


10-1938

Civil Procedure in the Province of Quebec

J. Armitage Ewing, K. C.
Member, Montreal Bar

Follow this and additional works at: <http://www.repository.law.indiana.edu/ilj>

 Part of the [Civil Procedure Commons](#), and the [Comparative and Foreign Law Commons](#)

Recommended Citation

Ewing, J. Armitage K. C. (1938) "Civil Procedure in the Province of Quebec," *Indiana Law Journal*: Vol. 14 : Iss. 1 , Article 4.
Available at: <http://www.repository.law.indiana.edu/ilj/vol14/iss1/4>

This Article is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in *Indiana Law Journal* by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



JEROME HALL LAW LIBRARY

INDIANA UNIVERSITY
Maurer School of Law
Bloomington

CIVIL PROCEDURE IN THE PROVINCE OF QUEBEC

By J. ARMITAGE EWING, K. C.*

For a proper understanding of the civil procedure of the Province of Quebec a reminder of some events of history is of assistance. The portion of the country now known as the Province of Quebec, as well as much of the Maritime Provinces, were colonized by France in the sixteenth century. France was divided into provinces, each of which had its own customs. These customs (coutumes), as the name implies, were the habits and practices of the people of the different districts which in the course of time acquired the force of law. In the same manner arose those great principles called "The Common Law of England"—usages crystalizing into laws. As Norman conquered and occupied England and intercourse between France and England through wars, the crusades, commerce or otherwise, progressed, the customs of one land were in part adopted by the other, and so it is not surprising to find that in the main the laws of the one country are much like those of the other.

The Romans were great law makers and law developers. Their conquest of France or Gaul had been complete and when a question arose and there was no adequate provision for it in the custom of the locality, recourse was had to the Roman law—not that it was of binding force, but because it was regarded as written reason. The influence of Roman law on the French customs was considerable and has affected the Quebec Civil Code. Some chapters of the latter are almost word for word with the Institutes of Justinian.

In time the French customs were reduced to writing, and registered in their respective Provincial Parliaments. Of these the most important was the Custom of Paris. So much of this as was deemed appropriate to the colony was registered

* Address of Hon. J. Armitage Ewing, K. C., of the Montreal, Canada, Bar, at the Annual Meeting of the Indiana State Bar Association, September 16, 1938.

by the Sovereign Council of Quebec in 1663, and thus became the law in civil matters of French Canada.

Canada, including Quebec, was taken by the British from the French by conquest, Acadia in 1713, and what is now the Province of Quebec in 1759 and 1760. The latter was formally ceded to Britain by the Treaty of Paris in 1763. No provision was made in this Treaty for the continuation of the civil laws to the conquered subjects, who decided to remain in Canada, then amounting to about 50,000, nor for the preservation of their language and institutions.

After the Treaty, by Royal Proclamation of the King of Great Britain in 1763, the Governor was empowered with the consent of the Council and representatives of the people to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of the colony and of the people and inhabitants thereof, as near as might be agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies "and in the meantime, and until such assemblies can be called as aforesaid, all persons inhabiting in or resorting to our said colonies may confide in our Royal protection for the enjoyment of the benefit of the laws of the realm of England; for which purpose we have given power under our great seal to the governors of our said colonies respectively to enact and constitute, with the advice of our said councils, respectively, courts of judicature and public justice as well criminal as civil according to law and equity, and, as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts in all civil cases to appeal under the usual limitations and restrictions to us in our Privy Council."

Authorities differ as to the effect of this proclamation. Some hold that it did not change the existing civil laws of the Colony; others are of the opinion that it established English law as the common law of the Province. The question is now more academic than practical, for by the Quebec Act of 1774 it was enacted that "in all matters of controversy relative to property and civil rights, resort shall be had to the laws of

Canada as the rule for the decision of the same," and subsequent acts have confirmed the establishment of the doctrine that in the Province of Quebec the principles of English law govern in constitutional and criminal and certain commercial questions, and those of the old French law as contained in the Custom of Paris, in civil matters.

