

C A P . X X .

An Act to amend the Civil Code and the Code of Civil Procedure.

[Assented to 9th May, 1885.]

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

AMENDMENTS TO THE CIVIL CODE.

C. C. art. 1543, amended. **1.** Article 1543 of the Civil Code is amended by adding thereto the following paragraph :

Limitation of right in case of insolvency. “ In the case of insolvency such right can only be exercised during the fifteen days next after the delivery.”

C. C. art. 1896, amended. **2.** Article 1896 of the said Code is amended by adding thereto the following paragraphs :

Appointment of liquidators. “ If a partnership be dissolved or a judicial demand be made for such dissolution, the court or the judge, upon the demand of one of the partners, after notice given to the others, has power to appoint one or more liquidators.

Oath to be taken by them. The liquidators so appointed shall be sworn to well and faithfully perform the duties of their office ;

Notice of their appointment. They immediately give notice of their appointment by an advertisement to that effect published in the Quebec Official Gazette and in two newspapers, one in the French and the other in the English language, published at the place of business of the partnership or at the nearest place, and in such other manner as the court or judge may prescribe.

Become seized of assets. Security to be furnished by them. Subject to summary jurisdiction of courts, &c. Their powers. They become *pleno jure* seized of the assets of the partnership for the purpose of the liquidation ; they furnish the security prescribed by the court or judge, and are in all respects subject to the summary jurisdiction of such court or judge.

They possess all the powers and are subjected to all the obligations of judicial sequestrators, with the exception of the putting into possession, which is done without the intermediary of a bailiff.

Acts exceeding administration. Acts, exceeding those of administration, cannot be performed by the liquidators without the consent of all the partners, and, in default of such consent, only with the approval of the court or judge, after previous notice to the members of the partnership.

Remuneration of liquidators. The remuneration of the liquidators is fixed by the court or judge.

Proceedings respecting the appointment of liquidators and the performance of the duties of their office are summary. Proceedings respecting appointment are summary.

Provisional execution takes place notwithstanding the appeal, saving the right of the court to which the cause is taken in appeal to summarily suspend such execution. Provisional execution notwithstanding appeal.

Two judges of the court seized of the appeal may also give such order for suspension after notice to the adverse party." Power of two judges to stay execution.

3. Article 2272 of the said Code is amended by substituting the figures "47" for the figures "57" in the second line of paragraph 5. C. C. art. 2272, amended.

AMENDMENTS TO THE CODE OF CIVIL PROCEDURE.

4. Article 1 of the Code of Civil Procedure, as amended by the acts 37 Victoria, chapter 8, section 6, and 47 Victoria, chapter 8, section 3, is further amended by adding thereto the following paragraph : C. C. P. art. 1, amended.

"Notwithstanding the preceding provisions, the proceedings under articles 645, 663, 678, 679, 690, 712, 720, 730 and 763 to 780 of this Code, inclusively, may be had upon any juridical day." Certain proceedings may be had on any juridical day.

5. Article 92 of the said Code is amended by striking out the last paragraph thereof. Id. art. 92, amended.

6. The following articles are added to the said Code after article 343 : Articles added after art. 343 of C. C. P.

"343a. Except in actions to annul a marriage, for separation of property or from bed and board, to obtain the dissolution of a corporation or the annulling of letters patent, or in which the parties are minors or legally incapable, and in all cases of public interest, the Superior Court or the Circuit Court may, on the written demand of the parties and of their attorneys *ad litem*, refer all or any of the issues, either of fact or of law, to the decision of one or more practising advocates appointed according to the manner determined by the consent. Except in certain cases courts may refer issues to practising advocates.

343b. The referees appointed who do not accept the office shall be replaced by others, and the majority shall be a quorum. Replacing referees who refuse to act.

343c. Before proceeding they shall be sworn to well and faithfully perform their duties, either before the judge, the prothonotary, a commissioner of the Superior Court, or the clerk of the Circuit Court, as the case may be. Oath to be taken by referees and before whom.

343d. The trial before such referees is conducted as in cases without a jury before the court ; and the referees How case is tried before referees.

Powers of referees.

shall, for such purpose, have all the powers of such court or judge.

Clerk may be appointed.

