

"500a. Cases instituted in virtue of paragraph 4 of article 494 have precedence over all other cases." Precedence of certain cases.

4. The act 45 Victoria, chapter 33 is repealed. 45 V., c. 33, repealed.

5. This act shall come into force on the day of its sanction. Coming into force.

C A P . X X I I .

An Act to amend the Code of Civil Procedure, in so far as it concerns abandonment of property.

[Assented to 9th May, 1885.]

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

ABANDONMENT AND ASSIGNMENT OF PROPERTY.

1. Article 763 of the Code of Civil Procedure is repealed and replaced by the following : C. C. P. art. 763, replaced.

"763. Any debtor, arrested under a writ of *capias ad respondendum*, and every trader who has ceased his payments, may make a judicial abandonment of his property for the benefit of his creditors. Abandonment of property by certain debtors.

In the absence of *capias* no abandonment can be made, if the debtor has not been so required as hereinafter provided. Demand required if no *capias* has been issued.

763a. Every trader who has ceased his payments may be required to make such abandonment by a creditor whose claim is unsecured for a sum of two hundred dollars and upwards." Traders may be required to make abandonment.

2. Article 764 of the said Code is amended by striking out the words "in the prothonotary's office," and by adding at the end of the article the following paragraph : Id. art. 764 amended.

"The abandonment is made in the office of the prothonotary of the Superior Court of the district wherein issued the *capias*, and in the absence of *capias*, of the district of the place where the debtor has his principal place of business, and, in default of such place, of the place of his domicile." Abandonment where made.

3. Article 765 of the said Code is repealed and replaced by the following : Id. art. 765, replaced.

"765. The debtor must give notice of the abandonment, by inserting an advertisement to that effect in the Que- Notice of abandonment.

bec Official Gazette and by a registered notice sent by mail to the address of each of his creditors.

Contents of notice sent to creditors.

The notice addressed to the creditors must contain a list of the creditors of the debtor, mentioning the amount due to each.

Notice may be given by creditor.

In default of such notices being given by the debtor, any creditor may give them himself."

Id. arts. 768 and 769, replaced.

Appointment of provisional guardian.

4. Articles 768 and 769 of the said Code are repealed and replaced by the following :

" 768. Immediately after the filing of the statement, the prothonotary appoints a provisional guardian, whom he, as far as possible, selects from among the most interested creditors who, either personally or by a person whom he delegates for that purpose, takes immediate possession of all the property liable to seizure and the books of account of the debtor.

His powers.

The guardian may summarily dispose of any perishable goods and may take conservatory measures under the direction of the judge, or, in, the absence of the latter, of the prothonotary.

Appointment of curator.

The abandonment being made, the court or the judge, upon demand of a party interested and after taking the advice of the creditors of the debtor convened for that purpose, appoints a curator to the property of the debtor.

Appointment of inspectors.

Inspectors or advisers may also be appointed at this or any subsequent meeting.

Convening meeting.

The meeting shall be convened within a short delay and in the manner which the court or judge deems suitable.

Transmission of record.

The record of the proceedings upon the abandonment is then transmitted to the prothonotary of the Superior Court of the district in which the debtor has his place of business.

Suspension of proceedings after abandonment.

769. After the abandonment, any proceeding by way of attachment, attachment for rent or attachment in execution against the movables of the debtor is suspended ; and the guardian or the curator has a right to take possession of the goods seized, upon serving by a bailiff a notice of his appointment upon the seizing creditor or upon his attorney or the bailiff entrusted with the writ ;

Costs subsequent to notice.

The costs upon such attachment, made after the notice, or, in the absence of such notice, incurred by a creditor after he had knowledge of the abandonment, either personally or by his attorney or by the bailiff, and in all cases, the costs of attachment made eight days after the notice given by the debtor or the curator, cannot be collocated upon the property of the debtor when the proceeds are distributed in consequence of the abandonment."

5. Article 770 of the said Code is repealed and replaced by the following : Id. art. 770, replaced.

“770. The curator is bound to make his appointment known by an advertisement in the Quebec Official Gazette and by a registered notice transmitted by mail to the address of each creditor. Notice of appointment of curator.

In such notice, the curator shall call upon the creditors to file their claims with him within a delay of thirty days. Contents of such notice.

770a. The curator appointed may be required to give security, the amount whereof is fixed by the court or judge, and he is subject to the summary jurisdiction of the court or judge. Security to be given by curator.

Such security may be given in favor of the creditors of the debtor generally without mentioning their names.” How to be given.

6. Article 772 of the said Code is amended by striking out the second paragraph and substituting the following therefor : Id. art. 772, amended.

