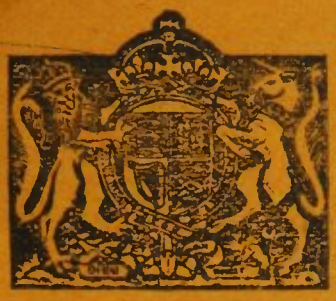

THE

CIVIL CODE

OF

SAINT LUCIA

1957

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CHAPTER 242.

THE CIVIL CODE.

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ABBREVIATIONS USED IN THIS TITLE.

Ad.	Added by
Am.	Amended by
App.	Appendix
Art.	Article
C.C.	Civil Code
C.C.P.	Code of Civil Procedure
Rep.	Repealed by
Subst.	Substituted by
Sup.	Superseded by
1889 Ed.	1889 Edition of the Laws
1916 Rev.	1916 Revised Edition of the Laws

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CHAPTER 242.

THE CIVIL CODE.

INTRODUCTORY CHAPTER.

PROVISIONS IN RESPECT OF THE LAWS IN GENERAL.

SECTION I.

INTERPRETATION.

1. (Am. 1916 Rev. App.; 34-1956.) The meaning, explanation or application assigned in this section to a word, term or enactment, attaches to it whenever occurring in this Code, in the Code of Civil Procedure, or in any ordinance or proclamation, unless such meaning, explanation or application is inconsistent with the context or with the object of the provision in which such word, term or enactment occurs, or is repugnant to some special provision of law.

1. "Author" means the person from whom the right of property has been derived.

2. "Children" includes descendants of children when such meaning may be inferred.

3. "Collocation" is the proceeding by which the claims upon the proceeds of a judicial sale are ranked (collocated) according to the rights of preference which attach to them.

4. "Community" means the common interest of a man and his wife in certain of their property, and is further explained in articles 1188, *et seq.* The term is also

used to designate the property to which this common interest attaches. The term "a community" or "the community" is always used in the latter sense.

5. "Resolutive condition" is a condition attached to a gift or contract by which the gift is revoked or annulled, or the contract determined or dissolved on the occurrence or non-occurrence of a specified event, or on the doing or failure to do, a specified act.

6. "A contract" means an agreement, the fulfilment of which may be enforced through the intervention of a court of justice. The conditions essential to a contract are contained in article 918, and subsequent articles.

7. The term "quasi-contract" indicates an act voluntary and not injurious, which in the absence of any contract, gives rise to an obligation on the part of the doer of the act towards another, or on the part of another person towards the doer, or on the part of each of two persons, one of whom is the doer towards the other. Further particulars are contained in the chapter on quasi-contracts.

8. A contract is termed "onerous" or "gratuitous" with reference to one of the parties to it, according as he has or has not given substantial consideration or incurred obligation in respect of it to the other party.

9. "The Court," unless the term is qualified by the context, means the Supreme Court of the Windward Islands and Leeward Islands, or a Judge thereof.

10. The term "creditor" designates not merely one to whom money is owing but one to whom is owing any kind of obligation.

11. The term "debt" denotes anything due under an obligation, whether money or otherwise.

12. The term "debtor" designates not merely one who owes money, but one who owes or is subject to any kind of obligation, whether arising from contract, quasi-contract, delict, quasi-delict, or any other source.

13. "In default" is predicated of a person who has failed to fulfil an obligation or to obey the order of a court of justice, and so long as the failure continues. The term is further explained in connection with obligations in articles 999 and 1000.

14. "Delay" means the period allowed by law or contract for the doing of an act.

15. Each of the terms "delict" and "quasi-delict" indicates an injurious act or incident which, in the absence of any contract gives rise to an obligation towards the injured person (the creditor), on the part of another person (the debtor). The act or incident is termed "delict" when there is, and "quasi-delict" when there is not, injurious intention or culpable negligence on the part of the debtor.

16. "Right of discussion" is a right with respect to property of compelling a creditor to proceed in the first instance against other property liable for the debt.

17. "To discuss" is to exercise this right.

18. An event is termed "fortuitous" when it is the act of God, or when it is caused by irresistible force on the part of man.

19. Words importing the masculine gender apply to either sex; words importing the singular number apply to more than one person or thing and importing the plural number apply to one person or thing, whenever such application may be inferred.

20. A gift is termed "onerous" when it has, and "gratuitous" when it has not, any substantial obligation attached to its acceptance.

21. "Gift in contemplation of death" is a gift otherwise than by will, with the condition attached to it that it shall take effect only after the death of the donor.

22. The word "holograph" is predicated of a will which is wholly written in the handwriting of the testator.

23. "Hypothec" is a charge upon immovables for the fulfilment of an obligation. It is more particularly explained in article 1908.

24. "A hypothecary action" is a recourse by legal proceedings against an immovable which is subject to hypothec. Further particulars respecting this action are contained in this Code and in the Code of Civil Procedure.

25. "Judge" means the Chief Justice or any judge of the Supreme Court.

26. "The Chief Justice" means the Chief Justice of the Court.

27. "The United Kingdom" means the United Kingdom of Great Britain and Northern Ireland.

28. "Universal legatee" means the person to whom is bequeathed a universal legacy. "General legatee" and "particular legatee" have the same relation respectively to "general legacy" and "particular legacy."

29. "Lesion" means insufficiency of consideration, and is used with reference to contracts.

30. "A counter letter" is a writing by which the parties to a written instrument qualify or alter, as between themselves, the meaning or purport of such instrument.

31. "Licitation" is the sale and division of the proceeds of immovable property belonging in undivided shares to two or more coheirs or co-proprietors when they cannot agree to a partition in kind. "Judicial licitation" takes place when, in an action for partition, licitation is ordered by the Court.

32. "Magistrate" means a Magistrate appointed under the District Courts Ordinance. "District," when not qualified by the context means judicial district of a magistrate.

33. "Novation" is said to take place with respect to an obligation when a new debt, a new debtor, or a new

creditor is substituted for a previous debt, debtor, or creditor. The term is more particularly described in articles 1100, 1101, 1102, 1103, 1104 and 1105.

34. "Oath" includes the affirmation permitted to be made by certain persons.

35. "An obligation" means a duty imposed by law to do or forbear from doing, and sometimes includes in its reference the right to which such duty correlates.

36. "The action of partition" is the proceeding taken by one of two or more coheirs or co-proprietors to obtain a division of their common and undivided property.

37. The term "payment" includes in its meaning not merely the discharge of a debt in money, but the fulfilment of any obligation.

38. "Peremption" is the termination of a suit or action which is obtained by a defendant for want of prosecution on the part of the plaintiff.

39. The word "person" includes in its application bodies corporate and politic, and heirs and legal representatives, when such application may be inferred and is not repugnant to some other law.

40. When an act is required to be done by more than two persons, it may be done by the majority.

41. A country, place, body, corporation, society, company, institution, officer, functionary, person or thing, is held to be designated by the name commonly given to it without more ample or general description.

42. "A possessory action" is an action by the possessor of an immovable or of a real right, for the purpose of putting an end to any disturbance of his enjoyment or possession and in order to be maintained in the possession. Further particulars are contained in the Code of Civil Procedure.

43. "Privilege" is the right of preference in payment which is given to certain claims by the law, and without any agreement to that effect.

44. "Proclamation" means proclamation of the Governor under the Great Seal, and the term "The Great Seal," used without qualification, means the Great Seal of the Colony.

45. "Commencement of proof" is evidence serving as an introduction to other evidence, each being incomplete proof without the other.

46. "Immovable property" and "immovables" are used as convertible terms, as are also "movable property" and "movables".

47. "Proprietor" and "owner" are used as convertible terms and have the same meaning.

48. "Recaption" means the seizure by legal proceedings of the goods of a debtor upon which the creditor has a lien, after they have been transferred to third parties.

49. The term "records of civil status" are the entries made for the registration according to law of births, marriages and deaths.

50. "Redhibitory action" is the proceeding by which a purchaser compels the vendor to take back the purchased property on account of a latent defect.

51. "The Registrar" means, according to the context, either a registrar of civil status, or the registrar of deeds and mortgages.

52. "Servitude" means as explained in article 449.

53. The word "shall" is construed as imperative, and the word "may" as permissive. A verb in the present tense denoting the doing of an act is directory and imperative; as for instance in article 27, "Each depositary keeps" is construed as though the words were "each depositary shall keep," or "it is the duty of each "depositary to keep."

54. " The Sheriff " means the officer under whatever name, appointed to discharge the functions heretofore belonging to the Provost-Marshal.

55. " Status Officer " means —

(1) Any person, whether minister of religion or layman, who is authorised to keep records of civil status ;

(2) (*a*) Any Anglican, Roman Catholic, Methodist or Presbyterian Minister performing any baptismal, marriage or burial ceremony in the Colony ;

(*b*) The Minister of any other religious denomination who is authorised by the Governor in Council to perform baptismal, marriage and burial ceremonies in the Colony.

(3) Any layman performing a burial ceremony in the absence of an authorised Minister of religion.

56. " Subrogation " is the result of the payment of a debt by any one who is not the principal debtor, by which payment, he who makes it is placed or subrogated in the right of the creditor. The term is more particularly described in articles 1085, 1086 and 1087.

57. " Succession " means the devolution by law or by will of the property of a deceased person and such of his rights as are capable of devolution. The same term is also used sometimes to designate the property and rights of a deceased person with respect to which such devolution has taken place. The terms " a succession " or " the succession " are always used in the latter sense.

58. " An intestate succession " means the succession of a person who has died without leaving a valid will.

59. " A testamentary succession " is that which devolves by will.

60. " The mass " of a succession, a community or other property to be distributed, means the whole of the

property available for distribution among the creditors and other persons entitled to it.

61. The word "title" is used with reference to property to denote either the act or contract upon which the right to such property is founded, or the document which is the principal evidence of such act or contract, the meaning applicable in any particular case being determined by the context.

62. The term "viable" applied to a new-born child means that it is alive and capable of continuing to live.

63. "Will" includes any testamentary instrument.

SECTION II.

THE EFFECT, APPLICATION AND EXECUTION OF THE LAWS IN GENERAL.

2—4. (Rep. 91-1889 Ed.)

5. The laws of the Colony govern the immovable property situated within its limits. Movable property is governed by the law of the domicile of its owner. But the law of the Colony applies to determine the nature of property and in cases of disputed possession, and also in questions with reference to privileges and rights of lien, to the jurisdiction and procedure of the Courts, to the mode of execution and attachment, to public policy and the rights of the Crown, and in other cases specified in this Code.

The laws of the Colony relative to persons apply to all persons being therein, even to those not domiciled there; except that the laws of status and capacity do not apply to persons domiciled elsewhere, and do apply to persons domiciled in the Colony, though they be absent therefrom.

6. Deeds made out of the Colony are valid if they be valid by the law of the country where they were made.

7. Deeds are construed according to the law of the country where they were made, unless there be some law to

the contrary, or the parties have agreed otherwise, or from the nature of the deed or other circumstances, it appears that the parties intended to be governed by the law of another place.

8. (Rep. 91-1889 Ed.)

9. The Court or Judge cannot refuse to adjudicate under pretext of the silence, obscurity, or insufficiency of the law.

10. When a law is doubtful or ambiguous, it is to be interpreted so as to fulfil the intention of the Legislature and to attain the object for which it was passed.

The preamble which forms part of the Ordinance assists in explaining it.

11. An agreement contravening the laws of public order or morality is void.

12. (Rep. 99-1889 Ed.)

13. Any right or liability attaching to a person attaches also to the heirs of such person, except in a case where the law specifically provides otherwise or the liability is to imprisonment.

PART FIRST.

PERSONS.

BOOK FIRST.

