

sixty days, unless the said penalty with costs of conviction and subsequent costs be previously paid; no such person shall recover in any court of law for any work done or materials provided by him in the exercise of the practice of a dentist.

Privileges of physicians and surgeons not interfered with.

18. Nothing in this act shall interfere with the privileges conferred upon physicians and surgeons by the various acts relating to the practice of medicine and surgery in this province.

Privileges of licentiates defined.

19. The same privileges and exceptions by this act conferred upon the licentiates of dental surgery in this province, are the same as those conferred upon physicians and surgeons by the laws of this province.

32 Vict., ch. 69, and 33 Vict., ch. 45, repealed.

20. The 32nd Vict., chap. 69, and 33rd Vict., chap. 45, amending the same, are hereby repealed.

C A P. X V .

An Act to provide a remedy for the losses occasioned by the burning of the Quebec Court House.

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

[Assented to 28th January, 1874.]

If an original order or judgment given by the court of appeal, superior or circuit court, before the 1st Feb, 1873, is destroyed, a copy may be registered in the register of the court.

1. Any party or person, or the attorney or agent of any party or person interested in a case in the court of Queen's bench, appeal side, or the superior court in the district of Quebec, or the circuit court at the city of Quebec, in which any order or judgment shall have been made or rendered on or before the first day of February, one thousand eight hundred and seventy-three, may, if the original register of such order or judgment has been lost by the burning of the court house at the said city, demand the enrolment of an authentic copy of such order or judgment, and upon production thereof for that purpose, the clerk of the said court of Queen's bench, appeal side, or the prothonotary of the said superior court, or the clerk of the said circuit court shall enrol such authentic copy in the register of the court in which the order was made or the judgment obtained.

Notice to that effect.

2. Notice of such enrolment shall be forthwith given by the party or person who shall have so demanded the same to the party or person affected by the judgment or order or to his legal representatives; and when service of the notice in the ordinary manner is impracticable, a judge of

How served.

the said court of Queen's bench, or of the said superior court, in the said district, shall direct the mode of service.

3. Any party or person interested in a case wherein judgment shall have been rendered or an order made in the said court of Queen's bench, appeal side, or in the said superior court, or in the said circuit court on or before the said first day of February, eighteen hundred and seventy-three, who shall be unable to produce for enrolment a copy of the judgment rendered or of the order made by either of the said courts, as provided in section one, may, if the original register of such judgment or order has been lost or destroyed by the said fire, on petition to a judge of the said court of Queen's bench, or to a judge of the said superior court, after having given notice to the adverse party as hereinafter required on petitions for the restoration of records, and on proof made to the satisfaction of the judge, either by the declaration in writing of the judge who made the order, or of one or more of the judges of the court which rendered the judgment (which declaration it shall be the duty of such judge or judges to make as fully as may be in his or their power,) upon the production of a writ of execution or extracts from public or private registers, upon the oath of the adverse party, the evidence of the attorney who represented the parties, or upon evidence of any other nature admissible in similar cases, shewing the amount or the purport and effect of the judgment or order, obtain the enrolment of a judgment or order in the register of the court in which the judgment was recovered or the order made.

If a copy cannot be produced, how to supply the same.

Such judgment or order shall bear the date of the original judgment or order if the same has been ascertained, and if not the first February, one thousand eight hundred and seventy-three.

Date of judgment.

4. Judgments or orders enrolled under sections one or three cannot be executed until fifteen days after notice of the enrolment under section one, or until after the like delay from the date of enrolment under section three.

Delay for execution.

2. The period of time between the date of the said fire and the enrolment of any such judgment or order shall not be reckoned in the delay for appealing therefrom.

Interval not reckoned in delay to appeal

3. In cases in which no return has been made to a writ of appeal in consequence of the destruction of the original register of judgments, the record not having been destroyed, the delay to make the said return shall be extended to twenty days after the enrolment of a copy of the judgment appealed from in the office of the court where the said record is,

Delay extended to make returns of writs of appeal not made.

Power to begin new *ex-parte* proceedings, if the record is lost.

5. In any *ex-parte* suit or proceeding in the said superior court, or in the said circuit court, the record of which has been lost or destroyed by the said fire, before or after judgment, the plaintiff may bring a fresh action for the same cause.

Appeal in *ex-parte* cases shall lie upon application to the judge of the court.