This principle has been recognized and conserved in all constitutional Acts affecting Canada, and by its present written constitution, the British North America Act, passed by the Parliament of Great Britain in 1867, which formed four of the provinces including Lower Canada, as Quebec was then called, into the Dominion of Canada, with provision for the entrance of other colonies later on, popularly called "Confederation," certain powers were given exclusively to the Dominion of Canada, the Federal authority, and certain powers to the Provinces. Among the powers given exclusively to the Provinces were the right of legislating on "Property and Civil Rights in the Province" (sec. 92, s.s. 13), and the administration of justice in the Province, including the constitution, maintenance and organization of Provincial courts both of civil and criminal jurisdiction, and including procedure in civil matters in these courts (sec. 92, s.s. 14).

But one year before Confederation, owing to the inconvenience of the inhabitants of the Province obtaining access to the laws which sprang from a country whose language was in many cases not their own, and the increasing difficulty in obtaining copies of the old laws themselves, it was deemed advisable to codify Quebec's civil laws. Accordingly in 1866 there was enacted by the Parliament of the then Province of Canada what is known as "The Civil Code of Lower Canada," which reduced to writing, in both languages, the major portion of the civil law of the now Province of Quebec, and this was followed a year or so later by the Code of Civil Procedure, passed by the legislature of the newly created Province of Quebec, which sets forth, *inter alia*, the laws of procedure before the courts in civil matters.

THE COURTS

The civil courts are, of course, of two kinds: Courts of First Instance or Trial Courts; and Courts of Appeal.

TRIAL COURTS

The trial courts are the Circuit Court of the District of Montreal, the Commissioner's Court, the Magistrate's Court, the Court of the Justices of the Peace, the Recorder's Court, all of which are of comparative minor importance, their jurisdiction being limited; and two major courts which are the Superior Court and the Exchequer Court of Canada. The latter is a court of Federal creation; all the others are constituted by Acts of the Quebec Legislature.

The Judges of the Superior Court, the Exchequer Court and the Circuit Court of the District of Montreal are appointed by the Dominion Government and are paid by it. The Judges of the other courts are appointed and paid by the Provincial Government.

The Exchequer Court of Canada is not peculiar to the Province of Quebec as it has jurisdiction in all the Provinces of the Dominion. It deals with claims by or against the Dominion Government, or concerning Dominion Government property, or with matters made subject to it by Acts of Parliament.

The Superior Court is the important Court of First Instance. It has original jurisdiction in all suits or matters not exclusively within the jurisdiction of the other courts, which, as already said, with the exception of the Exchequer Court within its own peculiar sphere, have authority only in minor matters (except in a few special instances); but sometimes cases in these minor courts may be brought before the Superior Court by means of evocation. Sometimes by special provisions an appeal from the decision of a minor Judge or Magistrate lies to the Superior Court, or a Judge thereof.

Excepting the Court of King's Bench, which in civil matters is a court of appeal, all courts' Judges of the Circuit Court and Magistrates, and all other persons and corporations within the Province are subject to the superintending and reforming

power and control of the Superior Court and of the Judges thereof, in such manner and form as is by law provided.

The Province is divided into a number of judicial districts, and the Superior Court sits at the duly appointed place in each district, which is called the *Chef Lieu*.

Let us follow a case in the Superior Court, for say \$3,000, to final judgment and to appeal.

No person can institute an action at law unless he has an interest, actual or eventual, therein.

SUMMONS AND PLEADINGS

All actions are instituted by a Writ of Summons in the name of the Sovereign, who is the "Fountain of Justice." It may be drawn up in either English or French; it is signed and attested by the Clerk of the Superior Court, who is called the Prothonotary, or one of his deputies, and is issued on the written requisition of the Plaintiff. All proceedings may take place in either English or French, the two languages being of equal validity.