THE ENJOYMENT AND LOSS OF CIVIL RIGHTS.

CHAPTER FIRST.

THE ENJOYMENT OF CIVIL RIGHTS.

14. (Am. 34-1956). All British subjects enjoy the same civil rights as persons born in the Colony, except as set forth in the rules respecting domicile.

15. The quality of British subject is acquired either by right of birth, or by operation of law.

16. (Subst. 34-1956). Every person born in the Colony is a British subject. Further provisions as to British nationality, the manner in which it may be acquired, and the status of aliens, are contained in the Imperial Acts of Parliament relating thereto.

17. (Rep. 34-1956).

18. Naturalisation confers in the Colony all the rights and privileges of a British subject.

19. (Am. 34-1956). Subject to the provisions of any statute relating thereto, aliens have a right to acquire and transmit by gratuitous or onerous title, as well as by succession or will, all movable and immovable property in the Colony, in the same manner as British-born or naturalised subjects.

20. Aliens, although not resident in the Colony, may be sued in its Courts for the fulfilment of obligations contracted even in foreign countries.

21. Any inhabitant of the Colony may be sued in its Courts for the fulfilment of obligations contracted in foreign countries, even in favour of a foreigner.

22. (See C.C.P. art. 123A.).

CHAPTER SECOND.

THE LOSS OF CIVIL RIGHTS.

23. Civil rights are lost only in cases affected by Acts of Parliament applying to the Colony, by Her Majesty's Orders in Council or by Ordinance.

BOOK SECOND.

RECORDS OF CIVIL STATUS.

CHAPTER FIRST.

GENERAL PROVISIONS.

24. Records of civil status are those of (1) Births. (2) Marriages, civil or religious. (3) Deaths.

Marriages are termed civil when they take place before a civil officer, and religious when solemnized by a minister of religion.

25. (Am. 34-1956). Registers for records of births, civil marriages, and deaths are kept by the district registrars.

Special provisions respecting these officers and of the manner in which their duty is performed, are contained in the Civil Status Ordinance.

26. (Subst. 6-1913). Registers for records of births and religious marriages and burials are required to be kept by the following depositaries :—

(1) The Curé of each Roman Catholic parish or the resident minister in charge of a Church in a parish where there is more than one Church with a resident minister in such parish.

(2) The minister in charge of each Anglican congregation.

(3) The minister in charge of each Methodist congregation.

(4) The minister in charge of each Presbyterian congregation.

(5) The minister in charge of any congregation of any other religious denomination who is authorised by the Governor in Council to perform baptismal, marriage and burial ceremonies.

27. (Am. 6-1913). Each depositary keeps two registers of the same tenor ; and every record of civil status is inscribed in both, in the same terms and with the same formalities ; each inscription being authentic.

The duplicate registers for acts of civil status may be divided into three parts or volumes, one for acts of birth, one for acts of marriage, and the third for acts of burial ; or into two parts or volumes, one for acts of birth and of marriage and the other for acts of burial.

Such parts or volumes of the duplicate registers may be either blank, or may be prepared with printed forms, running consecutively through each part or volume ; but when one part or volume is used for acts of birth and of marriage, the first portion of such part or volume shall contain, in consecutive order, the forms for acts of birth, and the second portion thereof, the forms for acts of marriage.

28. (Am. 6-1913). The depositaries are supplied with registers by the Registrar of Civil Status, at the expense of the Colony.

Each register so supplied must be numbered, signed and initialled in the manner prescribed in the Code of Civil Procedure.

29. In cases where the parties are not obliged to appear in person at the registration of a record of civil status, they may be represented by an agent specially authorised to that effect.

30. The status officer reads to the parties or their agents and to the witnesses the record he inscribes in the register.

31. Records of civil status are inscribed without delay, in order of time and without blank space between any two. Erasures and marginal notes are acknowledged and initialled by those who sign the body of the record. Numbers must be expressed in words and there must be no abbreviations.

32. (Am. 6-1913). Within the first month of each year every depositary shall deposit in the office of the Registrar of Civil Status, one of the duplicate registers containing all the records of the previous year. The deposit is acknowledged by a receipt which the Registrar gives free of charge.

33. Within the first six months of each year, the Registrar of Civil Status verifies and reports to the Governor upon the condition of the registers so deposited. He also reports without delay every irregularity or omission on the part of the status officer in the performance of his duty.

34. (Am. 56-1953). The Registrar of Civil Status and the Status Officers are bound to give extracts from the registers in their charge, to any person requiring them, on being paid a fee of forty-eight cents for the extract of each record, and any extract signed by the Registrar or status officer is authentic.

35. On proof that the registers have not been kept, or when kept, that both have been lost or destroyed, records

of civil status may be proved by family registers or papers, or by other writings or by witnesses.

36. Every depositary of registers is civilly responsible for any alteration made in them with recourse however against the person who has made the alteration.

37. An infraction of any article of this book, other than one which is punishable as a criminal offence, is punished by a penalty not exceeding ninety-six dollars.

CHAPTER SECOND.

RECORDS OF BIRTHS.

SECTION I.

REGISTRATION OF BIRTHS.

38. Records of births are required to be kept by ministers of religion only in respect of children baptised by them. In other cases they are kept by the district registrars.

39. Records of birth set forth the day of the birth of the child, that of its baptism, if performed, its sex, and the names given to it; the names, surnames, occupation and domicile of the father and mother, and also of the sponsors, if there be any.

40. (Am. 6-1913). These records are signed in both registers, by the status officer officiating, by the father and mother if present, and by the sponsors if there be any ; if any of them cannot sign, their declaration to that effect is noted.

41. When the father and mother of any child presented for registration are either or both of them unknown, the fact is mentioned in the register.

Special provisions in respect of the registration of births are contained in the Civil Status Ordinance.

SECTION II.

(Ad. 34-1956).

RE-REGISTRATION OF BIRTHS OF LEGITIMATED PERSONS.

41A. (1) The Registrar of Civil Status may, on production of such evidence as appears to him to be satisfactory, authorise at any time the re-registration of the birth of a person legitimated by marriage whose birth is already registered under the provisions of this Code or of the Civil Status Ordinance, and such re-registration shall be effected in such manner and at such place as the Governor in Council may by regulations prescribe :

Provided that the Registrar of Civil Status shall not authorise the re-registration of the birth of any such person in any case where information with a view to obtaining such re-registration is not furnished to him by both parents, unless :—

(*a*) the name of the legitimated person has been entered on the record of marriage of the parents at the time of their marriage ; or

(*b*) the paternity of the legitimated person has been acknowledged in the contract of marriage of the parents ; or

(*c*) the paternity of the legitimated person has been established by an affiliation order or otherwise by a decree of a Court of competent jurisdiction.

(2) It shall be the duty of the parents of a legitimated person, or, in cases where re-registration can be effected on information furnished by one parent and one of the parents is dead, of the surviving parent, to furnish to the Registrar of Civil Status information with a view to obtaining the re-registration of the birth of that person within three months after the date of the marriage.

(3) Where the parents, or either of them, fail to furnish the necessary information within the time limited for the purpose, the Registrar of Civil Status may at any time

after the expiration of that time require the parents of a person whom he believes to have been legitimated by virtue of this article, or either of them to give him such information concerning the matter as he may consider necessary, verified in such manner as he may direct, and for that purpose to attend personally either at his office or at any other place appointed by him within such time, not being less than seven days after the receipt of the notice, as may be specified in the notice.

(4) The failure of the parents or either of them to furnish information as required by this article in respect of any legitimated person shall not affect the legitimation of that person.

(5) No fee for re-registration under this article shall be charged if the necessary information for the purpose is furnished within the time above specified ; but in any other case there shall be charged in respect of such re-registration such fees not exceeding in the aggregate one dollar and fifty cents as may be prescribed by regulations under this article.

CHAPTER THIRD.

RECORDS OF MARRIAGES.

42. (Am. 34-1956). The record of marriage is signed in the case of religious marriage by the minister ; in the case of civil marriage by the district registrar who has performed the ceremony, and also by the parties and at least two witnesses who have been present at the ceremony. If any of the parties or witnesses cannot sign, their declaration to that effect is noted.

43. (Am. 34-1956). In this record are set forth :

1. The day of the marriage ;

2. The names in full, the quality or occupation and the domicile of the parties married, the name, if known, of the father and mother of each, or the name of the former husband or wife ;

3. Whether the parties are majors or minors ;

4. Whether the marriage was after the publication of banns or notice, or by licence ;

5. Whether it was with the consent of father, mother, tutor or curator, or of the judge, when such consent is required ;

6. The names of the witnesses, whether they are related to the parties, and if so, in what manner ;

7. That opposition has been withdrawn or disallowed if opposition has been made.

8. Where any child is legitimated by the marriage the names and date of birth of such child, if the parties so desire.

CHAPTER FOURTH.

RECORDS OF BURIAL.

44. (Am. 34-1956). The record of burial mentions the day of burial, and that of the death, if known ; the names, surnames, and quality or occupation of the deceased ; and it is signed by the person performing the burial service, and by two of the nearest relations or friends there present ; if they cannot sign, mention is made thereof. In case of burial without religious ceremony, any person present may sign the record before the district registrar.

CHAPTER FIFTH.

THE RECTIFICATION OF RECORDS OF CIVIL STATUS.

45. (Subst. 34-1956). If an error have been committed in the entry of a record of civil status, or if an entry which ought to have been inserted in the register be omitted, the Court or Judge may, on a petition presented at the instance of any interested party and served upon the despositary of the register and other interested parties, order such register to be rectified or such omission to be supplied. The Court or

Judge may order any person to be summoned whom it deems interested in the petition.

45A. (Ad. 34-1956). Any judgment ordering a rectification must contain an order for the inscription of such judgment upon the two registers, and no copy of the act rectified can thereafter be delivered without the corrections thus ordered to be made.

46. (Subst. 34-1956). The depositary of a register, on receipt of a copy of any judgment of rectification, is bound to inscribe the same on the margin of the register, at the place where the record so rectified appears, or where the record so omitted ought to have been entered, and if there be no margin, then on a sheet of paper which remains annexed to the register.

47. The judgment of rectification cannot, at any time, be set up against those who did not seek it, or who were not duly notified.

CHAPTER SIXTH.

(Ad. 32-1939).

RENEWAL OF WORN OUT REGISTERS.

47A. The Governor in Council may by order direct that any register, index or other record or book, kept at the Registrar's office, worn out by time and use, or in such a state of decay from age, that errors or omissions, of a nature to prejudice the public, or endanger the rights of individuals, may be committed in or arise from the same, be replaced by the Registrar with another, in the same form as the first, wherein shall be transcribed, in so far as the writing thereof, or of the register of the same tenor kept by its depositary, can be deciphered, all the acts, matters and things contained in the said register, index or other record or book.

47B. The book in which such transcription is to be made shall be previously authenticated, signed and initialled, in the manner set forth in article 975 of the Code of Civil Procedure.

47C. The Registrar or his deputy shall, after having compared the original and copy, draw up and affix at the end of the copy, a certificate to the effect that the same has been examined and compared and is in comformity with the original.

47D. Every register, index or other record or book bearing such certificate, shall have the same authenticity, validity and effect, to all intents and purposes, as that whereof it is the transcription, and the provisions of any law applicable to the latter shall equally apply to the former.

47E. The original book shall nevertheless be carefully preserved and may avail and be consulted as occasion requires.

BOOK THIRD.

DOMICILE.

48. The domicile of a person, for all civil purposes, is at the place where he has his principal residence.

49. A person holding a temporary or revocable public appointment retains his former domicile unless he manifests a contrary intention.

50. (Am. 34-1956). A married woman, not separated from bed and board, has no other domicile than that of her husband.

