to that effect obtain judgment of *non pros* and be discharged from the appeal unless the appellant prove diligence.

Exceptions and demurrers may be set up for certain reasons.

“ 1128. Unless the court otherwise order, the respondent may, within eight days next after the period allowed to appear, set up by motion all grounds of exception or of demurrer and all grounds of defence resulting from :

- 1 Informalities in the inscription or in the service of the notice thereof ;
2. Insufficiency of the appeal bond ;
3. Non-existence or forfeiture of the right to proceed by error or appeal ;
4. Acquiescence in the judgment ;
5. The renunciation of the judgment in the court below.

Reduction of excessive security.

“ 1129. The appellant may apply by motion for a reduction of excessive security, if he has been obliged to give it.

Cross appeals.

“ 1130. If both parties seek redress against the judgment, their cross proceedings in error or in appeal may be joined.

Facts and when to be produced.

“ 1131. Within fifteen days after the judgment upon the exceptions or demurrers, if there are any to the proceedings.

in appeal or error, or within fifteen days after the expiration of the delay for fyling the appearance, each party must file in the clerk's office a printed factum or case, and in default of his doing so the proceedings in appeal or error may be declared to have been abandoned with costs against the appellant if he is in default, or the case may be heard *ex parte* if the respondent is in default.

“**1132.** As soon as the parties have fyled their appearance, or after the delay to fyle the same has expired if only one party has appeared, the case is set down upon the roll by the clerk of appeals, and is heard in its turn.” Setting down of cause for hearing.

“**1133.** Every appeal from interlocutory judgments must be inscribed by the clerk of the court and heard by privilege in a summary manner without any factums being fyled.” Hearing of appeals from interlocutory judgments.

3. Article 1142 of the said Code is amended by striking out the first paragraph beginning with the words “ when the sum ” and ending by the words “ on points of law ” C. C. P. art. 1142 amended.

4. Articles 1143 to 1153 of the said Code, inclusively, are repealed, and the procedure on appeal from the Circuit Court is the same as on appeals from the Superior Court, as provided by the present act. C. C. P. art. 1143 to 1153 repealed. Provision for appeal.

5. The English version of article 1172 of the said Code is amended by inserting, after the words “ purpose of ” in the second line, the words “ hearing cases or. ” C. C. P. art. 1172 English version amended.

6. This act shall come into force on the first day of September next, and shall not affect cases in which judgment shall have been rendered before that date. Coming into force and application of act.

CAP. XLIX.

An Act to amend article 6013 of the Revised Statutes of the Province of Quebec, relating to district magistrates.

[Assented to 30th December, 1890.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. The following article is added after article 1215*d* of the Code of Civil Procedure, as added by article 6013 of the Revised Statutes of the Province of Quebec : Article added after C. C. P. art 1215*d*.