The Writ of Summons is addressed to the Sheriff of the district, or to an officer of the Court called a Bailiff—generally to the latter—commanding him to summon the Defendant to appear before the Court within the delay therein mentioned. This delay depends on the nature of the action, but is generally six days from the date of service, with additional delays for increased distance from the place of service to the office of the Court.

The causes of action are set out in the Writ, or in a writing annexed to it called the Declaration, which is signed by the Plaintiff or his Attorney.

In all pleadings it is sufficient that the facts alleged, and the conclusions which flow from these facts, be concisely, distinctly and fairly stated without any special form being necessary, and without entering into argument. All pleadings must be served on the opposite party.

The officer to whom the Writ is directed serves a certified copy thereof, and a certified copy of the Declaration attached to the Writ, on the Defendant, in the manner provided by the

Code of Procedure, and makes his return of service under his oath of office on the original Writ.

The Writ, with the Declaration attached, must be filed in the office of the Court on or before the last day of the delay allowed for the Defendant's appearance.

The Plaintiff must file with the return of the Writ the Exhibits which he has alleged in support of his demand, and until they are filed he cannot proceed with his action.

When summoned the Defendant must file an Appearance in the office of the Court on or before the last day of the delay fixed for appearance, and if he does not the Plaintiff may proceed to judgment by default; but the Defendant may obtain leave from the Judge to appear on showing sufficient cause at any time before judgment is obtained against him.

If the Defendant has any preliminary exceptions to urge he must do so by Motion, of which a copy is served on the Plaintiff within three days of the return of the action. In some cases the deposit of a small sum to meet the Plaintiff's costs is required.

The preliminary exceptions provided by the Code of Procedure are:

1. Declinatory exceptions, where the Defendant alleges that he has been summoned before the wrong court. He may ask that the action be referred to the court having jurisdiction or that it be dismissed, if there is no such court.

2. Exception of *lis pendens*. If the same cause of action is already before the court, between the same parties, the Defendant may ask that the action be dismissed.

3. Exceptions to the form. Where there are irregularities in the Writ, Declaration or service, absence of quality or incapacity in or of the Plaintiff or the Defendant, or no statement of the causes of action in the Writ or the Declaration, or an irregular description of the object of the demand, the Defendant may ask that the action be dismissed.

4. Dilatory exceptions. Where the Defendant has the right to ask that the action be stayed for certain causes.

The preliminary exceptions having been disposed of, or none having been raised, the Defendant must file his Defence

within a specified time, in default of which the Plaintiff may proceed against him *ex parte*.

An issue of law may be raised by an Inscription for a fixed day not less than three days after service on the opposite party whenever the facts alleged, or some of them, do not give rise to the right claimed. It must be filed at the same time as the Defence and contain all the grounds relied upon. They are all deemed to be denied by the opposite party. This Inscription in law, popularly called "a demurrer," may be against the whole or part of the demand. It may ask that the action be dismissed, or that certain paragraphs of the Declaration be struck out.

The Defendant may urge by his Defence, known as a Plea:

1. The non-completion of the term, or the non-fulfillment of the condition upon which the right of action depends;
2. The extinction, in whole or in part, of the right claimed by the Plaintiff;
3. The falsity, in whole or in part, of the allegations of the action.

It concludes by praying that the action be dismissed.

Six days are generally allowed to file the Defence, counting from the delay allowed for the Appearance, or from the Judgment on preliminary exceptions, if any have been urged.

Within a fixed time from the filing of the Plea the Plaintiff must file his Answer to Plea, and if it alleges new facts, the Defendant must reply within the same delay to the new facts raised, by a Replication.

If these are not sufficient to set forth the contentions of the parties, the judge may grant leave to file additional pleadings. The issue is thus said to be joined.

Grounds of law against a Defence or other pleading are urged by Inscription in law, in the same manner as against the Plaintiff's demand, heretofore stated; and preliminary exceptions against a Defence or other pleading may be urged by motion in the same manner as provided for exceptions against Plaintiff's action, as already mentioned.