The domicile of an [unmarried] minor is with his father and mother, or with his tutor.

The domicile of a person of the age of majority interdicted for unsoundness of mind is with his curator.

51. The domicile of persons of the age of majority, who serve or work continuously for others, is at the residence of those whom they serve or for whom they work, if they reside in the same house.

BOOK FOURTH.

ABSENTEES.

GENERAL PROVISION.

52. An absentee, means in this book one who, having had a domicile in the Colony, has disappeared, and whose existence is unknown.

CHAPTER FIRST.

CURATORSHIP TO ABSENTEES.

53. The property of an absentee who has no attorney or whose attorney is unknown or refuses to act, is administered by the Administrator General or curator.

54. A curator may be appointed in the place of the Administrator General at the instance of those interested, as provided in the Book respecting *Minority and Tutorship*; or if there be no minors concerned in the property, at the instance of a creditor.

55. Curators to the property of absentees make oath faithfully to fulfil the duties of their office and to account.

56. The curator is bound to cause to be made, in notarial form, a faithful inventory and valuation of all the property committed to his charge, and for his administration he is

liable to the same obligations as those to which tutors are subject.

57. The powers of the curator extend to acts of administration only. He can neither alienate, pledge nor hypothecate the property of the absentee without special permission from the Court or Judge.

58. The curatorship to the absentee is brought to an end :

1. By his return ;

2. By his sending a power of attorney to the curator or to any other person ;

3. When his heirs are authorised to take provisional possesion of his property.

CHAPTER SECOND.

THE PROVISIONAL POSSESSION OF THE HEIRS OF ABSENTEES.

59. Whenever a person has ceased to appear at his domicile or place of residence, and has not been heard of for a period of five years, his presumptive heirs at the time of his departure or of the latest intelligence received, may obtain from the Court authority to take provisional possession of his property, on giving security for their due administration of it.

60. Provisional possession may be authorised before the expiration of such delay, if it be established to the satisfaction of the Court that there are strong presumptions that the absentee is dead.

61. In pronouncing on such demand, the Court takes into account the reasons of the absence and the causes which may have prevented the receipt of intelligence concerning the absentee.

62. Provisional possession is a trust which gives to those who obtain it, the administration of the property of the absen-

tee and makes them liable to account to him or to his heirs and legal representatives.

63. Those who have obtained provisional possession are bound to make an inventory, before a notary, of the movable property and title deeds of the absentee, and to cause the immovable property to be visited by skilled persons for the purpose of ascertaining its condition. Their report is confirmed by the Court, and the costs are paid out of the absentee's property.

With respect to property in such provisional possession, the Court may order the sale of any movables, and the investment of the proceeds, or the investment of any accrued rents, issues, or profits of any real or personal property.

64. If the absence have continued during thirty years from the day of the disappearance, or from the latest intelligence received, or if a hundred years have elapsed since his birth, the absentee is reputed to be dead from the time of his disappearance or from the latest intelligence received; in consequence, if provisional possession have been granted, the sureties are discharged, the partition of the property may be demanded by the heirs or others having a right to it, and the provisional possession becomes absolute.

65. Notwithstanding the presumptions mentioned in the preceding article, the succession of the absentee devolves from the day on which he is proved to have died, to the heirs entitled at such time to his estate; and those who have been in the enjoyment of the absentee's property are bound to restore it.

66. If the absentee reappear, or if his existence be proved during the provisional possession, the judgment granting it ceases to have effect.

67. If the absentee reappear, or if his existence be proved, even after the expiration of the hundred years of life or of the thirty years of absence, as mentioned in article 64, he recovers

his property in the condition in which it then is, and the price of what has been sold, or the property arising from the investment of such price.

68. The children and direct descendants of the absentee may likewise, within the thirty years from the time at which the said possession becomes absolute, claim the restitution of his property, as mentioned in the preceding article.

69. After the judgment authorising provisional possession, persons having claims against the absentee can only enforce them against those who have been authorised to take possession.

CHAPTER THIRD.

THE EFFECT OF ABSENCE IN RELATION TO CONTINGENT RIGHTS WHICH MAY ACCRUE TO THE ABSENTEE.

70. Whoever claims a right occurring to an absentee must prove that such absentee was living at the time the right accrued ; in default of such proof his demand is not admitted.

71. A succession falling to an absentee devolves exclusively upon those who would have shared with him, or to those who would have succeeded in his stead.

72. The provisions of the two preceding articles do not affect proceedings for the recovery of inheritances and of other rights. Right of action for such recovery belongs to the absentee, his heirs and legal representatives, and is only extinguished by the lapse of time required for prescription.

73. So long as the absentee does not reappear, or proceedings are not taken on his behalf, those to whom the succession has devolved acquire as their own the profits received by them in good faith.

CHAPTER FOURTH.

THE EFFECTS OF ABSENCE IN RELATION TO MARRIAGE.

74. (Rep. 34-1956).

75. If there be community of property between the spouses, the community is provisionally dissolved, from the day of the demand to that effect by the presumptive heirs, after the lapse of the time required for obtaining authority to take possession of the absentee's property, or from the date of the action that the spouse who is present brings against them, for the same purpose ; and in these cases, the liquidation and partition of the property of the community may be proceeded with on the demand of such spouse, or of the persons authorised to take provisional possession, or of any other parties interested.

76. In the cases provided for in the preceding article, the covenants and rights of the spouses, dependent on the dissolution of the community, become effective and absolute.

77. If the husband be the absentee, the wife may obtain possession of all the matrimonial profits and advantages resulting from the law or from her marriage contract ; but on condition of giving good and sufficient security to account for and restore all that she shall have so received in the event of the absentee's return.

78. If the absent spouse have no relations entitled to his succession, the spouse who is present may obtain provisional possession of the property.

CHAPTER FIFTH.

THE CARE OF MINOR CHILDREN OF AN ABSENTEE FATHER.

79. If a father have disappeared, leaving minor children issue of his marriage, the mother has the care of such children and exercises all the rights of her husband as to their person

and as to the administration of their property, until a tutor is appointed.

80. After the disappearance of the father, if the mother be dead or unable to administer the property, a provisional or a permanent tutor may be appointed to the minor children.

BOOK FIFTH.

MARRIAGE.

CHAPTER FIRST.

CONDITIONS NECESSARY FOR CONTRACTING MARRIAGE.

81. (Subst. 34-1956). A marriage solemnized between persons either of whom is under the age of sixteen years is null and void.

82. There is no marriage when there is no consent.

83. Impotency, natural or accidental, existing at the time of the marriage, renders it null; but only if such impotency be apparent and manifest.

This nullity cannot be claimed by any one but the party who has contracted with the impotent person, nor at any time after three years from the marriage.

84. A second marriage cannot be contracted before the dissolution of the first.

85. (Subst. 34-1956). Where the marriage of a minor, not being a widower or a widow, is intended to be solemnized the consent of the person or persons specified hereunder is required :—

I. *Where the Minor is Legitimate.*

Circumstances.	Person or Persons whose consent is required.
1. Where both parents are living :	
(*a*) if parents are living together ;	Both parents, but in case of disagreement, the consent of the father suffices.
(*b*) if parents are divorced or separated by order of any Court or by agreement ;	The parent to whom the custody of the minor is committed by order of the Court or by the agreement, or, if the custody of the minor is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents.
(*c*) if one parent has been deserted by the other ;	The parent who has been deserted.
(*d*) if both parents have been deprived of custody of minor by order of any Court.	The person to whose custody the minor is committed by order of the Court.
2. Where one parent is dead :	
(*a*) if there is no other tutor ;	The surviving parent.
(*b*) if a tutor has been appointed by the Court or by the deceased parent.	The surviving parent and the tutor if acting jointly, or the surviving parent or the tutor if the parent or tutor is the sole guardian of the person of the minor.
3. Where both parents are dead.	The tutors or tutor appointed by the deceased parents or by the Court.

II. *Where the Minor is Illegitimate.*

Circumstances.	Person whose consent is required.
If the mother of the minor is alive.	The mother, or if she has by order of any Court been deprived of the custody of the minor, the person to whom the custody of the minor has been committed by order of the Court.

86 — 88. (Rep. 34-1956).

89. When any person whose consent is necessary to a marriage is absent, of unsound mind, or otherwise incapable of consenting or refuses consent, the Judge may on petition give valid consent.

90. In the direct line, marriage is prohibited between ascendants and descendants and between persons connected by alliance, whether the connection be legitimate or natural.

91. In the collateral line, marriage is prohibited between brother and sister, legitimate or natural, and, subject to the provisions of article 91A, between those connected in the same degree by alliance, whether the connection be legitimate or natural.

91A. (3-1912). (1) Notwithstanding anything contained in article 91 or in any other law, no marriage heretofore or hereafter contracted between a man and his deceased wife's sister, within this Colony or without, shall be deemed to have been or shall be void or voidable, as a civil contract, by reason only of such affinity.

Provided that in case, before the coming into force of this article, any such marriage shall have been annulled, or either party thereto (after the marriage and during the life of the other) shall have lawfully married another, it shall be deemed to have become and to be void upon and after the day upon which it was so annulled, or upon which either party thereto lawfully married another as aforesaid.

(2) No right, title, estate or interest, in, to, or in respect of any property, whether in possession or expectancy and whether vested or contingent at the time of the coming into force of this article, and no act or thing lawfully done or omitted before the coming into force of this article shall be prejudicially affected, nor shall any will be deemed to have been revoked, by reason of any marriage heretofore contracted as aforesaid being made valid by this article.

92. Marriage is also prohibited between uncle and niece, aunt and nephew, and between persons connected in the same degree by marriage.

93. A marriage solemnized in contravention of articles 90, 91, 92, is null.

CHAPTER SECOND.

THE FORMALITIES TO BE OBSERVED ON THE CELEBRATION OF MARRIAGE.

94. (Am. 6-1913). All status officers authorised by law so to do are competent to celebrate marriage ; but no officer who is a minister of religion can be compelled to celebrate a marriage to which any impediment exists according to the doctrine of his religion or the discipline of the church or religious community to which he belongs.

All marriages heretofore celebrated by Anglican, Roman Catholic, Methodist or Presbyterian ministers of religion shall be deemed to have been celebrated by a competent officer.

95. Marriages may be celebrated by licence of the Governor, or after publication of banns in the case of religious marriage, or after the publication of notice in the case of civil marriage.

96. (Subst. 15 as am. by 33-1933). (1) Those intending marriage who desire to obtain the licence shall apply to the Governor therefor by petition lodged at the Government Office at least seven days before it is required.

Provided that the Governor may, however, if he thinks fit, consent to the petition being lodged within a shorter delay.

(2) The petition shall state —

(*a*) the christian or other names and surnames of the parties, their respective rank, profession or occupation ;

(*b*) the place where, and the status officer by whom it is proposed that the marriage is to be solemnized ;

(*c*) whether the parties or either of them have or has been previously married and if so whether there has been a divorce ;

(*d*) that they know of no impediment of kindred, or alliance, or other lawful cause, to prevent the proposed marriage ;

(*e*) that one of the said parties, for the space of fifteen days immediately preceding the application for the licence, has had his or her usual place of abode within the Colony ;

(*f*) where either of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person or persons whose consent to the marriage is required has been obtained.

(3) The petition shall be signed by both parties (unless the Governor is in the circumstances satisfied to accept the signature of one of the parties only) and shall be accompanied by an affidavit of one of the parties and by such other evidence, if any, as the Governor may in the particular case or from time to time prescribe.

(4) A licence shall be in the form prescribed or approved by the Governor.