“The curator may, with the permission of the court or judge, upon the advice of the creditors or inspectors, exercise all the rights of action of the debtor and all the actions possessed by the mass of the creditors. Powers of curator to exercise rights of action of debtor, &c.

The curator may sell the debts and movables and immovables of the debtor in the manner indicated by the court or judge, upon the advice of the parties interested or the inspectors. To sell debts, movables, &c..

Upon the demand of the curator, authorized by the creditors or by the inspectors, or upon the demand of an hypothecary creditor, of which demand sufficient notice must be given to the debtor, the court or judge may authorize the curator, or command him, to issue his warrant addressed to the sheriff of the district where the immovables are situated, requiring him to seize and sell such immovables. To issue warrant addressed to the sheriff to sell real estate.

The sheriff is bound to execute such warrant, without its being necessary to make any service upon the debtor, but by otherwise observing the same formalities as in the case of a writ *de terris* ; and all proceedings subsequent to the issue of the warrant are had in the Superior Court.” Duties of sheriff in such case.

7. The following article is added to the said article 772, as amended : Id. Art. 772a, added.

“772a. The monies realized by the curator from the property of the debtor shall be distributed among the creditors by means of dividend sheets prepared after the expiration of the delays to file creditors' claims, and are payable fifteen days after notice is given of the preparation of such dividend sheets. Distribution of monies realized. Notice of such.

Such notice is given by the insertion of an advertisement in the Quebec Official Gazette and by a registered notice Notice how given.

sent by mail to the address of each of the creditors of the debtor who have filed their claims or who appear upon the list of creditors furnished by him.

Contestation of claims. The claims or dividends may be contested by any party interested.

Proceedings upon contestation. The contestation for such purpose must be filed with the curator, who is bound to transmit it immediately to the prothonotary of the Superior Court of the district, in which the proceedings upon the abandonment are then deposited, or to such other district as the parties interested in the contestation may agree upon, and such contestation is proceeded upon and decided in a summary manner."

Id. art. 773, replaced. **8.** Article 773 of the said Code is repealed and replaced by the following :

Contestation of statement. "773. Any creditor may contest the statement, by reason :

1. Of the omission to mention property of the value of eighty dollars ;

2. Of any secreting by the debtor, within the year immediately preceding the institution of the suit, or since, of any portion of his property, with intent to defraud his creditors ;

3. Of fraudulent misrepresentations in the statement, with respect to the number of his creditors or the nature or amount of their claims.

Delay to contest restricted in certain cases. In cases where the debtor has given notice of the abandonment of his property to his creditors, as above prescribed, the delay to contest the statement is restricted, as to the creditors to whom the notice is sent, to four months from the date of sending such notice."

Id. art. 776, amended. **9.** Article 776 of the said Code is amended by adding thereto the following paragraph :

Penalty for not producing statement, &c. "If the debtor, discharged upon bail, does not produce his statement and declaration within the thirty days mentioned in article 766, such debtor and his sureties are subject to the same penalties and recourse as hereinabove."

Id. art. 778, amended. **10.** Article 778 of the said Code is amended by striking out the words "under execution."

Id. art. 780, replaced. **11.** Article 780 of the said Code is repealed and replaced by the following :

Appointment of guardian, &c., in case where *capias* could not be executed or defendant has left province. "780. In cases where a *capias* could not be executed by reason of the absence of the defendant, or because he could not be found, and in all cases in which the defendant has left the province or no longer resides therein and has ceased his payments, there may, after notice to the defendant or debtor, in the manner prescribed by the court

or judge, be appointed a guardian and curator, whose powers and obligations shall be the same as if appointed after an abandonment of property."

12. Article 799 of the said Code is repealed and replaced by the following :

"799. The writ may also be obtained if the affidavit establish, besides the debt, that the defendant is a trader, that he has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors."

Id. art. 799, replaced.

Writ may be also obtained upon certain affidavit.

13. Article 834 of the said Code is amended by striking out the words "is notoriously insolvent, that he has refused to arrange with his creditors or to make an assignment to them or for their benefit, and that he still carries on his business"; and by substituting therefor the words "has ceased his payments and has refused to make an assignment of his property for the benefit of his creditors."

Id. art. 834, amended.

CERTAIN SALES HAVING THE EFFECT OF SHERIFF'S SALES.

14. The said Code is amended by adding thereto after article 711 the following articles :

"711a. The sale of immovables, situate in this province, made by liquidators in virtue of section 35 of the Federal Act, 45 Victoria, chapter 23, and followed by the formalities hereinafter mentioned, has the effect of a sheriff's sale.