Other Proceedings. Provision is made in the Code of Pro-

cedure for incidental and cross demands, for interventions by interested third parties, for improbation against authentic documents, for contestation of the truth of the Sheriff's or Bailiff's returns, for recusation of a Judge for certain specific causes, for the preliminary examination of a party to the action, and inspection of relative documents, for the joinder of two or more actions or for the ordering of them to be tried together and on the same evidence if the Judge so decides, and for many other procedures which time does not permit me to deal with.

TRIALS

On the issue being joined and all preliminary matters disposed of, either party may inscribe the case on the proper roll for trial, there to await its turn. This depends on the nature of the case—some cases being entitled to a more expeditious hearing than others. When its turn comes round, notice of the day and the court is given by the party who inscribes to the other.

Trials are of two kinds: (1) Before a Judge sitting alone, or (2) Before a jury presided over by a Judge.

Trial Before a Judge: Most cases are tried by one Judge without a jury.

The day for trial having arrived, and the inscribing party having given the others the proper notice, the case is called, and the parties being ready it proceeds.

The Judge is attired in black clothes, over which he wears a black silk gown and a white band at his throat, and a black three cornered hat which he removes on taking his seat but which he resumes on leaving the Bench. The Counsel likewise wear black clothes with white band at the throat, and if they are King's Counsel they wear black silk gowns similar to that of the Judge, and if not, gowns of black lustre.

The records of the court are kept by the Prothonotary, or his deputy. He is dressed like an Advocate who is not a King's Counsel. He swears the witnesses and taxes them. The court is opened and closed in a formal manner by the

Judge's Crier, who precedes him and calls for silence on entering the room. He is attired like the Prothonotary.

On the wall behind the Judge's seat is the Royal Coat of Arms and alongside it is a crucifix.

The underlying idea of such dress and formality is to impress all parties with the solemnity of the occasion, and to maintain the dignity of His Majesty's court of justice.

The different Counsel briefly state their pretensions.

The party on whom the burden of proof lies proceeds first to the examination of his witnesses. The opposite party then makes his proof, after which the other party may adduce evidence in rebuttal. The court may, in its discretion, allow the examination of other witnesses.

At the conclusion of the evidence, the party on whom the burden of proof rests addresses the court; the opposite party follows and the other party replies; and if, in his reply, he raises a point of law his opponent may answer.

No other address can be made without the permission of the court.

The testimony of one witness is sufficient in all cases in which proof by testimony is admitted.

All persons are competent to render testimony except those deficient in understanding, those insensible to the religious obligation of an oath, and husband or wife against each other; but if consorts are separate as to property and one of them has administered property of the other, the consort who has so administered may be examined as a witness against the other in relation to any fact connected with the administration if the court is of opinion that it is just and advisable. The omission of a party to examine a consort in his favor cannot be invoked against him, and the fact that a party does not offer his own testimony cannot be construed against him.

Relationship, connection by marriage and interest are objections only to the credibility of a witness.

In cases susceptible of appeal the evidence is taken by writing, generally by stenography, unless the court otherwise orders.

A witness may give his evidence in English or French, sten-

ographers of both languages being provided, though in some of the districts where the population is nearly exclusively French it is sometimes difficult to find an English stenographer.

The Judge may, before deciding on the merits, refer the case, or any issue thereof, to experts, accountants, etc., who must report to him on or before the day fixed therefor.

In certain matters of dispute between relations the court may, of its own motion or on the application of either party, refer the case to the decision of arbitrators.

At the conclusion of the argument, or after the Judge has taken the case under advisement, the Judge renders his judgment. He cannot adjudicate beyond the conclusions, but he may reduce them and grant them only in part.

Every judgment must mention the cause of action and must be susceptible of execution. In contested cases it must contain a statement of the issues of law and of fact raised and decided, the reasons upon which the decision is founded, and the name of the Judge by whom it is rendered. If it is for damages it must contain a liquidation thereof.