(5) If any objection to the grant of any licence for a marriage be lodged at the Government Office, that objection being duly signed by or on behalf of the person who lodges it, stating his place of residence and the ground of objection, no licence shall issue until the Governor has examined into the matter of the objection and is satisfied that it ought not to obstruct the grant of the licence for the marriage, or until the objection is withdrawn by the party who lodges it.

(6) A marriage licence will not be issued unless the Governor is satisfied that the facts stated in the petition are true, and the Governor may require a further declaration of the facts to be made by some minister of religion, justice of the peace, or other respectable person approved by him.

97. The banns in the case of religious marriage and the notice in the case of civil marriage mention :—

1. The names in full, the qualities or occupations, and the domiciles of the persons to be married :

2. The names in full, the qualities or occupations, and the domiciles of their fathers and mothers, or if the woman has been previously married the name of her former husband.

98. (Am. 34-1956). The banns or notice must be published audibly three times within a period of two months, at intervals of not less than one week. Where service is not held every week the publication of banns must be made on the two successive days when service is performed, after the day when the first publication is made. In both cases there must be an interval of not less than one week between each publication.

No minister of religion shall be obliged to publish the banns unless the particulars thereof as set out in the preceding article are delivered to him in writing at least seven days before the date on which the parties wish the banns to be published for the first time.

99. The publication of banns takes place during divine service in a church in each ecclesiastical parish in which the parties are resident.

100. The publication of notice in the case of civil marriage takes place in a court-room of the Magistrate of each district in which the parties reside and during the sitting of the Court. The notice, which must be in writing, must be exhibited in a court-room for a period of not less than fifteen days.

101. A religious marriage may take place after due publication of notice according to the preceding article, even in the absence of banns or licence, if the minister of religion does not object to the celebration under the circumstances.

102. After the due publication of banns or notice, the minister of the church or the Magistrate of the Court where the publication has been made, on the demand of one of the parties, is bound to grant, without fee, a certificate of the publication, containing the particulars of the banns or notice and the dates of the several publications.

103. Before celebrating a marriage the status officer requires the production of a licence or a certificate of the due publication of banns or notice; except in the case of religious marriage, when the officer has made the publication himself.

104. The marriage cannot be celebrated if more than one month has elapsed from the date of the licence, or more than three months from the last publication of the banns or notice.

105. In the case of an opposition its disallowance must be notified to the officer charged with the celebration. But opposition founded merely on a previous promise of marriage is of no effect.

106. Marriage must be celebrated between sunrise and sunset. Contravention of this article subjects the officiating officer to a penalty not exceeding two hundred and forty dollars.

107. Religious marriage is celebrated according to the forms prescribed by the religion of the celebrating officer.

108. Civil marriage is celebrated as follows :—

Each party to be married solemnly declares in the presence of the other and in the presence of the status officer and at least two adult witnesses, that he or she takes the other for wife or husband, as the case may be, and that he or she solemnly believes that there is no legal impediment to the marriage.

109. The marriage is concluded when both parties have made the required declaration and have signed the record of marriage.

110. An officer who duly celebrates a marriage either by licence or after publication of banns or notice is, if he act in good faith, not responsible for the celebration.

110A. (Ad. 34-1956). (1) If the parties to a civil marriage desire to add the religious ceremony ordained or used by the church or persuasion of which they are members, they may present themselves after giving notice of their intention so to do, to the clergyman or minister of the church or persuasion of which they are members and the clergyman or minister upon the production of a certificate of their marriage before the district registrar and upon the payment of the customary fees (if any) may, if he sees fit, read or celebrate in the church or chapel of which he is the regular minister, the marriage service of the church or persuasion to which he belongs or nominate some other person to do so.

(2) Nothing in the reading or celebration of a marriage service under this article shall supersede or invalidate any marriage previously solemnized in the office of a district registrar, and the reading or celebration shall not be entered as a marriage in any marriage register kept under this Code or under the Civil Status Ordinance.

111. A marriage celebrated out of the Colony between persons either or both of whom are, or afterwards become, subject to its laws, if it be valid according to the law of the place of celebration, is valid also in the Colony if the parties did not go to such a place for the purpose of evading the law of the Colony.

112. (Subst. 34-1956). (1) Notwithstanding anything in this Code contained, it shall be lawful for any status officer to perform the ceremony of marriage between any persons, without notice given of the intended marriage of such persons, or without banns having been first published, or without a

licence, or after the expiration of the time specified in article 104, provided that both the parties between whom such ceremony of marriage shall be performed shall, at the time of the performance thereof, be legally competent to contract marriage and be of full age, and provided also that one at least of them to the best of the knowledge and belief of such status officer and of the other persons signing the certificate hereinafter required, shall be at the time of the performance of such ceremony, in a dying state, and that such dying person shall be a member of the religious communion or denomination to which such status officer shall belong.

(2) Immediately after the solemnization of any such marriage, the officiating status officer shall transmit to the Registrar of Civil Status a certificate of the said marriage in the form set out below, signed by such status officer and by two credible witnesses present at the said marriage. Such statement shall be filed by the Registrar of Civil Status in a register to be specially kept for the purpose. The certificate shall be in the form set out in the Schedule hereto.

(3) Subject to the observance of the foregoing conditions, a marriage solemnized under the provisions of this article shall be and be held to be good and effectual in law.

(4) No marriage solemnized under the provisions of this article shall operate as a revocation of any will.

SCHEDULE.

Marriage in Extremis.

I, the undersigned Status Officer of (1)
and we, the undersigned of (2) and
of (2) being of the age of twenty-one years and
upwards do hereby certify that on the day of ,
19 , the ceremony of marriage was performed by me the said
in the presence of us the said and

(1) Residence.
(2) Residence and Profession.

between of (3) and of (4) and that both the said and at the time of the performance of such ceremony were legally competent to contract marriage, and were of full age, and that the said (5) was a member of the same religious communion or denomination to which the said (6) belongs, that is to say, the (7) ; and that at the time of the performance of such ceremony, the said (8) was, to the best of our knowledge and belief, in a dying state.

Signatures.

Marriage of British Subjects (Facilities).

112A. (15-1916 as subst. 34-1956). (1) Where a marriage is intended to be solemnized or contracted in the Colony between a British subject residing in the Colony and a British subject residing in England, Scotland or Ireland, a certificate for marriage lawfully issued in England, Scotland or Ireland, as the case may be, shall, in the Colony, have the same effect as a certificate for marriage issued in the Colony by a district registrar or status officer.

(2) Where a marriage is intended to be solemnized or contracted in England, Scotland or Ireland between a British subject residing in England, Scotland or Ireland and a British subject residing in the Colony, a certificate for marriage may be issued in the Colony, by a district registrar or status officer in the like manner as if the marriage were intended to be celebrated in circumstances requiring the issue of such a certificate, and as if both British subjects resided in the Colony.

(3) State whether bachelor or widower.
(4) State whether spinster or widow.
(5) Name of party in dying state.
(6) Name of Status Officer.
(7) Religious communion or denomination.
(8) Name of party in dying state.

(3) For the purposes of paragraph 1 of this article the expression "certificate for marriage lawfully issued" means —

(*a*) in the case of England, a certificate for marriage issued by a Superintendent Registrar ;

(*b*) in the case of Scotland, a certificate for marriage issued by a Registrar or a certificate of proclamation of banns ;

(c) in the case of Ireland, a certificate for marriage issued by a Registrar.

112B. (Ad. 34-1956). Special provisions with respect to marriages between persons one of whom at least is a British subject solemnized in a foreign country or place by or before a Marriage Officer within the meaning of the Foreign Marriage Act, 1892, are contained in the Foreign Marriages Ordinance.

CHAPTER THIRD.

OPPOSITIONS TO MARRIAGE.

113. (Subst. 34-1956). The celebration of a marriage may be opposed by any person already married to one of the parties intending to contract. The marriage of a minor not being a widower or a widow, may be opposed by any person whose consent to the marriage is required under article 85.

114 — 116 (Rep. 34-1956).

117. If a person about to be married, being of the age of majority, be of unsound mind, any person may oppose the marriage.

118. (Subst. 34-1956). When the opposition is founded on the unsoundness of mind of the person about to be married the opposer is bound to apply without delay for an inquisition and the appointment of a curator.

118A. (Ad. 34-1956). (1) Any person, on payment of a fee of one dollar may enter opposition with the district registrar, or the Magistrate, or the minister of religion, being a status officer, publishing the banns against the issue of a certificate for the marriage of any person named therein or against the celebration of the marriage.

(2) If any opposition is entered as aforesaid, the opposition having been signed by or on behalf of the person by whom it was entered and stating his place of residence and the ground of objection on which the opposition is founded, the district registrar or the Magistrate or the minister of religion shall forthwith forward the same to the Registrar, and no certificate shall be issued or marriage celebrated until the Registrar has examined into the matter of the opposition and is satisfied that it ought not to obstruct the issue of the certificate or the celebration of the marriage or until the opposition has been withdrawn by the person who entered it; and if the Registrar is doubtful whether a certificate ought to be issued or the marriage celebrated he may refer the matter of the opposition to the Judge.

(3) Where the Registrar refuses by reason of any such opposition as aforesaid, to allow a certificate to be issued or the marriage to be celebrated, the person applying therefor may appeal to the Court or Judge who shall either confirm the refusal or direct that a certificate shall be issued or that the marriage may be celebrated.

119. Whatever may be the quality of the opposer, he is bound to adopt and follow up the formalities and proceedings necessary to have his opposition brought before the Court or Judge and decided without delay, a demand for its dismissal not being required. If he be in default in this respect, the opposition is regarded as never having been made, and the marriage ceremony is proceeded with, notwithstanding.

120. (Subst. 34-1956). The Code of Civil Procedure contains the rules as to the delay for appeals to the Court or Judge, their form, contents and notification.

121. (Subst. 34-1956). The decision in favour of marriage is without appeal.

122. (Subst. 34-1956). (1) Any person who enters an opposition against the issue of a certificate or the celebration of a marriage on grounds which the Court or Judge declares to be frivolous and to be such that they ought not to obstruct the issue of the certificate or the celebration of the marriage shall be liable for the costs of the proceedings before the Judge and for damages recoverable by the person against whose marriage the opposition was entered.

(2) For the purpose of enabling any person to recover any such costs and damages as aforesaid a copy of the declaration of the Judge, purporting to be sealed with the seal of the Court shall be evidence that the Judge has declared the opposition to have been entered on grounds which are frivolous and such that they ought not to obstruct the issue of the certificate.

CHAPTER FOURTH.

ACTIONS FOR ANNULLING MARRIAGE.

123. A marriage once celebrated can be impugned only for the following reasons :

1. For contraventions of articles 90, 91, 92 ;

2. Because without free consent of one of the parties ;

3. For error of one party as to the person of the other ;

4. Because one of the parties at the time of the marriage was of unsound mind ;

5. Because celebrated by an incompetent officer ;

6. For non-publication of banns or notice as prescribed in the last Chapter.

124. In the cases 2, 3, 4 and 5 specified in the preceding article, the party who has continued cohabitation during six

months after having acquired liberty or sanity, or having become aware of the error, cannot seek the nullity of the marriage.

125. A marriage in contravention of articles 90, 91, 92 may be contested either by the parties themselves or by any of those having an interest therein.

126. A marriage can be impugned for the cause 5 specified in article 123 only on behalf of a party who was unaware of the incompetency of the officer, and for the causes 2, 3, 4 specified in the same article only on behalf of the party who was not free, or was of unsound mind or in error, and for cause 6 only by a parent, tutor, or curator of one of the parties, who was a minor or interdicted at the time of the marriage, such parent, tutor, or curator having been ignorant of or having refused consent to the marriage.

