

**21.** The amount so allowed shall be deemed to form part of the expenses incurred in carrying out the provisions of this act, and it shall be the duty of the treasurer to see that such expenses shall not exceed the interest or profit accruing to the treasury, from the moneys deposited in virtue of the said provisions.

Percentage to form part of expenses incurred under this act.  
Expenses not to exceed profits derived.

**22.** The lieutenant-governor in council may fix the salary of the sheriff of the district of Quebec, at a sum not exceeding three thousand six hundred dollars, and the salary of the sheriff of the district of Montreal, at a sum not exceeding three thousand six hundred dollars per annum.

Salaries of certain sheriffs to be fixed by lieut.-gov.

**23.** Moneys held by the treasurer or by any agent of his, under this act, may be seized by garnishment, either before or after judgment, provided the ordinary requirements of the law, in respect of garnishees, be fulfilled in respect of the agent, and that moreover a copy of the writ be sent by mail to the treasurer.

Moneys deposited may be seized by garnishment.

**24.** Whenever any judicial surety or any surety of a public officer, or any tutor or judicial administrator shall be desirous of paying over the amount of his suretyship or the full amount of his legal liability, he may deposit such amount with the treasurer under this act, and upon the production of the deposit receipt, he shall thereupon be free from the costs of any proceeding taken against him with respect to such amount.

Sureties may deposit the amount of their suretyship.  
Effect of such deposit.

**25.** Any public officer failing to comply with the provisions of this act shall be liable, at the suit of the attorney-general of the province or of any interested party, to a penalty not exceeding two hundred dollars, to be recovered before any court of competent jurisdiction in the district; and shall be liable to the party or parties interested for any amount he shall have failed to deposit, and for all damages, and may, moreover, be proceeded against by motion and rule, under pain of coercive imprisonment, to compel him to the payment of any moneys deposited with him under this act.

Liability of public officers failing to comply with this act.

## CAP. VI.

An Act respecting the amendment of certain articles of the Code of Civil Procedure, the appointment of an additional Judge of the Superior Court at Montreal, and the administration of justice in other respects.

[Assented to 23rd December, 1871.]

**H**ER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Art. 64 C. C. P.  
amended.

Service upon  
foreign rail-  
way com-  
panies.

1. Article 64 of the code of civil procedure is hereby amended by adding thereto the following paragraph :

"Foreign railway companies who control, either as owners or lessees, any line of railway extending to or passing through the province of Quebec, and who have no office, president, secretary, or agent therein, are sufficiently summoned by service made upon any of their station agents or dépôt-masters, in charge of such stations or dépôts, belonging to or under the control of said companies, as are situated within this province."

§ 1, of art 68,  
C. C. P.,  
amended.

2. The first paragraph of article 68 of the code of civil procedure is amended so as to read as follows :

"If the defendant has left his domicile in Lower Canada, or has never had such domicile, but has property therein, the court or judge, or the prothonotary, upon a return stating that he cannot be found in the district, may order him to appear within two months from the last publication of such order."

Signification  
of sale requir-  
ed by art. 1571,  
how made in  
certain cases.

3. Whenever, in the case of a sale of a debt or a right of action against a third person, the debtor has left or has never had his domicile in this province, the signification of the sale required by article 1571 of the civil code, may be effected, by publishing, in the form given in the schedule of this act, or in any form equivalent thereto, a notice of the said sale, twice in the French language, in a newspaper published in the French language, and twice in the English language, in a newspaper published in the English language, in the district in which the debt was contracted or in which the action has been instituted ; and in default of either of such newspapers in such district, then in a similar newspaper of the nearest locality.

Delivery of  
copy of act of  
sale required  
by art. 1571.

The delivery of a copy of the act of sale, required by the said article 1571 may be effected, in either of the cases mentioned in this section, by leaving such copy for the debtor in the hands of the prothonotary of the district in which the signification was published.

Service of ac-  
tion to be suffi-  
cient signifi-  
cation of sale in  
certain cases.

4. Whenever in either of the cases mentioned in the preceding section, an action has been brought against the debtor, the service of the action, in the manner prescribed by article 68 of the code of civil procedure, shall be a sufficient signification of the act of sale, if in the order published in virtue of the said article, the sale is mentioned and described ; and the filing of a copy of the act of sale together with the return of the action, shall be a sufficient delivery thereof to the debtor.

Signification of  
sale required

5. Whenever a whole class of rents or debts collectively is sold, whether such sale has been made before or after

the coming into force of this act, the signification of sale required by article 1571 of the civil code may be effected by causing the act of sale to be published in the manner prescribed by section three of this act, and the delivery of a copy required by the said article may be effected by depositing a copy of the deed of sale in the office of the prothonotary of the district in which the succession opened, or in which the lands are situated in respect of which the debts are due, or of the district in which is or was the chief place of business of the original creditor. And such publication and deposit, once made, shall be a sufficient signification and delivery with respect to each debtor individually.

**6.** Article 128 of the code of civil procedure, is hereby amended, by adding thereto the following paragraph : Art. 128 amended.