The judgment must be entered without delay in the register of the court in conformity with the draft prepared by the Judge.

The losing party must pay all costs, unless for special reasons the court reduces or compensates them, or orders otherwise; but if in personal actions the condemnation does not exceed \$25.00 no Attorney's fee can be granted against the Defendant, except in certain special cases. Other exceptional provisions are provided.

Every condemnation to costs involves, by the operation of law, the distraction in favor of the Attorney of the party to whom they are awarded.

Costs are taxed by the Prothonotary after notice to the opposite party, in accordance with the tariffs in force.

I am obliged to abstain from dealing with the execution of judgments and the remedies against judgments, except appeals therefrom, which I will take up presently.

Trial by Jury is the exception in the Province of Quebec. It can only be had when the action is founded on a debt,

promise or agreement of a commercial nature either between traders or between a trader and a non-trader, or when the action is for the recovery of damages resulting from personal wrongs, or from offences or quasi-offences against movable property. The amount claimed by the action must exceed \$1,000.

A trial by jury is had at the option of either of the parties made in the Declaration or in the Defence, or by a special application to the Judge within three days after issue joined.

Detailed provisions exist in the Code of Procedure and special statutes as to the qualifications, summoning, challenging, etc., of the jurors, the proceedings before them, the verdict they may render, the court's judgment arising from the verdict, the remedies and appeals therefrom, the narration of which would form a separate paper, so I am obliged to omit further reference to them; but mentioning one or two of the principal features, will say that a jury consists of twelve men aged at least twenty-one years (no women), being British subjects and having certain property qualifications.

The province of the Judge is to declare whether there is any evidence adduced and whether that evidence is legal. The province of the jury is to find the facts, but it must be guided by the directions of the Judge as regards the law. The agreement of nine of the twelve jurors is sufficient to return a verdict.

After the jury has rendered its verdict one of the parties may move for judgment according to the verdict. Motions may also be made by either party for a judgment different from the verdict, for a new trial, or alternately for any of the remedies set out in certain articles of the Code of Procedure, which, for lack of time, I cannot go into.

APPELLATE TRIBUNALS

These are: The Court of King's Bench, Appeal Side—established by the Province of Quebec, the Supreme Court of Canada, a court having jurisdiction over the whole of Canada, established by an Act of the Dominion Parliament, and the

Privy Council, which is an imperial tribunal having jurisdiction over the entire British Empire.

The Court of King's Bench, Appeal Side, frequently called the Court of Appeals. Unless otherwise provided by Statute, an appeal lies to the Court of King's Bench, sitting in appeal, from any final judgment of the Superior Court, where the sum claimed or value of the thing demanded is not less than \$200. An appeal is also allowed from certain other judgments, some of which are final and some of which are interlocutory.

Except in certain cases proceedings in appeal must be brought within thirty days from the date of the judgment appealed from.

Appeals are instituted by means of an Inscription filed in the office of the court which rendered the judgment, and a notice must be served upon the opposite party, or his Attorney. The appellant must, on penalty of having his appeal dismissed, give security, in the manner laid down and within the time fixed, that he will effectually prosecute the appeal and satisfy the condemnation, and pay all costs adjudged in case the judgment appealed from is confirmed, or consent in writing to the judgment being executed, or file a copy of any judgment ordering provisional execution of the judgment appealed from, in which case he is only obliged to give security for the payment of the costs in appeal if he fails.

On the security being given the record is transmitted to the Clerk of the Court of Appeal.

Preliminary Motions being disposed of, or none being filed, the appellant must, within a certain delay, file in the office of the Court of Appeal a joint record, called "The Case", containing the Pleadings, Exhibits, Evidence and other essential documents produced in the court below, the Judgment appealed from, and the Trial Judge's Notes, of which joint record two copies are sent to the respondent and ten copies filed in the office of the court; and within a certain delay thereafter each party, except where otherwise provided, must file in the office of the court ten copies of a memorandum called a "Factum," containing his pretensions, reference to authorities,

and to the pages of the Evidence which support his pretensions.