127. If the publications required were not made or on their omission supplied by licence, or if there have not been the legal intervals between the publications, or if the publications or licence have by lapse of time become invalid, the officer celebrating the marriage is liable to a penalty not exceeding two hundred and forty dollars, and is further liable to civil damages.

128. The penalty and liability imposed by the preceding article is in like manner incurred by any officer who, in the execution of the duty imposed upon him, or which he has undertaken, as to the solemnization of a marriage, contravenes the rules prescribed in that respect by the different articles of the present Book.

129. No one can claim the title of husband or wife and the civil effects of marriage, unless he produces a certificate of the marriage, as inscribed in the registers of civil status, except in the cases provided for by article 35.

130. Possession of the status of married persons does not dispense those who pretend to be husband and wife, from producing the certificate of their marriage.

131. When the parties are in possession of the status, and the certificate of their marriage is produced, they cannot impugn the validity of the certificate.

132. Nevertheless, in the case of articles 129 and 130, if there be children issue of two persons who lived publicly as husband and wife, and who are both dead, the legitimacy of such children cannot be contested solely on the pretext that no certificate is produced, whenever such legitimacy is supported by possession of the status uncontradicted by the record of birth.

133. A marriage although declared null, produces civil effects, as well with regard to the husband and wife as with regard to the children, if contracted in good faith.

134. If good faith exist on the part of one of the parties only, the marriage produces civil effects in favour of such party alone and in favour of the children issue of the marriage.

134A. (Ad. 34-1956). Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, at the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

134B. (Ad. 34-1956). In the case of any action for nullity of marriage :—

(1) the Court may, if it thinks fit, direct all necessary papers in the matter to be sent to the Crown Attorney, who may himself argue or instruct counsel to argue before the Court any question in relation to the matter which the Court deems to be necessary or expedient to have fully

argued, and the Crown Attorney shall be entitled to charge the costs of the proceedings as part of the expenses of his office.

(2) any person may at any time during the progress of the proceedings or before the decree *nisi* is made absolute give information to the Crown Attorney of any matter material to the due decision of the case, and the Crown Attorney may thereupon take such steps as he considers necessary or expedient ;

(3) if in consequence of any such information or otherwise the Crown Attorney suspects that any parties to the action are or have been acting in collusion for the purpose of obtaining a decree contrary to the justice of the case, he may, after obtaining the leave of the Court, intervene and retain counsel and subpoena witnesses to prove the alleged collusion.

134C. (Ad. 34-1956). Where the Crown Attorney intervenes or shows cause against a decree *nisi* in any proceedings for nullity of marriage, the Court may make such order as to the payment by other parties to the proceedings of the costs incurred by him in so doing or as to the payment by him of any costs incurred by any of the said parties by reason of his so doing, as may seem just.

134D. (Ad. 34-1956). (1) Every decree for nullity of marriage shall, in the first instance, be a decree *nisi* not to be made absolute until after the expiration of six weeks from the pronouncing thereof, unless the Court by general or special order from time to time fixes a shorter time.

(2) After the pronouncing of the decree *nisi* and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not having been brought before the Court, and in any such case the Court may

make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit.

(3) Where a decree *nisi* has been obtained and no application for the decree to be made absolute has been made by the party who obtained the decree, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom the decree *nisi* has been granted shall be at liberty to apply to the Court and the Court shall, on such application, have power to make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit.

134E. (Ad. 34-1956). Nothing in this Chapter shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

CHAPTER FIFTH.

THE OBLIGATIONS ARISING FROM MARRIAGE.

135. Husband and wife contract, by the mere fact of marriage, the obligation to maintain and bring up their children.

136. Children are bound to maintain their father, mother and other ascendants, who are in want.

137. (Rep. 34-1956).

138. The obligations which result from this provision are reciprocal.

139. Maintenance is only granted in proportion to the wants of the party claiming it and the fortune of the party by whom it is due.

140. Whenever the condition of the party who furnishes or of the party who receives maintenance is so changed that the one can no longer give or the other no longer needs the whole or any part of it, a discharge from or a reduction of such maintenance may be demanded.

141. If the person who owes maintenance, prove that he cannot pay an alimentary pension, the Court may order such person to receive and maintain in his house the party to whom such maintenance is due.

142. The Court likewise decides whether the father or mother, who, although able to pay, offers to receive and maintain the child to whom a maintenance is due, shall in that case be exempted from paying an alimentary pension.

CHAPTER SIXTH.

THE RESPECTIVE RIGHTS OF HUSBAND AND WIFE.

143. Husband and wife mutually owe each other fidelity, succour and assistance.

144. A husband owes protection to his wife; a wife obedience to her husband.

145. (Subst. 34-1956). (1) A wife is obliged to live with her husband, and to follow him wherever he thinks fit to reside. But a husband is not entitled to use force, or to keep his wife in confinement for the purpose of compelling his wife to live with him; nor is he entitled to a writ of *habeas corpus* for the purpose of restoring her to his custody. The husband is bound to receive her and to supply her with all the necessaries of life, according to his means and condition.

(2) Where the parties have mutually agreed to live separate and apart from each other, such agreement has the same effect as it has by the law of England.

146. (14-1930 as Subst. 34-1956). (1) A married woman separate as to property can alone sue or be sued or appear in judicial proceedings, as if she were not married.

(2) A wife married in community can alone sue or be sued or appear in judicial proceedings in respect of her separate property, rights or liabilities, or of a delict to or by her, as if she were not married.

(3) In litigation, however, with third parties as to community property, rights and liabilities, the husband is, nevertheless, to represent the community and his wife, unless it is otherwise provided or the wife alone is authorised by the Judge to represent the community or to appear owing to the absence, incapacity or refusal of her husband.

(4) The Court, Judge, Magistrate or other judicial officer or any person who hears or has to determine any action or matter which in his opinion may affect the rights or interests of a married woman even if she is common as to property may at any time before determining such action or matter on his own motion or on application by the married woman or on her behalf or by any other person require the presence of such married woman before him to answer such questions or to give such information as he may consider proper and he may authorise her to appear or be represented in such action or proceedings.

147. (14-1930 as subst. 34-1956). (1) The separate property of a married woman is no longer subject to the right of administration of her husband which is wholly abolished.

(2) Marital consent or authorisation is no longer necessary for any act or contract by a married woman respecting her separate property.

148. (14-1930 as subst. 34-1956). (1) A married woman can alone accept, receive, administer, use, alienate and dispose of her separate property as if she were not married.

(2) A married woman is alone capable of entering into contracts and of incurring obligations and thereby binding her separate property as if she were not married.

(3) A married woman can alone execute any deed or writing relating to her separate property as if she were not married.

149 - 153. (Rep. 34-1956).

154. A wife may make a will without the authorisation of her husband.

154A. (Ad. 34-1956). A person shall not be disqualified by sex or marriage from the exercise of any public function or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise) :

Provided that this article shall in no way derogate from the right of Her Majesty by Order in Council to authorise regulations to be made providing for and prescribing the mode of the admission of women to the civil service of Her Majesty and the conditions on which women admitted to that service may be appointed to or continue to hold posts therein, and giving power to reserve to men any branch of or post in the civil service.

CHAPTER SEVENTH.

THE DISSOLUTION OF MARRIAGE.

155. Subject to the provisions of article 155A marriage can only be dissolved by the death of one of the parties ; while both live, it is indissoluble.

155A. (Ad. 34-1956). (1) Notwithstanding the provisions of article 155 any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may, if he is domiciled in the Colony present a petition to the Court to have it presumed that the

other party is dead and to have the marriage dissolved, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living within that time, shall be evidence that he or she is dead until the contrary is proved.

(3) Articles 134B, 134C and 134D of this Code shall apply to a petition and a decree under this article as they apply to an action and a decree of nullity respectively.

(4) In determining for the purposes of this article whether a woman is domiciled in the Colony, her husband shall be treated as having died immediately after the last occasion on which she knew or had reason to believe him to be living.

155B. (Ad. 34-1956). (1) When a decree of dissolution under the preceding article has been made absolute and there is no right of appeal against the decree absolute, or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, either party to the marriage may marry again.

(2) No minister of religion shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved under the preceding article and whose former husband or wife is subsequently proved to be living, or to permit the marriage of any such person in the church or chapel of which he is the minister.

BOOK SIXTH.

SEPARATION FROM BED AND BOARD.

CHAPTER FIRST.

THE CAUSES OF SEPARATION FROM BED AND BOARD.

156. Separation from bed and board can only be demanded for specific causes; it cannot be based on the mutual consent of the parties.

157. Either party to a marriage may demand separation on the ground of the adultery of the other.

158. (Subst. 34-1956). Either party may demand separation on the ground of cruelty on the part of the other.

159. (Subst. 34-1956). The question of the sufficiency of the cruelty is left to the discretion of the Court, which must take into consideration the circumstances of the parties, and their condition in life.

160. (Subst. 34-1956). Either party may demand separation on the ground that the other party has deserted the plaintiff without cause.

160A. (Ad. 34-1956). The expressions "adultery", "cruelty" and "desertion" shall have the same meanings as are assigned to them by the law of England in matters relating to matrimonial causes:

Provided, however, that it shall not be necessary to prove, in an action on the ground of desertion that the desertion has continued for any specified period of time.

160B. (Ad. 34-1956). (1) In an action for separation it shall be the duty of the Court to inquire, so far as it reasonably can, into the facts alleged and whether there has been any connivance or condonation on the part of the plaintiff and whether any collusion exists between the parties, and also to

inquire into any countercharge which is made against the plaintiff.

(2) If the Court is satisfied on the evidence that —

(*a*) the case for the plaintiff has been proved ; and

(*b*) where the ground of the action is adultery, the plaintiff has not in any manner been accessory to, or connived at, or condoned, the adultery, or, where the ground of the action is cruelty, the plaintiff has not in any manner condoned the cruelty ; and

(*c*) the action is not brought or prosecuted in collusion with the defendant or either of the defendants ;

the Court shall grant the separation, but if the Court is not satisfied with respect to any of the aforesaid matters, it shall dismiss the action :

Provided that the Court shall not be bound to grant the separation and may dismiss the action if it finds that the plaintiff has during the marriage been guilty of adultery or if, in the opinion of the Court, the plaintiff has been guilty —

(i) of unreasonable delay in bringing or prosecuting the action ; or

(ii) of cruelty towards the other party to the marriage ; or

(iii) where the ground of the action is adultery or cruelty, of having without reasonable excuse deserted, or having without reasonable excuse wilfully separated himself or herself from, the other party before the adultery or cruelty complained of ; or

(iv) where the ground of the action is adultery or desertion, of such wilful neglect or misconduct as has conduced to the adultery or desertion.

160C. (Ad. 34-1956). The Court may on the application by petition of the husband or wife against whom an order for

separation from bed and board has been made, and on being satisfied that the allegations contained in the petition are true, reverse the order at any time after the making thereof, on the ground that it was obtained in the absence of the person making the application, or, if desertion was the ground of the order, that there was reasonable cause for the alleged desertion.

CHAPTER SECOND.

THE FORMALITIES OF THE ACTION FOR SEPARATION FROM BED AND BOARD.

161. The action for separation is brought, tried and decided in the same manner as all other civil actions, with this difference, that the parties cannot admit the allegations, proof of which must always be made before the Court.

162. (Subst. 34-1956). It is no longer necessary for the wife to obtain the authorisation of the Judge to sue or to be allowed to withdraw from the matrimonial home pending the suit.

163. (Rep. 34-1956).

164. The action for separation from bed and board is extinguished by a reconciliation of the parties taking place either since the facts which gave rise to the action, or after the action brought.

165. (Am. 34-1956). In such a case the action is dismissed.