“The delays for filing preliminary exceptions and pleas to the merits do not begin to run until after the date of the service, upon the defendant’s attorney of a notice, informing him that such security has been given.”

**7.** Section one of the act of this province, thirty-fourth Victoria, chapter four, is hereby amended by striking out therefrom the word “Montreal.” 34 Vic., cap. 4, amended.

**8.** Notwithstanding anything contained in article 238 of the code of civil procedure as amended by section one of the act thirty-fourth Victoria, chapter four, and by the next preceding section of this act, the following days shall be days on which parties may be compelled to proceed to proof in all actions or proceedings instituted or had, at the city of Montreal, in the superior or the circuit court, unless any such days are days fixed for the holding of the court of Queen’s Bench, appeal side, namely :

The first sixteen days of the months of February, March, April, May, June, September, October, November and December ;

The first nine days of the month of July ; and

The last sixteen days of the month of January.

**9.** Article 252, of the code of civil procedure, is hereby amended, by adding thereto the following paragraph : Article 252 amended.

“Nevertheless, if consorts are separated as to property, and one of them, as agent, has administered property belonging to the other, the consort who has so administered may be examined as a witness in relation to any fact connected with such administration ; provided the court or judge shall, in view of the circumstances of the case, deem it just and advisable to order such examination. Whenever such examination shall be allowed, it shall be as unrestricted as would have been that of the other consort, whether as regards the admissibility of verbal evidence or otherwise.”

Employment of stenographers at jury trials and in cases inscribed for proof and hearing at the same time.

**10.** In all suits to be tried by a jury, or which are inscribed for proof and hearing at the same time, either in the superior court or in the circuit court, either of the parties may, by a demand in writing, accompanied by a deposit of a sufficient sum of money to pay a stenographer, require that the evidence in the case shall be taken by means of stenography. In every such case, the stenographer shall be named by the prothonotary, unless the parties mutually agree upon one, and the said stenographer shall be sworn before the court or judge, or the prothonotary, or the clerk of the court, and he shall, at the conclusion of each testimony, read over the same to the witness, and such testimony shall, when afterwards transcribed in ordinary writing, form the record of the evidence in the cause; and, in the case of trials by jury, the requirements of articles 397 and 398 of the code of civil procedure, may be fulfilled through the intervention of the stenographer. In cases inscribed for proof and hearing at the same time, such evidence taken by means of stenography shall be a sufficient fulfilment of the last part of article 263 and of article 264 of said code; and the sufficiency of the deposit required to pay a stenographer shall be determined by the court or judge, or by the prothonotary.

Employment of stenographers in other cases.

**11.** In any case in the superior or in the circuit court, the parties may, by consent, employ the services of a stenographer, and cause him to be sworn, and the evidence to be taken in the manner mentioned in the next preceding section.

Taxation of their expenses.

**12.** The expense of employing a stenographer, shall form part of the taxed costs of the case.

Art. 423 C.C.P. amended.

**13.** Article 423 is hereby amended so as to read as follows:

“Motions for new trial or for judgment *non obstante veredicto* must be made before the superior court, sitting in review, on or before the second day of the next term of such sittings, following the tenth day after the rendering of the verdict, and cannot be received after.

Art. 511 amended.

**14.** Article 511 of the said code is hereby amended, by adding thereto the following paragraph:

“The opposition must, moreover, on pain of nullity, be accompanied with an affidavit of the opposant, or of some other credible person, that the allegations contained in such opposition are, to the best of his knowledge, true.”

Art. 563 amended.

**15.** Article 560 of the said code is amended by substituting the following for the last sentence of the last paragraph thereof:

"The debtor must also, if he is present, be called upon to sign the inventory, and his refusal or inability to do so, or his absence must be stated."

And the said article is further amended, by striking out, from paragraph three of the same, all the words after the word "nature," and by adding, at the end of the said article, the following paragraph :

"In the case of the seizure of a registered vessel of fifteen tons burthen, or over, the recital required by section thirteen, of chapter forty-one, of the consolidated statutes of Canada, must be returned and filed together with the inventory."

**16.** Article 570 of the said code is amended, by inserting therein, immediately after the word "province," the words "or has ceased to reside within the district in which the judgment was rendered." Art. 570 amended.

**17.** Article 571 of the said code is hereby amended, by adding thereto the following paragraph : Art. 571 amended.

"If the debtor has no domicile in the province, or has ceased to reside within the district in which the judgment was rendered, the notice may be left for him at the office of the prothonotary of the court."

**18.** Article 834 of the said code is hereby amended, by inserting therein, immediately after the word "secreting," the words "or is about to secrete," and by substituting in place of the words "creditors and the plaintiff," the words "creditors or the plaintiff." Art. 834 amended.

**19.** Article 952 of the code of civil procedure is amended by adding, after the word "third," in the second line, the words "or fourth." Art. 952 C.C.P. amended.