Failure by the appellant to file the joint record, or his Factum within the delay fixed may cause the dismissal of the appeal.

The parties must also file written Appearances, and on that of the appellant being filed and the record received by the court, the case is set down on the roll by the Clerk, and is heard in its turn.

The court is composed of five Judges, attired as are the Superior Court Judges, and the Counsel and court officials are robed as described for the Superior Court, and the court rooms arranged in much the same way.

The Counsel for the appellant opens his argument, followed by Counsel for the respondent, and each one is allowed to reply to the other.

A majority of the Judges is necessary to reverse the judgment appealed from.

Every judgment in appeal must contain a statement of the points of fact and of law in the case, and the reasons upon which it is founded, with the names of the Judges who concur therein, and of those who dissent therefrom, and an adjudication as to the costs.

The costs are taxed by the Clerk of the Court of Appeals after notice to the opposite party.

Judgments in appeal are executed both for principal and costs by the Court of First Instance, and for that purpose the records are sent back to it, unless a further appeal to a higher court is taken, for the final judgment becomes the judgment of the Court of First Instance.

The Court of Appeals may exercise all the powers necessary for its jurisdiction, and make such orders as it may deem proper to remedy any insufficiency of the record, of staying proceedings in the court appealed from, and for providing for all cases in which the law affords the party no special remedy.

The Supreme Court of Canada. Though by subsection 13, of section 92, of the British North America Act, the right is

given to each Province to exclusively legislate in relation to property and civil rights in the Province, and by section 14 to legislate exclusively for the administration of justice in the Province, including the constitution, management and organization of Provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in these courts, by section 101 of the same Act the Parliament of Canada is given authority, notwithstanding anything in the Act, to provide for the constitution, maintenance and organization of a general court of appeal for Canada, and for the establishment of any additional courts for the better administration of the laws of Canada. Under this last mentioned power the Dominion Parliament has established a court of general appeal called the Supreme Court of Canada. It exercises an appellate civil and criminal jurisdiction within and throughout Canada.

Excluding exceptions and special provisions, an appeal lies to the Supreme Court where the value of the amount in controversy in the appeal exceeds \$2,000., and in other cases where special leave to appeal is obtained.

This court consists of a Chief Justice called the "Chief Justice of Canada" and six other Judges, five of whom shall constitute a quorum, but where the parties consent four Judges may form this quorum. Provision is made for an *ad hoc* Judge, to be drawn from the courts of the different Provinces, to make up a quorum in the event of vacancies on the Supreme Court Bench.

A Joint Record and Factums are filed in this court much the same as in the Court of King's Bench, and the security for costs, etc., given as fixed by the Rules of the Court. The argument is also conducted much like that in the Court of King's Bench, and the judgments rendered much in the same manner. Of course the majority of the Judges who heard a case must agree in order to reverse. On final judgment being rendered the record is sent back to the Court of First Instance for execution.

The Privy Council. The Code of Procedure provides that an appeal lies to His Majesty in his Privy Council from final judgments rendered in appeal by the Court of King's Bench—

1. In all cases where the matter in dispute relates to any fee of office, duty, rent, revenue, or any sum of money payable to His Majesty;

2. In cases concerning titles to lands or tenements, annual rents or other matters in which the rights in future of the parties may be affected; and

3. In every other case where the amount or value of the thing demanded exceeds \$12,000.

But where no provision is made for such an appeal by the laws of the Province, leave to appeal to it may be given by the Privy Council itself; for regardless of the amount in dispute or the question at issue, no Colonial or Dominion Legislature can stand between the Sovereign and the subject.