The plaintiff may nevertheless bring another, for any cause which has happened since the reconciliation, and may in such case make use of the previous causes in support of the new action.

166. If the action be dismissed the husband is obliged to take back his wife, and the wife is obliged to return to her

husband, within such delay as the Court by its judgment determines.

167. (Am. 34-1956). When the action is brought on the ground of cruelty, although the same be well established, the Court may refuse to grant the separation forthwith, and may suspend its judgment until a further day, which it appoints in order to afford the parties sufficient time to come to an understanding and reconciliation.

CHAPTER THIRD.

THE PROVISIONAL MEASURES TO WHICH THE ACTION FOR SEPARATION FROM BED AND BOARD MAY GIVE RISE.

168. The provisional care of the children remains with the father, whether plaintiff or defendant, unless the Court or Judge orders otherwise for the greater advantage of the children.

169. (Subst. 34-1956). A wife sued in separation may leave her husband's domicile.

170. Whether the wife is plaintiff or defendant, she may demand an alimentary pension, in proportion to her wants and the means of her husband ; the amount is fixed by the Court, which also orders the husband, if necessary, to deliver to the wife at the place to which she has withdrawn, the clothing she may require.

171. (Rep. 34-1956).

172. (Am. 34-1956). A wife who is in community as to property, whether plaintiff or defendant in an action for separation from bed and board, may, from the date of the commencement of the action, obtain permission from the Court or Judge, to cause the movable effects of the community to be attached for the preservation of the share which she will have a right to claim when the partition takes place ; in

consequence of which, her husband is bound as judicial guardian, to produce the things seized or their value when required.

173. (Subst. 34-1956). All obligations contracted by a husband affecting the community, subsequent to the commencement of the action, are declared null, if it be established that such obligations were contracted or made in fraud of the rights of his wife.

CHAPTER FOURTH.

THE EFFECTS OF SEPARATION FROM BED AND BOARD.

174. Separation from bed and board, from whatever cause it arises, does not dissolve the marriage tie. Neither husband nor wife, therefore, can contract a new marriage while both are living.

175. The separation relieves the husband from the obligation of receiving his wife, and the wife from that of living with her husband; it gives the wife the right of choosing for herself a domicile other than that of her husband.

176. (Subst. 34-1956). Separation from bed and board carries with it separation of property; it gives the wife the right to obtain restitution of the property that she brought in marriage.

Unless by the judgment they are declared forfeited, which only takes place in the case of adultery, the separation also gives the wife the right to claim all the benefits conferred on her by the marriage contract; saving the rights of survivorship to which such separation does not give rise, unless the contrary has been specially stipulated.

177. When community of property exists, the separation operates its dissolution, imposes on the husband the obligation of making an inventory, and gives to the wife, in case

of acceptance, the right to demand the partition of the property, unless by the judgment she has been declared to have forfeited this right.

178. (Subst. 34-1956). The separation confers upon the wife full civil capacity to act without the necessity of marital or judicial authorisation.

179. For whatever cause the separation takes place, the party against whom it has been declared, loses all the advantages granted by the other party.

180. The party who has obtained the separation, retains all the advantages granted by the other, although they may have been stipulated to be reciprocal and the reciprocity does not take place.

181. (Am. 34-1956). (1) Either of the parties thus separated who has not sufficient means of subsistence, may obtain judgment against the other for an alimentary pension. The amount of pension is fixed by the Court, according to the condition, means and other circumstances of the parties.

(2) If an alimentary pension has been ordered to be paid and has not been duly paid by the husband he shall be liable for necessaries supplied for the use of the wife.

182. The children are entrusted to the party who has obtained the separation, unless the Court orders, for the greater advantage of the children, that all or some of them be entrusted to the care of the other party, or of a third person.

183. Whoever may be entrusted with the care of the children, the father and mother respectively retain the right of watching over their maintenance and education, and are bound to contribute thereto in proportion to their means.

184. Separation from bed and board judicially ordered does not deprive the children, issue of the marriage, of any

of the advantages allowed them by law or by the marriage covenants of their father and mother. But these rights only come into operation in the same way and under the same circumstances as if there had been no such separation.

185. (Subst. 34-1956). Husband and wife thus separated, for any cause whatever, may at any time reunite and thereby put an end to the effects of the separation, but the spouses nevertheless remain separate as to property.

BOOK SEVENTH.

FILIATION.

CHAPTER FIRST.

THE FILIATION OF CHILDREN WHO ARE LEGITIMATE OR CONCEIVED DURING MARRIAGE.

186. A child conceived during marriage is legitimate and is held to be the child of the husband.

A child born on or after the one hundred and eightieth day after the marriage was solemnized, or within three hundred days after its dissolution, is held to have been conceived during marriage.

187. The husband cannot disown such a child even for adultery, unless its birth has been concealed from him; in which case he is allowed to set up all the facts tending to establish that he is not the father.

188. Neither can the husband disown the child on the ground of his impotency either natural or caused by accident before the marriage. He may nevertheless disown it if, owing to impotency that did not exist at the time of the marriage, to his distance from his wife, or any other cause, the fact of his being the father is a physical impossibility.

189. A child born before the one hundred and eightieth day after the marriage was solemnized, may be disowned by the husband.

190. Nevertheless a child born before the one hundred and eightieth day of the marriage, cannot be disowned by the husband in the following cases :—

1. If he knew of the pregnancy before the marriage ;

2. If he take any part at the registration of the birth ;

3. If the child be not declared viable.

191. In all the cases where the husband may disown the child, he must do so :

1. Within two months, if he be in the place at the time of the birth ;

2. Within two months after his return, if absent at the time of the birth ;

3. Within two months of the discovery of the fraud, if the birth have been concealed from him.

192. If the husband die before disowning the child, but still being within the delay allowed for so doing, the heirs have two months to contest the legitimacy of the child from the time he has taken possession of the property of the husband, or from the time that the heirs have been disturbed by him in their possession.

193. Such repudiation of a child, on the part of the husband or of his heirs, must be made by an action at law, directed against the tutor, or tutor *ad hoc*, appointed to the child, if he be a minor ; and the mother, if living, must be made a party to the action.

194. The child which might have been disowned is held to be legitimate, if it has not been disowned as prescribed in this Chapter.

195. A child born after the three hundredth day from the dissolution of the marriage is held not to be the issue thereof and is illegitimate.

CHAPTER SECOND.

THE EVIDENCE OF THE FILIATION OF LEGITIMATE CHILDREN.

196. The filiation of legitimate children is proved by the records of birth inscribed in the registers of civil status.

197. If there be no such record, the uninterrupted possession of the status of a legitimate child is sufficient.

198. Such possession is established by a sufficient concurrence of facts, indicating the connection of filiation and relationship between the individual and the family to which he claims to belong.

199. No one can claim a status contrary to that which is given him by the record of his birth, accompanied with the possession conformable to such record; and reciprocally no one can contest the status of him who has a possession conformable to the record of his birth.

200. If there be neither record of birth nor uninterrupted possession, or if the child have been described either under false names, or as being the child of unknown parents, the proof of filiation may be made by testimony. Nevertheless this evidence can only be admitted when there is a commencement of proof in writing, or when the presumptions or indications resulting from facts then ascertained, are sufficiently strong to permit its admission.

201. A commencement of proof in writing may be derived from the title-deeds of the family, the registers and papers of the father and mother, from public and even private writings proceeding from a party engaged in the contestation, or who would have had an interest therein had he been alive.

202. Proof of the contrary may be made by any means of a nature to establish that the claimant is not the child of the mother he claims to have, or even, the maternity being proved, that he is not the child of the husband of such mother.

203. (Subst. 34-1956). Proceedings to establish the status of legitimacy may be brought by a petition presented to the Supreme Court for a declaration that the petitioner is a legitimate child of his parents. The right of a child to establish his status is imprescriptible.

204. (Am. 34-1956). This petition cannot be brought by the heirs of a child who has failed to bring it, unless he died in minority, or within five years after his majority ; but they may continue the action already brought.

CHAPTER THIRD.

ILLEGITIMATE CHILDREN.

205. Children born out of marriage, unless they are the issue of an incestuous or adulterous connection, are legitimated by the subsequent marriage of their father and mother.

206. Such legitimation takes place even in favour of the deceased children who have left legitimate issue, and in that case it benefits such issue.

207. Children legitimated by a subsequent marriage have the same rights as if they were born of such marriage.

208. The forced or voluntary acknowledgment by the father or mother of their illegitimate child, gives the latter the right to demand maintenance from each of them, according to circumstances.

209. (Am. 34-1956). An illegitimate child has a right to establish judicially his claim of paternity or maternity, and the proof thereof is made by writings or testimony, under the conditions and restrictions set forth in articles 200, 201 and 202, and the petition to establish his claim is presented in the manner set forth in article 203.

BOOK EIGHTH.

PARENTAL AUTHORITY.

210. (Subst. 34-1956). Subject to the powers of the Court to order otherwise, a child remains subject to the authority of his father and mother until his majority or his marriage.

210A. (Ad. 34-1956). Where in any proceeding before any Court the custody or upbringing of a minor, or the administration of any property belonging to or held on trust for a minor, or the application of the income thereof, is in question, the Court in deciding that question shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, or any right under this Code possessed by the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

210B. (Ad. 34-1956). The mother of a minor shall have the like powers to apply to the Court in respect of any matter affecting the minor as are possessed by the father.

210C. (Ad. 34-1956). The Court may upon the application of the mother of any minor make such order as it may think fit regarding the custody of such minor and the right of access thereto of either parent, having regard to the welfare of the minor and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or after the death of either parent, of any tutor under this Code, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

210D. (Ad. 34-1956). (1) The power of the Court under article 210C to make an order as to the custody of the minor and the right of access thereto may be exercised notwithstand-

ing that the mother of the minor is then residing with the father of the minor.

(2) Where the Court, under the said article makes an order giving the custody of the minor to the mother, then whether or not the mother is then residing with the father, the Court may further order that the father shall pay to the mother towards the maintenance of the minor such weekly or other periodical sum as the Court, having regard to the means of the father, may think reasonable.

(3) No such order, whether for custody or maintenance, shall be enforceable and no liability thereunder shall accrue while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made the mother of the minor continues to reside with the father.

(4) Any order so made may, on the application either of the father or the mother of the minor, be varied or discharged by a subsequent order.

210E. (Ad. 34-1956). (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under the provisions of this Chapter, shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such notice shall be liable on summary conviction to a fine not exceeding ten dollars.

(2) Where the Court has made any such order, the Court shall, in addition to any other powers for enforcing compliance with the order, have power in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the Court may think fit of any such pension or income, be attached and paid to the person named by the Court, and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of

the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

210F. (Ad. 34-1956). Where the parent of a child applies to the Court for a writ or order for the production of the child, and the Court is of opinion that the parent has abandoned or deserted the child or that he has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child, the Court may in its discretion decline to issue the writ or make the order.

210G. (Ad. 34-1956). If at the time of the application for a writ or order for the production of the child the child is being brought up by another person, the Court may in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person, the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the Court to be just and reasonable, having regard to all the circumstances of the case.

210H. (Ad. 34-1956). Where a parent has —

(*a*) abandoned or deserted his child ; or

(*b*) allowed his child to be brought up by another person at that person's expense, for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

the Court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the Court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.

210I. (Ad. 34-1956). Upon any application by the parent for the production or custody of a child, if the Court is of

opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up. Nothing in this Code contained shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.

210J. (Ad. 34-1956). In articles 210F to 210I inclusive the expression " parent " of a child includes any person at law liable to maintain such child or entitled to his custody, and " person " includes any school or institution.