6. In *ex-parte* cases the record of which has been lost or destroyed by the said fire, no appeal shall lie from the judgment unless it be first allowed by the court of Queen's bench upon special application, and on evidence to the satisfaction of the court that the judgment was obtained irregularly and contrary to law.

Notice of and delay to appeal.

Notice of the intention to appeal shall be given within fifteen days after service of notice of the enrolment of the judgment, and the application for leave to appeal shall be presented at the term next after the expiration of such fifteen days. Execution of the judgment shall be stayed by filing in the prothonotary's office, the notice of appeal, with a certificate of service thereof, and giving security in appeal.

How execution is stayed.

If appeal is allowed the record must be restored.

2. If the appeal be allowed the court shall order the restoration of the record, which shall be proceeded with in the manner hereinafter provided. The defendant shall sue out and serve his writ of appeal within eight days after the judgment declaring the record restored, otherwise he shall forfeit his right of appeal and be condemned, upon petition to a judge of the superior court, to pay to the plaintiff all costs occasioned by his appeal, including those on the restoration of the record.

Service of writ of appeal.

Forfeiture with costs.

Plaintiff may renounce the judgment enrolled, and recommence the suit.

3. The plaintiff in any such *ex-parte* case may, on payment of costs, at any time, renounce the judgment which he shall have caused to be enrolled under sections one and three, and bring a fresh action for the same cause.

If the record cannot be restored, the appeal is dismissed; case where the defendant is to be blamed.

4. If the judge of the superior court before whom the proceedings to restore the record are had, decides that it cannot be restored, the judgment shall be final, and the defendant's appeal dismissed with costs unless it shall appear that the non-restoration of the record is caused by the fault of the plaintiff, in which case the judgment shall be vacated.

Pending suits may be renewed in S. and C. courts, by permission of the judge.

7. In any case or proceedings pending in the said superior court or in the said circuit court, the record of which has been lost or destroyed by the said fire, a judge of the superior court may, on petition of any of the said parties thereto or their legal representatives, after notice to all the other parties, or to their attorneys *ad litem*, permit such party to recommence such case or proceeding, or to bring an action for the same cause as that set forth in the case or proceeding of the said applicant; but such permission shall not be

Exception.

granted if any other party to the cause shows to the satisfaction of the judge that he will suffer substantial and manifest injustice by the institution of such action, and that it is possible to restore the record as hereinafter provided for, so as to render it in substance what it was before the fire. The notice of such petition may be given in the manner and form as hereinafter provided for the notice of a petition for the restoration of a record.

Notice of the petition.

8. The record or any part thereof in any case in the said superior court, or in the said circuit court, which has been destroyed by the said fire, may, when practicable, be restored either by consent of parties or by order of the judge.

Restoration takes place, by consent or by order of the judge in S. and C.

9. No record shall be deemed or taken as restored by consent unless the parties or their attorneys declare in writing that they agree that the record made up shall avail and have the same effect as the original record; whereupon the judge shall declare the record to be duly restored, and the further proceedings in the cause shall be had in the ordinary manner.

The consent to be in writing.

10. An order for the restoration of a record or part thereof in any contested suit or proceeding pending at the time of the said fire, shall be made by a judge on application by petition of any party to the record, of which due notice shall be given to the other parties, shewing, to the satisfaction of the judge, that restoration is possible and requisite to secure to the petitioner acquired rights which cannot otherwise be invoked or established.

An order for restoration may be given on petition.

11. In cases wherein final judgment has been rendered, including those inscribed for review or in which an appeal has been taken to the court of Queen's bench, the record or part thereof may be restored by consent as provided in section nine, or restoration may be ordered by the judge as prescribed in section ten. If the judge decides that the record or the substance thereof cannot be restored, and that such impossibility of restoration is not owing to the fault or neglect of the party who obtained the judgment, such judgment shall have the force and effect of *chose jugée*. If he declares that the non-restoration of the record is attributable to the fault or neglect of that party, the judgment shall be vacated.

Records in adjudicated cases, inscribed for review, or taken into appeal, may be restored.

When the judgment has the effect of *resjudicata*, or is vacated.

12. Any party who has inscribed for review, or appealed from, or shall appeal from, a judgment rendered before the said fire, in a case the record of which has been lost or destroyed, shall be bound to commence proceedings, to restore the record, within six months from the notice of enrol-

Delay to demand restoration, to preserve right of appeal or review.

ment of the judgment under sections two and three, in default whereof he shall forfeit his right of appeal or review.