Theoretically the Privy Council is not a court at all, for the appeal is to His Majesty in his Privy Council, and an appeal is heard by the Judicial Committee of this body. In former times the Sovereign was supposed to be present in person at the hearing of an appeal, but he has not sat for centuries, though until comparatively recent times there was a vacant chair at the Board, symbolizing that His Majesty was temporarily absent.

Security for the respondent's costs is given by the appellant, and a Joint Record and Factums filed by each party, somewhat similar to those filed in the Court of Appeal and the Supreme Court.

The Lords of the Judicial Committee of the Privy Council announce their decision as a whole. If there is a dissenting member it is not disclosed. They are the advisers of the King and tender their advice as a body.

The conclusions of their "judgment" read as follows:

- (a) Where the judgment appealed from is confirmed. "Their Lordships will humbly advise His Majesty that this appeal ought to be dismissed, the appellants will pay the costs of the appeal."

- (b) Where the judgment appealed from is reversed. "For these reasons their Lordships will humbly advise His Majesty to reverse the judgment of the (Supreme) court, and restore

the judgment of the court (of King's Bench), the appeal being allowed, with costs, to the appellant throughout."

The Judicial Committee of the Privy Council is one of the most informal, but one of the most august, bodies in the world. It is composed of some of the most illustrious judicial minds in the British Empire. Generally five members sit, though sometimes there are only three. When a case comes from one of the self-governing Dominions usually the Chief Justice of that Dominion forms part of the Board. The Chief Justice of Canada, Sir Lyman Duff, has long been a member.

Unlike one of His Majesty's high courts, the members of the Judicial Committee wear no robes or paraphernalia. They quietly enter dressed in morning clothes and take their seats around a table. The records are kept by the Registrar of the Committee, who, of course, is present. The Counsel representing the litigants dress as they do before the Superior Courts of Canada, with the addition of the wig of the English Barrister. The cases are conducted quite informally and pleasantly, but the facts and the law governing them are thoroughly found and applied.

When the appeal is taken from a judgment of the Quebec Court of King's Bench, the execution of the judgment appealed from cannot be stayed unless the appellant has given security that he will effectually prosecute the appeal, satisfy the condemnation and pay all costs and damages which may be awarded by His Majesty in the event of the judgment being confirmed.

If the appellant consents to the judgment being executed, he need only give security for the costs in appeal.

The judgment of the Privy Council is entered in the records of the court which rendered the first judgment, and is executed by it.

REMOVAL AND RETIREMENT OF JUDGES

The appointment of a Justice of the Peace may at any time be revoked by the Lieutenant-Governor-in-Council, namely the Government of the Province of Quebec.

A Commissioner's Court may be abolished under certain conditions by the Lieutenant-Governor-in-Council. This carries with it the abolition of the office of the Commissioners of that Court.

There is no general enactment providing for the removal of the Recorders. The Council of any city or town may by by-law establish a Recorder's Court in its municipality, but the Recorder is appointed by the Lieutenant-Governor-in-Council. Some of the City Charters provide for the removal of the Recorders of their own courts, but they have no application outside the limits of their municipalities.

These courts are of minor jurisdiction and importance.

A Judge of the Magistrate's Court—called a District Magistrate—holds office during good behavior, and can only be dismissed by the Lieutenant-Governor-in-Council upon a joint address of the Legislative Council and the Legislative Assembly of the Province of Quebec.

A Judge of the Circuit Court of the District of Montreal may be removed from office by the Governor-General-in-Council, i. e., the Government of the Dominion of Canada, for misbehavior or for incapacity or inability to perform his duties properly, on a report being made by one or more Judges of the Supreme Court of Canada, or the Superior Court of the Province of Quebec, entrusted with the task, which report shall be laid before Parliament within the first fifteen days of the next ensuing session.

A Judge of the Supreme Court of Canada or a Judge of the Exchequer Court of Canada, holds office during good behavior, but is removable by the Governor-General on address of the Senate and House of Commons; but he automatically ceases to hold office upon attaining the age of seventy-five years.