210K. (Ad. 34-1956). No agreement contained in any separation deed made between the father and mother of a minor, shall be held to be invalid by reason only of its providing that the father of such minor shall give up the custody or control thereof to the mother : Provided always that no Court shall enforce any such agreement, if the Court shall be of opinion that it will not be for the benefit of the minor to give effect thereto.

211. (Rep. 34-1956).

212. (Am. 34-1956). The father and mother of an unmarried minor have over him a right of reasonable and moderate correction, which may be delegated to and exercised by those to whom his education has been entrusted.

BOOK NINTH.

MINORITY AND TUTORSHIP.

CHAPTER FIRST

MINORITY.

213. Persons of either sex remain in minority until they attain the full age of twenty-one years.

214. (Rep. 34-1956).

215. The disabilities, rights and privileges resulting from minority, the acts the minor may do and the suits he may bring, the cases in which he may demand to be relieved, the manner and time of making the demand, and other like questions, are determined in the third part of this Code.

CHAPTER SECOND.

TUTORSHIP.

(Subst. 34-1956).

216. Save as is otherwise provided in this Code or in any other law which now is or may hereinafter be in force in the Colony the law of England for the time being relating to the custody of infants, guardianship and the appointment of guardians, and the rights, powers and duties of guardians, shall *mutatis mutandis* apply to the custody of minors, tutorship and the appointment of tutors, and the rights, powers and duties of tutors.

SECTION I.

(Subst. 34-1956).

APPOINTMENT OF TUTORS.

217. (1) Tutorships are of three kinds, namely :

(*a*) those appointed by the Court,

(*b*) those appointed by the father or mother in accordance with article 219, and

(*c*) the legal tutorship of the surviving father or mother.

(2) The Court may on the petition of any person including the minor himself in certain cases appoint a tutor to any minor, whether such minor is entitled to property or not.

218. (1) On the death of the father of a minor the mother, if surviving, shall, subject to the provisions of this Code, be tutor of the minor, either alone or jointly with any tutor appointed by the father. When no tutor has been appointed by the father or if the tutor appointed by the father is dead or refuses to act, the Court may if it thinks fit appoint a tutor to act jointly with the mother.

(2) On the death of the mother of a minor, the father, if surviving, shall, subject to the provisions of this Code, be tutor of the minor, either alone or jointly with any tutor appointed by the mother. When no tutor has been appointed by the mother or if the tutor appointed by the mother is dead or refuses to act, the Court may if it thinks fit appoint a tutor to act jointly with the father.

(3) Where both the father and the mother of a minor are dead, the Court on the petition of any person, may, if it thinks fit, appoint the applicant to be the tutor of the minor.

219. (1) The father of a minor may by deed in notarial form or by will appoint any person to be tutor of the minor after his death.

(2) The mother of a minor may by deed in notarial form or by will appoint any person to be tutor of the minor after her death.

(3) Any tutor so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive unless the mother or father objects to his so acting.

(4) If the mother or father so objects or if the tutor so appointed as aforesaid considers that the mother or father is unfit to have the custody of the minor, the tutor may apply to the Court, and the Court may either refuse to make any order (in which case the mother or father shall remain sole tutor) or make an order that the tutor so appointed shall act jointly with the mother or father, or that he shall be sole tutor of the minor and in the latter case may make such order regarding the custody of the minor and the right of access thereto of its mother or father as, having regard to the welfare of the minor, the Court may think fit, and may further order that the mother or father shall pay to the tutor towards the maintenance and education of the minor such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

(5) Where tutors are appointed by both parents, the tutors so appointed shall after the death of the surviving parent act jointly.

(6) If under the preceding article a tutor has been appointed by the Court to act jointly with the surviving parent he shall continue to act as tutor after the death of the surviving parent ; but if the surviving parent has appointed a tutor, the tutor appointed by the Court shall act jointly with the tutor appointed by the surviving parent.

220. Where two or more persons act as joint tutors of a minor and they are unable to agree on any question affecting the welfare of the minor, any of them may apply to the Court for its direction, and the Court may make such order regarding the matters in difference as it may think proper.

221. The power of the Court under the preceding article to make orders regarding matters in difference between persons acting as joint tutors of a minor shall, where one of the said persons is the mother or father of the minor, include power—

(*a*) to make such orders regarding the custody of the minor and the right of access thereto of its mother

or father as, having regard to the welfare of the minor, the Court may think fit ; and

(*b*) to order the mother or father to pay towards the maintenance and education of the minor such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable ; and

(*c*) to vary or discharge any order previously made under the said article.

222. The powers conferred on the Court by paragraph (4) of article 220, in cases where an appointed tutor is to be the sole tutor of a minor to the exclusion of its mother or father, may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

223. No one is bound to accept a tutorship, unless he is the father of the minor.

A tutor having accepted the office cannot resign at will.

224. Where a minor is without a tutor, or where his interests and those of his tutor conflict, the Court may appoint a tutor for any special purpose, such as consenting to a marriage, giving a receipt for a legacy, or the conduct of legal proceedings, or may itself give the necessary consent or authority.

225. Save as is otherwise in this section provided, one tutor only is appointed for each minor, and may be appointed to any number. Nevertheless the Court may, if it thinks fit, appoint a tutor to the person of the minor, and a separate tutor to his property.

The mother or other female ascendant who has remarried may be appointed joint-tutor with her second husband.

226. A tutor acts and administers, as such, from the time of his appointment, if it take place in his presence ; in any

other case from the time of his being notified of it. But the appointment of a tutor by deed or will does not take effect until the death of the parent who appointed him.

227. Tutorship is a personal office which does not pass to the personal representatives of the tutor. They are simply responsible for his administration and are bound to continue it until a new tutor is appointed.

228 — 241. (Rep. 34-1956).

SECTION II.

INCAPACITY FOR TUTORSHIP AND EXCLUSION AND REMOVAL FROM IT.

242. (Subst. 34-1956). The following persons cannot be tutors :

1. Minors, except the father who is bound to accept the office, and the mother, who although a minor, has a right to the tutorship of her children, but is not bound to accept it.

2. Interdicted persons.

3. A married woman, unless she has been appointed jointly with her husband.

4. All those who themselves or whose father or mother have against the minor a suit at law involving his status, his fortune, or an important portion of it.

243. (Subst. 34-1956). A woman who has been appointed to a tutorship is deprived of it from the day on which she marries, or remarries, and the husband of the tutrix remains responsible for the administration of the property of the minor during such marriage until a new tutor is appointed, even if there be not community. She may, however, be re-appointed jointly with her husband.

244. Condemnation to a degrading punishment carries with it by law exclusion from tutorship ; and also involves removal from a tutorship previously conferred.

245. The following persons are also excluded from tutorship, and even may be deprived of it when they have entered upon its duties :

1. Persons whose misconduct is notorious ;

2. Those whose administration exhibits their incapacity or dishonesty.

246. (Subst. 34-1956). The Court, on being satisfied that it is for the welfare of the minor, may remove any tutor and may also, if it deems it to be for the welfare of the minor, appoint another tutor in his place.

247. (Rep. 34-1956).

248. (Subst. 34-1956). The order for removal must contain the grounds on which it is founded and orders the tutor to render an account.

249. (Am. 34-1956). During the litigation or pending the hearing of the application for his removal, the tutor sued retains the management and administration of the person and of the property of the minor, unless the Court or Judge orders otherwise.

SECTION III.

THE ADMINISTRATION OF TUTORS.

250. (Subst. 34-1956). (1) A tutor has the care of the person of his pupil until his marriage and represents him in all civil acts.

(2) He is entitled to the possession and control of all his property and is bound to manage it like a prudent administrator.

(3) He can neither buy the property of his pupil, nor take it on lease, nor accept the transfer of any right or debt against his pupil.

(4) He may, with the authorisation of the Court, continue an established business ; but this power may be revoked at any time by order of the Court.

251. A tutor as soon as his appointment is known to him, and before acting under it, must make oath to well and truly administer the tutorship.

252. (Subst. 34-1956). As soon as he has taken the oath, the tutor proceeds forthwith to the taking of an inventory of the property of the minor.

If anything is due to him by the minor, the tutor must declare it in the inventory, on pain of forfeiting his claim.

253. (Rep. 34-1956).

254. (Subst. 34-1956). The tutor after discharging the debts and other liabilities must within a reasonable time invest whatever money remains in his hands or is subsequently received from the debtors of the minor.

255. (Am. 34-1956). During the tutorship he must likewise invest the excess of the revenues over the expenses, as well as all capital sums which have been reimbursed and all other monies which he has received, or ought to have received ; and this he must do within a delay of six months from the day when he had or ought to have had a sufficient sum, considering the means and condition of the minor, to form a suitable investment.

256. If the tutor has failed to make, within the delays, the investment required, he is bound to account to his pupil for interest on the sums which he ought to have so invested, unless he can establish that such investment was impossible, or unless, on his application, the Judge or the Registrar has dispensed with the investment or prolonged the delays.

257. Without the authorisation of the Judge or the Registrar, the tutor is not allowed to borrow for the minor, nor to

alienate or hypothecate his immovable property ; nor is he allowed to make over or transfer any capital sums belonging to the minor, or his shares and interest in any financial, commercial, or manufacturing joint-stock company.

258. Such authorisation can only be granted in cases of necessity or for an evident advantage.

In the case of necessity, the Judge or Registrar grants his authorisation only when it is established by a summary account submitted by the tutor, that the monies, movable effects and revenues of the minor are insufficient.

In all cases the authorisation indicates what property is to be sold or hypothecated, and any conditions deemed expedient.

259 — 262 (Rep. 34-1956).

263. Gifts made to a minor may be accepted by his tutor, or a tutor *ad hoc*, or by his father, mother, or other ascendants.

264. (Subst. 34-1956). Actions belonging to a minor are brought in the name of his tutor.

Nevertheless, a minor of fourteen years of age may bring alone actions to recover his wages.

He may also, with the authority of the Judge, bring alone all other actions arising from the contract for the hire of his personal services.

If he is sued, he may invoke alone the incapacity resulting from his minority.

265. A tutor cannot demand the definitive partition of the immovable property of the minor, but he can, even without authorisation, defend an action of partition brought against such minor.

266. A tutor cannot appeal from a judgment, until he is authorised by the Judge or the Registrar.

267. A tutor cannot transact in the name of the minor unless he is authorised by the Court, the Judge or the Registrar. Accompanied by these formalities, transaction has the same effect as if made with a person of age.

SECTION IV.

THE ACCOUNT OF TUTORSHIP.

268. Every tutor is accountable for his administration, when it has terminated.

269. (Am. 34-1956). Any tutor may be compelled, even during the tutorship, under the authorisation of the Court or Judge on the demand of any interested person, to produce from time to time, a summary account of his administration.

270. (Am. 34-1956). The definitive account of a tutorship is rendered at the cost of the minor, when he has attained his majority. The tutor advances the costs of such account.

He is allowed all the expenses which he can justify, and of which the object was useful.

271. Every settlement between a minor become of age and his tutor, relating to the administration and account of the latter, is null, unless it is preceded by a detailed account, and the delivery of vouchers in support thereof.

272. If the account give rise to contestations, they are proceeded with and adjudicated upon in the manner provided in the Code of Civil Procedure.

273. Any balance due by the tutor bears interest without demand, from the closing of the account. Interest on any sum due by the minor to the tutor, only runs from the time of his being put in default by the tutor, after the closing of the account.

CHAPTER THIRD.

MISCELLANEOUS PROVISIONS.

274—278. (Rep. 34-1956).

279. (Am. 34-1956). A minor who is or has been married may grant leases for terms not exceeding nine years ; he may receive his revenues, give receipts therefor, and perform all acts of mere administration. He is not relievable from these acts, except in cases where persons of age would be so.