13. The proceedings for the restoration of a record shall be the following :

1. The judge who rendered the original judgment shall alone take cognizance of the petition and proceedings thereon, and in case of his death, sickness or absence, the petition shall be presented to and the subsequent proceedings had before another judge of the court of original jurisdiction. The promotion of the judge to another court shall not be a ground of disqualification. If a trial by jury has been had in the case, the petition shall be presented to and adjudicated upon by the judge who presided at the trial, or in case of his death, sickness or absence, by one of the judges who gave judgment upon the verdict ;

2. The judge may prescribe the delays within which the record shall be restored, or the proceedings incidental thereto carried on, and may extend the same or foreclose any party who has not proceeded with due diligence. He may also make such order for the examination of the parties or their attorneys or witnesses and the production of copies of documents belonging to the lost record, as will best secure the rights and protect the interests of all parties concerned, and give effect to the judgment ordering the restoration ;

3. Any deposition lost or destroyed by the fire may be replaced either by a written or printed copy, the correctness of which shall be admitted or shewn to the satisfaction of the judge, or by recalling the witness examined ;

4. The petition whereby proceedings are to be instituted under this act, shall be served upon all the parties to the original suit or proceeding, or upon their attorneys *ad litem*, and they shall have the same delays thereupon as are allowed upon writs of summons issued from the circuit court. When service of the petition cannot be effected in the ordinary manner, the judge shall make such order with reference thereto as to him shall seem just and proper ;

5. If one of the parties be dead or has changed his civil status, the petition shall be presented by or be served upon the representative of such person, or by or upon the person entitled to take up the *instance* ;

6. The proceedings had and taken in the court of appeals or court of review may be restored on petition in such manner and form as shall be prescribed by a judge of those courts respectively.

14. If the judgment declares that the record has been completely restored or that the substance thereof has been established, all further proceedings thereon shall be governed by the ordinary rules.

15. If the judgment declares that the record has not been restored wholly or in substance, it shall state in what respect the new record differs from the old, and whether any neglect is attributable to any of the parties.

If the record restored is incomplete.

16. An appeal shall lie in the ordinary manner from any final judgment upon an application to restore a record or to be permitted to bring a fresh action for the same cause.

A judgment or petition for restoration may be appealed from.

17. The losing party shall pay all costs occasioned by the fire, in addition to those of the original suit or proceeding, and the costs shall be taxed on secondary or other evidence to the satisfaction of the prothonotary.

Losing party to pay the costs.

2. The attorney's fees on proceedings to restore a record shall be one-half of those allowed on the action or proceeding up to the stage at which restoration is effected.

Attorney's fees one-half.

18. No fee of office or tax shall be exacted, nor shall any stamp be required to be affixed, in any fresh action or upon any petition for leave to bring the same, upon any proceeding taken to restore a lost record, or for or upon any office copy of a document to replace one previously procured and destroyed; provided that an order to that effect be obtained from the prothonotary or clerk which he shall be bound to make on production of an affidavit of the party or his attorney as to the loss of the record and the stage which it had reached at the time of the fire, or as to the loss of the document sought to be replaced.

Exemption of fees, tax, stamps.

2. The exemption from such fee, tax and law-stamps must be briefly mentioned on the document to which the order applies as made under this act, and be signed by the prothonotary or clerk who grants the same.

Brief mention required.

19. The period of time between the first of February, one thousand eight hundred and seventy-three, and the first day of September, one thousand eight hundred and seventy four next is, in so far as proceedings or matters before the said court of Queen's bench, superior court, and circuit court in the district of Quebec are concerned, which relate to records destroyed in whole or in part by the said fire, excluded from the operation of articles 1040, 1550, 1998, 1999, 2242, 2243, 2250, 2251, 2252, 2258, 2259, 2260, 2261, 2262, 2263, 2267 and 2268, of the civil code of Lower Canada, and of articles 454, 483, 506, 947, 1118, and 1119, of the code of civil procedure; and with reference to the said articles of the civil code and of the code of civil procedure, the first day of September next shall be reckoned as the day immediately following the first day of February, one thousand eight hundred and seventy-three.

Interval not reckoned in certain legal delays prescribed by the C. C., and the C. of C. P.

Action pending at the time of the fire is no bar to fresh action.

20. The pendency at the time of the said fire of any suit or proceeding, the record of which has been thereby lost or destroyed, shall be no answer to a fresh action or proceeding for the same cause instituted under the provisions of this act.