**20.** Notwithstanding anything to the contrary contained in article 963 of the code of civil procedure, whenever the applicant for a judgment of confirmation of title has an hypothecary claim against the property, which appears by the certificate of the registrar, he may retain the purchase money, to the extent of his claim, until judgment has been rendered, provided he furnishes the prothonotary with good and sufficient sureties for all damages that might result to any party interested, in the event of the non-payment of such sum as the court may order such applicant to pay into the hands of the prothonotary ; and upon such security being given the amount so retained shall be deemed to be deposited, and the case shall be dealt with accordingly. Art. 963 C.C.P. Applicant for confirmation of title may retain amount of his hypothecary claim.

**21.** Article 998, of the code of civil procedure is amended, so as to read as follows : Art. 998 amended.

993. The summons for that purpose must be preceded by the presenting to the superior court, or to a judge, of a special information containing conclusions adapted to the nature of the contravention, and supported by an affidavit to the satisfaction of the court or judge, and the writ of summons cannot issue upon such information without the authorization of the court or judge.

This writ, as well as the writs of *quo warranto*, *mandamus* and prohibition, shall be in the same form as ordinary writs of summons.

Art. 1023  
amended.

**22.** Article 1023 is amended so as to read as follows :

1023. The application is made by a petition supported with an affidavit, affirming that the facts set forth in the said petition are true, and presented to the court or judge, who may thereupon order a writ of *mandamus* to issue ; and such writ is served in the same manner as any other writ of summons.

Lieutenant  
governor may  
in certain  
cases abolish  
county circuit  
courts.

**23.** The lieutenant-governor may, at any time, by proclamation, abolish the holding in any county, or at any place in a county, of a circuit court theretofore authorized by proclamation in accordance with article 1062 of the code of civil procedure ; and thereupon, the books, papers and records of the court so abolished, shall be transmitted to such other circuit court as the lieutenant-governor shall name in the said proclamation.

Art 1081  
amended.

**24.** Article 1081 of the said code is hereby amended, by striking out the following words therein : " who is bound to elect a domicile for the judgment creditor in the locality within which the seizure is made, and."

Certain circuit  
court suits still  
pending to  
belong to supe-  
rior court.

**25.** All appealable suits begun in the circuit court, at the city of Quebec or the city of Montreal, before the coming into force of the act of this province, thirty-fourth Victoria, chapter four, in which judgment has not been rendered, shall cease to be within the jurisdiction of the circuit court, and thereafter all proceedings and judgments therein shall be had and rendered in the superior court ; and the books, muniments and records of the circuit court, relating to all such suits, shall, immediately upon the coming into force of this act, appertain to the said superior court, and be transmitted thereto.

No second de-  
mand of pay-  
ment required  
on executions.

**26.** Whenever in any suit, a writ of execution has issued, and by reason thereof a demand of payment has been made upon the defendant, no other demand of payment need be made in such suit previous to the further execution of any other such writ, whether in the same or in any other district.

**27.** There shall no longer be terms for the holding of the circuit court at the city of Montreal, but every juridical day shall be a day on which the circuit court may be held at the said city, whenever business shall require it. Nevertheless, the judge holding the said court may adjourn the sittings thereof to some future day, and in the interval of such adjournment, the said court shall not be held.

When circuit court in Montreal will be held.

**28.** Notwithstanding anything contained in chapter seventy-eight of the consolidated statutes for Lower Canada, or the acts of this province, thirty-second Victoria, chapter twenty, and thirty-third Victoria, chapter ten, the superior court therein mentioned shall consist of twenty judges, namely : one chief justice, and nineteen puisné judges.

C. S. L. C., c. 78, 32 Vic., c. 20, 33 Vic., c. 10, Superior court to consist of twenty judges.

**29.** The additional judge to be appointed to complete the said number of twenty, shall reside in the city of Montreal, and shall have the same power and jurisdiction, and be subject to the same provisions of law, as any other judge of the said court acting under like circumstances.

Residence and powers of additional judge.

**30.** The third section of the act thirty-third Victoria, chapter ten, is hereby amended, by striking out the word "five" therein, and substituting therefor the word "six."

33 Vic., cap. 10, sec. 3, amended.

**31.** And it is further declared and enacted, as follows : Notwithstanding the ninth section of the act of this province, thirty-fourth Victoria, chapter four, the circuit court within the districts of Quebec and Montreal, other than those sitting in the cities of Quebec and Montreal, have had, since the enactment of the said ninth section, and shall continue to have the same jurisdiction in appealable suits, as they had before the said ninth section was enacted.

Jurisdiction of C. C. in districts of Quebec and Montreal since 34 Vic., cap. 4, sec. 9 declared.

**32.** And it is further declared and enacted, as follows : Ever since the coming into force of the code of civil procedure, any judge of the superior court has had and hereafter shall continue to have the jurisdiction and power mentioned in article 1261 of the said code, at any place where the circuit court is held, and either in or out of term.

Any judge of S. C. declared to have powers, &c., mentioned in art. 1261.

**33.** This act shall come into force on and after such day as shall be fixed for that purpose, by proclamation of the lieutenant-governor.

Commencement of this act.

**34.** Section ten, of the Quebec Interpretation Act, shall not apply to this act.

Sec. 10, of Interp. act, not to apply.

## SCHEDULE.

### NOTICE.

To (name and designation of the debtor.)