The referees shall have power to appoint a clerk to assist them.

Proceedings where to be filed.

343e. All the proceedings in the case are filed in the office of the prothonotary or clerk, as the case may be, of the court of the district in which they are had.

Transmission of record in certain cases.

In case they are had in a district other than that in which the case was brought, the record shall, upon the order of the referees, be transmitted in the manner prescribed by articles 241 and 242 of this code.

Report to be in writing and when to be filed.

343f. The report of the referees shall be in writing and be filed, within sixty days after the final hearing of the parties, in the office of the prothonotary or clerk of the court of the place in which the case was pending at the time of the appointment of the referees.

Notice if report not filed.

In default of which, either party may cause a notice to be served upon the attorney of the adverse party that he intends to end the reference.

Effect of notice.

Upon the filing of such notice in the office of the prothonotary or clerk, as the case may be, the case is continued as if it had not been referred.

Certain proceedings, &c., to remain of record.

However, the proceedings had and proof adduced before the referees form part of the record as if they had been had and taken before the court.

Appointment of referees may be cancelled.

The court may also, upon demand of either of the parties, cancel the appointment of the said referees if they do not proceed with diligence to the hearing of the case.

Duties of referees upon statements submitted to note findings.

343g. On the statement of facts and propositions of law which may be submitted by the parties to the referees, it shall be the duty of the latter to decide what are pertinent to the issue and to note in the report their findings on each.

Report not invalid if not so noted.

The omission to note the same shall not however invalidate the report.

Draft of judgment to be in report.

343h. The referees shall further in their report set out the text of the judgment to be drawn up.

Power of court, &c., on application to homologate report.

343i. On the application to homologate the report, the court or judge may examine into the grounds of any nullity which may affect the report, but cannot inquire into the merits of the contestation.

Report to be homologated in certain cases.

If no ground of nullity be found in the report, the court or judge orders that judgment be entered up by the prothonotary or clerk, as the case may be, in accordance with the report.

No review if report by three referees and unanimous.

343j. If the reference is had before three or more referees and their report is unanimous the judgment based thereon shall not be subject to review by three judges, and the appeal is brought directly to the Court of Queen's Bench.

343k. In appeal, the court shall inquire into the merits of the contestation as well as the grounds of nullity of the referees' report." Duties of court in appeal.

7. The following article is added to the said Code after article 467. Art. 467a, added.

"467a. In cases of *capias*, attachment before judgment, attachment for rent, conservatory attachment, and in all cases of urgency, the writ may be issued outside office hours without having judicial stamps thereon, provided that the amount of such stamps be deposited with the officer issuing the writ, who is bound to affix the stamps upon the *fiat* as soon as possible." Writs of *capias*, &c., may be issued without stamps. Proviso.

8. Article 221 of the said Code is repealed and replaced by the following : Id. Art. 221, replaced.

"221. The parties may be examined upon articulated facts, pertinent to the issue, and as witnesses, as soon as the pleas are filed, upon the facts in issue as then joined." Examination of parties upon articulated facts and as witnesses.

9. Article 573 of the said Code is amended by striking out the word "and" in the first line and by adding, after the word "Montreal" in the same line, the words "and of Three Rivers and in the town of Sorel." Id. art. 573, amended.

10. Article 601 of the said Code is amended by adding after the word "sheriff" the words "or bailiff, four days after the sale." Id. art. 601, amended.

11. Articles 645, 663, 678, 679, 680, 688, 692, 712, 720, 730, 735, 736, 737 and 738 of the said Code are amended by adding after the word "court" in each of these articles the words "or the judge." Certain articles of C. C. P. amended.

12. Article 812 of the said Code is amended by adding thereto the following : Id. art. 812, amended.

"The commissioner cannot issue a similar warrant at the *chef-lieu* of a district unless it be established before him by affidavit that it was impossible for the plaintiff or his agent to obtain such writ of *capias* from the prothonotary or his deputy." Commissioner not to issue warrant, except in certain cases.

13. Article 813 of the said Code is amended by substituting the word "sheriff," for the word "gaoler," in the third line thereof. Id. art. 813, amended.

14. Article 1335 of the said Code is repealed and replaced by the following : Id. art. 1335, replaced.