A Judge of the Court of King's Bench or of the Superior Court of the Province of Quebec holds office during good behavior, and is only removable by the Governor-General on an address of the Senate and House of Commons.

Any of the Judges of the last mentioned four courts found by the Governor-General-in-Council, upon a report of the

Minister of Justice of the Dominion of Canada, to have become by reason of age or infirmity incapacitated or disabled from performing the duties of his office, shall cease to be paid or to receive any further salary if the facts respecting the incapacity or disability are first made the subject of enquiry and report by one or more Judges of any of these courts specially charged with that duty.

The independence of the Judiciary has been for many years recognized in Canada as one of the fundamental principles necessary for the conservation of public liberty, and so the Judges of the higher courts are not dependent upon the mere will of the Government, nor on the caprice of the people of a Province for their retention in office. Their tenure is as assured in Canada as in England, and their salaries are not voted periodically but are included permanently on the civil list. The provision of a Judge's salary, or change thereof, is provided by Act of the Dominion Parliament for the higher court Judges, and of the Provincial Legislature for the others. In impeaching a Judge for misconduct in office the chambers of Parliament discharge one of the most delicate functions entrusted to them by law. Whenever charges of a serious character demanding impeachment are brought against a Judge, a select committee is appointed, to whom all the papers are referred, for a thorough investigation. Since Confederation in 1867 very few committees of this character have been appointed—I think only two—and in no case did the enquiry result in the removal of a high court Judge whose character was impugned.

In this paper I have endeavored to give a brief outline of the civil courts of the Province of Quebec, and the procedure governing them. Of necessity I have been obliged to omit much. There are about 1500 Articles in the Code of Civil Procedure alone, besides a number of special Acts of the Parliament of Canada and the Legislature of Quebec, and the time at my disposal only permits me to touch upon some of the high spots. I trust, however, that I have succeeded in conveying a fair idea of the general principles underlying the constitution of our civil courts, and their rules of procedure.

INDIANA LAW JOURNAL

Published Bi-Monthly October to August, inclusive, by the
Indiana State Bar Association

OFFICERS AND BOARD OF MANAGERS OF THE INDIANA STATE BAR ASSOCIATION

WILLIAM H. HILL, *President*.....Vincennes
MILO N. FEIGHTNER, *Vice-President*.....Huntington
THOMAS C. BATCHELOR, *Secretary-Treasurer*.....Indianapolis

BOARD OF MANAGERS

1st District	7th District
W. J. Murray, Indiana Harbor	Willis Hickam, Spencer
2nd District	8th District
Joseph A. Andrew, Lafayette	Edmund L. Craig, Evansville
3rd District	9th District
Andrew J. Hickey, La Porte	Roscoe C. O'Byrne, Brookville
4th District	10th District
Dan M. Link, Auburn	Wilbur F. Pell, Shelbyville
5th District	11th District
Frank B. Russell, Tipton	Jonas P. Walker, Greenfield
6th District	12th District
O. B. Ratcliff, Covington	Carl Wilde, Indianapolis

Member-at-Large—Louden L. Bomberger, Hammond

ALFRED EVENS, *Editor*

THOMAS C. BATCHELOR, *Business Manager*

FACULTY BOARD OF EDITORS

Robert C. Brown	Fowler V. Harper
Milo J. Bowman	Frank E. Horack
Bernard C. Gavit	James L. Robinson

Hugh E. Willis

STUDENT BOARD OF EDITORS

DAVID MOIE COOK, *Chairman*

Warren Edward Baker	Isadore Krieger
Irving David Berger	Frank Louis Miklozek
John William Christensen	Lewis N. Mullin
Edward Oliver Craft	William Edward Osborn
James Merrill Crum	William Alfred Voss
Horace Milton Kean, Jr.	Roland Brooks Wynne

The Indiana State Bar Association does not assume collective responsibility for
matter signed or unsigned in this issue.