"711b. A copy of the deed of sale and the certificate from the registrar mentioned in article 965 of this code must be deposited with the liquidator.

"711c. Notice of such deposit, with mention of the names of those who possessed the immovable during the last three years, must be given, during one month in the Quebec Official Gazette, and be read and posted at the place and in the manner mentioned in article 952 of this code on the second Sunday preceding the delays for bidding hereinafter mentioned.

"711d. During the fifteen days following the last insertion of the notice in the Official Gazette, any creditor of the company in liquidation and any person having hypothecary or real rights upon the immovable sold, have the right to offer an increase over the purchase price mentioned in the deed of sale, provided such increase be at least one-tenth of the whole price and that the bidders offer beside to refund to the purchaser his costs and lawful disbursements, and give him for that purpose security in the ordinary manner or deposit a sum sufficient for that purpose in the discretion of the court or judge, reserving the subsequent completion of the precise amount.

Articles added after 711 of C. C. P.

Certain sales under 45 V., C., c. 23, have effect of sheriff's sales if certain formalities are observed.

Deposit of deed of sale and registrar's certificate with liquidator. Notice of such deposit to be published.

Power of hypothecary creditors to offer an increase over purchase price.

Proviso.

Powers of other
creditors to
offer increase.

711e. Any other creditors of the company, and any other persons having hypothecary or real rights upon the immovable sold, may in like manner, and under the same conditions, outbid upon the first increase and may continue outbidding each other, provided that such subsequent increased bid be not less than twentieth of the purchase price, over and above the costs and lawful expenses.

Proviso.

Right of purchase to keep immovable at highest bid.

711f. The purchase may however keep and retain the immovable at the amount of the highest bid legally offered."

C A P . X X I I I .

An Act to amend article 1054 of the Code of Civil Procedure, as amended by section 9 of the act 34 Victoria, chapter 4, section 31 of the act 35 Victoria, chapter 6, and section 9 of the act 47 Victoria, chapter 8, and also article 68 of 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 :

C. C. P. art.
1054, further
amended.

1. Article 1054 of the Code of Civil Procedure, as amended by the act 34 Victoria, chapter 4, section 9, the act 35 Victoria, chapter 6, section 31, and the act 47 Victoria, chapter 8, section 9, is further amended by adding, after the word "Sherbrooke" in the last line of said section 9 of the act 47 Victoria, chapter 8, the words "and in the city of St. Hyacinthe, the town of St. Germain de Rimouski, the village of Arthabaskaville, and the town of St. Johns."

Certain suits
not to be
within juris-
diction of
Circuit Court.

2. In consequence of the preceding amendment, all appealable cases commenced in the Circuit Court sitting in the city of St. Hyacinthe, the town of St. Germain de Rimouski, the village of Arthabaskaville and the town of St. Johns, in which judgment has not been rendered, shall, from the date of the passing of this act, cease to be within the jurisdiction of such Circuit Court.

Proceedings
to be taken in
Superior Court.
Transfer of
records, &c.

3. The proceedings to be taken and judgments to intervene shall be taken and rendered before the Superior Court; and the books, archives and records of the Circuit Court, respecting any such case, shall, immediately after the coming into force of this act, belong to the Superior Court, and shall be thereto transmitted within a short delay.

4. Subsection *b* of section 2 of the act 47 Victoria, 47 V., c. 8, s. chapter 8 is amended by adding after the words "St. Francis," in the first and third paragraphs thereof, the words "and St. Hyacinthe." 2, § b. amended.

5. Article 68 of the said Code of Civil Procedure is amended by adding thereto the following paragraph : C. C. P. art. 68, amended.

"The order need not be published at length, but may be in the form annexed to this act." Form of order calling in defendant.

6. This act shall come into force on the day of its sanction. Coming into force.

FORM OF ORDER UNDER ARTICLE 63.

PROVINCE OF QUEBEC, }
 District of } In the Court.
 W. S. of the (*residence and occupation*), Plaintiff,
 J. I. of the (*residence and occupation*) Defendant.

The defendant is ordered to appear within two months.

(Date.)

A. B.,
 P. S. C., or C. C. C.

C A P . X X I V .

An Act to amend article 1323 of the Code of Civil Procedure.

[*Assented to 9th May, 1885.*]

WHEREAS doubts have arisen as to the interpretation Preamble. to be given to articles 1323 of the Code of Civil Procedure and 663 of the Civil Code, and whereas the Code of Civil Procedure seems to be in contradiction with article 663 of the Civil Code; Therefore, Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows :

1. Article 1323 of the Code of Civil Procedure is repealed and replaced by the following : C. C. P. art. 1323, replaced.