New proceeding deemed to interrupt prescription, &c.

21. Every fresh suit or proceeding under this act shall be deemed a continuance of the former cause or proceeding so as to suspend or interrupt all prescriptions and limitations; and also with reference to the rule that every action, suit, cause or proceeding is to be decided according to the relative right of the parties thereto existing at the time when such action, suit, cause or proceeding was instituted or otherwise commenced, and also within the meaning of article eighty-four of the code of civil procedure, in *ex parte* actions, wherein services of the original writ of summons has been made upon the defendant in person.

A copy of the record of a case appealed to the privy council, is equivalent to the original destroyed.

22. In all cases in which there has been an appeal to Her Majesty in her privy council, a duly certified copy of the record or part thereof, printed according to the practice in such appeals, may be filed in the office of the clerk of the court of Queen's bench, appeal side, upon application to a judge of that court by any party or person interested therein; and the copy so filed shall have the same effect as the original record would have had, if the same had not been lost or destroyed.

Copy of record already delivered for appeal to the privy council shall avail.

23. In all cases in which at any time before the said first day of February, one thousand eight hundred and seventy-three, the clerk of the court of Queen's bench, appeal side, shall have delivered to the party appealing therefrom to Her Majesty in her privy council, a copy of the record and proceedings, up to and including the judgment allowing the appeal to Her Majesty, notwithstanding that the original record and all proceedings subsequent to the allowance of the said appeal have been destroyed by the said fire, the said copy or a printed copy thereof shall be certified, and shall, to all intents and purposes, avail and be held and considered as the transcript of record and proceedings required by law to be transmitted on appeal to the privy council, provided it be accompanied by a certificate from a judge or the clerk, that the security had been duly given before the fire.

Proviso :

Bill of costs, how made of record lost.

24. Whenever, on account of the destruction of the record, a bill of costs conformable thereto cannot be procured, the clerk of the court of appeals, prothonotary of the superior court, or clerk of the circuit court, shall admit secondary evidence of the proceedings in the cause, and tax the costs according to the same.

25. It shall be the duty of any sheriff, when thereunto required by any order of a judge, make a new return to any writ of execution addressed to him, the original return to which has been destroyed by the said fire, upon which new return the same proceedings may be taken as might have been taken upon the original return.

The sheriff shall make a new return to any writ of execution.

26. Every clergyman having the legal custody of a register of baptisms, marriages and burials, for the year one thousand eight hundred and seventy-two, shall, when thereunto required by the prothonotary, deposit in his office a certified copy of such register, and any extract therefrom by the prothonotary shall make proof as if taken from a duplicate register, unless impugned by affidavit shewing that the original is different.

A copy of any register of baptisms, marriages and deaths for 1872, shall be deposited on demand. Value of extracts from such copy.

27. The offices of the several officers of justice which have been held in various buildings since the date of the said fire, are hereby declared to have been legally held and kept in such buildings, and all acts and duties performed therein are as valid as if done and performed in the court house for the said district.

Acts of officers of justice done in different places declared valid.

28. In all cases unforeseen by and not provided for in this act, the judge upon summary petition by any party interested and upon satisfactory proof, may make such order and grant such relief, as he may deem advisable and the nature of the case requires.

Unforeseen cases.

29. The lieutenant-governor in council may, at any time, by proclamation published in the *Quebec Official Gazette*, extend this act to any judicial district or circuit in this province, in which the court house may be destroyed by fire; and thereupon, on and after the day fixed in such proclamation, all the provisions thereof shall apply *mutatis mutandis*, to every such judicial district or circuit.

Application of this act to other districts, or circuits, by proclamation.

30. The foregoing provisions, in so far as applicable, shall extend to and govern all cases pending before the circuit court or the magistrates court in and for the county of Missisquoi, on the twenty-fourth day of May, eighteen hundred and seventy-three, or in which judgment had at and before that time been rendered in either of said courts, and in which the records have been destroyed by fire in whole or in part.

Application of this act to the circuit court or the magistrates court in the county of Missisquoi.

31. Section ten of the Quebec Interpretation Act shall not apply to this act, in so far as respects the inconsistency of the provisions of the civil code or of the code of civil procedure, with those of this act.

Sec. 10 of the interpretation act shall not apply to this act.

32. This act shall come into force upon the day of the sanction thereof.

Coming into force of this act.