280 to 282. (Rep. 34-1956).

283. A minor engaged in trade is reputed of full age for all acts relating to such trade.

BOOK TENTH.

MAJORITY, INQUISITION AS TO UNSOUNDNESS OF MIND, CURATORSHIP AND RECEIVERS.

CHAPTER FIRST.

MAJORITY.

284. Majority is attained at the age of twenty-one years. At that age persons are capable of performing all civil acts.

CHAPTER SECOND.

(Subst. 34-1956).

INQUISITION AS TO UNSOUNDNESS OF MIND.

285. (1) It shall be lawful for the Supreme Court or any Judge thereof, on petition supported by affidavit to order an inquisition whether a person is of unsound mind and incapable of managing himself and his affairs.

(2) All such petitions shall be addressed to a Judge of the Supreme Court, and shall contain a specification of the acts of unsoundness of mind.

(3) Where the person alleged to be of unsound mind is within the jurisdiction, he shall have notice of the petition and shall be entitled to demand an inquiry before a jury. Where he is not within the jurisdiction, it shall not be necessary to give him notice of the petition, and the inquisition shall be before a jury.

286. Where the person alleged to be of unsound mind demands a jury, the Judge shall in his order for inquisition direct the return of a jury, unless he is satisfied by personal examination of such person, that he is not mentally competent to form and express a wish for an inquisition before a jury ; and the Judge may, where he deems it necessary, and for the purpose of personal examination, require the person alleged to be of unsound mind to attend before him at such convenient time and place as he may appoint.

287. The Judge may make general orders for regulating the procedure in cases of trial by jury under this article.

288. The inquisition shall be had by and before the Supreme Court and the Judge shall personally examine the person alleged to be of unsound mind and take such evidence, upon oath or otherwise, and call for such information as he thinks fit, in order to ascertain whether or not such person is of unsound mind.

Provided nevertheless that where the person alleged to be of unsound mind is confined in a mental hospital in this Colony or elsewhere, it shall not be necessary for the Judge to examine him personally but a certificate establishing his mental condition signed by the Medical Superintendent of the Mental Hospital must be produced.

289. (1) The inquisition shall be confined to the question whether or not the person who is the subject of the inquisition

is, at the time of such inquisition, of unsound mind and incapable of managing himself or his affairs, and no evidence as to anything done or said by him, or as to his demeanour or state of mind at any time, being more than two years before the time of the inquisition, shall be receivable in proof of unsoundness of mind on any such inquisition, unless the Court or Judge shall otherwise direct.

(2) If upon such inquisition it appears that the person alleged to be of unsound mind is of unsound mind, so as to be incapable of managing his affairs, but that he is capable of managing himself and is not dangerous to himself, or to others, it may be so specially found and certified.

290. It shall be lawful for the Court or Judge, upon a petition being presented within three months next after the trial of any such issue, to order a new inquisition as to the insanity of the person alleged to be of unsound mind, subject to such directions and upon such conditions as to the Judge may seem proper.

291. (1) Where upon an inquisition the Court or Judge finds that the person who is the subject of the inquisition is of unsound mind, the Judge may make an order for the appointment of a curator to the person and property of the person so found to be of unsound mind, and every such order shall take effect from the date thereof.

(2) Where upon the inquisition it is specially found or certified that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but that he is capable of managing himself, and is not dangerous to himself or to others, the Judge may make such orders as he thinks fit for the appointment of a curator of the property of the person of unsound mind and its management, including all proper provisions for the maintenance of the person of unsound mind, but it shall not be necessary, unless in the discretion of the Judge it appears proper to do so, to make any order as to the custody or curatorship of the person of the person of unsound mind.

(3) A person of unsound mind so found by inquisition is in this Code referred to as an interdicted person.

292. Any order under the preceding article may be made notwithstanding proceedings are pending for a new trial, and any person acting upon an order so made shall be indemnified as effectually as if there had been no right of a new trial.

293. An order made under the provisions of this Chapter must at the instance of the petitioner forthwith be notified to the person found to be a person of unsound mind, and inscribed without delay by the Registrar on the roll kept for that purpose, and publicly exposed in the Registry.

294. All acts done by the person found to be a person of unsound mind, subsequently to the making of the order, are void.

295. Acts anterior to the order may nevertheless be set aside, if the fact of such insanity notoriously existed at the time when these acts were done.

296. (1) The Judge, if satisfied by a report of the Medical Superintendent of a mental hospital, or any other evidence, that a person of unsound mind so found by inquisition is cured and capable of managing his affairs, may make an order putting an end to the curatorship, and thereupon such person shall resume the exercise of his rights.

(2) An order under this article may be made on such terms and conditions as the Judge thinks fit.

(3) Notice of an order under this article shall be forthwith given to the curator.

CHAPTER THIRD.

CURATORSHIP.

297. There are two sorts of curatorship, one to the person, the other to property.

298. (Subst. 34-1956). The persons to whom curators are given are :—

(1) Interdicted persons.

(2) Children conceived but not yet born.

(3) Persons judicially condemned to imprisonment for any term exceeding six months.

299. Curators to the person are appointed with the formalities and according to the rules prescribed for the appointment of tutors. They are sworn before entering upon their duties.

300. (Rep. 34-1956).

301. A curator to an interdicted person is appointed by the judgment which pronounces the interdiction.

302. (Rep. 34-1956).

303. (Subst. 34-1956). A curator to an interdicted person has over such person and his property the powers of the tutor over the person and property of the minor ; and has towards him the same duties and responsibilities as the tutor towards his pupil.

304. No one, with the exception of husband and wife, and ascendants and descendants, is obliged to retain the curatorship of an interdicted person for more than ten years. At the expiration of that time, the curator may demand and has a right to be replaced on petition.

305. The curator to a child conceived but not yet born, is bound to act for such child whenever its interests require it. He has until its birth the administration of the property which is to belong to it, and afterwards he is bound to render an account of the administration.

306. If during the curatorship the party subjected to it have any interests at variance with those of his curator, such party is given a curator *ad hoc* whose powers extend to these interests alone.

307. (Am. 34-1956). Curators to property are those appointed :

1. To the property of absentees ;

2. In cases of substitution ;

3. To vacant estates ;

4. To the property of extinct corporations ;

5. To property abandoned by arrested or imprisoned debtors or on account of hypothecs.

308. Provisions relating to curators to the property of absentees are contained in the Book respecting *Absentees.* Those concerning curators to the property of extinct corporations, in the Book respecting *Corporations.* In the Third Part and in the Code of Civil Procedure are to be found the rules relating to the appointment, powers and duties of the other curators mentioned in the preceding article.

CHAPTER FOURTH.

(Subst. 34-1956).

RECEIVERS.

309. In the case of any of the persons mentioned in article 311, any powers which, if such person were a person of unsound mind so found by inquisition under the provisions of the Lunacy Act, 1890 (3 & 4 Vict. c. 5) could be exercised by the committee of the estate, may be exercised by such person in such manner and with or without security, as the Judge subject to rules of Court, may direct, and any such order may confer on the person therein named authority to do any specified act or exercise until further order all or any of such powers without further application to the Judge.

310. Without prejudice to the generality of the power conferred by the preceding article the Judge shall have and exercise the same power and jurisdiction to make orders relating to the management and administration of the property of persons to whom this Chapter applies as a Judge in Lunacy has under the law of England for the time being.

311. The persons to whom this Chapter applies are :—

(*a*) Persons of unsound mind so found by inquisition ;

(*b*) Persons of unsound mind not so found by inquisition, for the protection or administration of whose property any order has been made before this article came into force ;

(*c*) Every person lawfully detained as a person of unsound mind though not so found by inquisition ;

(*d*) Every person not so detained and not found a person of unsound mind by inquisition, with regard to whom it is proved to the satisfaction of the Judge that such person is through mental infirmity arising from disease or age incapable of managing his affairs ;

(*e*) Every person with regard to whom it is proved to the satisfaction of the Judge that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed ten thousand dollars in value, or that the income thereof does not exceed five hundred dollars per annum ;

(*f*) Every person with regard to whom the Judge is satisfied by affidavit or otherwise that such person is or has been a prisoner of unsound mind and continues to be of unsound mind and in confinement ;

(*g*) Every person received as a patient for temporary treatment under the provisions of sections 37A and 37B of the Mental Hospitals Ordinance ;

(*h*) Every person with respect to whom the Judge is satisfied that though not amenable to any jurisdiction in lunacy he is by reason of habitual intemperate drinking of intoxicating liquor, or the habitual taking or using, of opium or other dangerous drugs within the meaning of the Dangerous Drugs Ordinance, incapable of managing his affairs.

311A. (Ad. 34-1956). Every person appointed to do any act, or exercise any power under the provisions of this Chapter, shall be subject to the jurisdiction and authority of the Judge as if such person were the curator of the property of a person of unsound mind so found by inquisition.

311B. (Ad. 34-1956). The powers conferred by this Chapter relating to management and administration shall be exercisable in the discretion of the Judge for the maintenance or benefit of the person of unsound mind or the habitual drunkard or of him or his family or where it appears to be expedient in the due course of the management of his property.

311C. (Ad. 34-1956). Nothing in this Chapter shall subject the property of a person of unsound mind or a habitual drunkard to claims of his creditors further than the same is now subject thereto by due course of law.

311D. (Ad. 34-1956). An application for an order under the foregoing articles of this Chapter shall be made by petition to a Judge in Chambers supported by affidavit and by such other proof as the Court or Judge may deem necessary.

BOOK ELEVENTH.

CORPORATIONS.

CHAPTER FIRST.

THE NATURE, CREATION, AND DIFFERENT KINDS OF CORPORATIONS.

312. Every corporation legally constituted is an artificial or ideal person, whose existence and succession are perpetual, or sometimes for a fixed period only, and which is capable of enjoying certain rights and liable to certain obligations.

313. A corporation is constituted by Ordinance, by Royal Charter, by Acts of the Imperial Parliament, or by prescription.

314. Corporations are aggregate or sole.

Corporations aggregate are those composed of several members ; corporations sole are those consisting of a single individual.

315. Corporations are either religious or secular.

Religious corporations are aggregate or sole. They are all public.

Secular corporations are either aggregate or sole. They are either public or private.

316. Secular corporations are further divided into political and civil ; those that are political are governed by the public law, and only fall within the control of the civil law in their relations, in certain respects, to individual members of society.

Civil corporations constituting, by the fact of their incorporation, ideal or artificial persons, are as such governed by the laws affecting individuals ; except as regards the privileges they enjoy and the disabilities to which they are subjected.

CHAPTER SECOND.

THE RIGHTS, PRIVILEGES, AND DISABILITIES OF CORPORATIONS.

SECTION I.

THE RIGHTS OF CORPORATIONS.

317. Every corporation has a corporate name, which is given to it at its creation or which has since been recognized and approved by competent authority.

Under such name the corporation is known and designated, sues and is sued, and does all its acts and exercises all the rights which belong to it.

318. The rights which a corporation may exercise, besides those specially conferred by its title, or by the general laws applicable to its particular kind, are all those which are necessary to attain the object of its creation. Thus it may acquire, alienate, and possess property, sue and be sued, contract, incur obligations, and bind others in its favour.

319. For these objects, every corporation has the right to select from its members, officers whose number and denominations are determined by the instrument of its creation or by its by-laws or regulations.

320. These officers represent the corporation in all acts, contracts or suits, and bind it in all matters which do not exceed the limits of the powers conferred on them. These powers are either determined by law, by the by-laws of the corporation, or by the nature of the duties imposed.

321. Every corporation has a right to make, for its internal government, for the order of its proceedings and for the management of its affairs, by-laws and regulations which its members are bound to obey, provided they are legally and regularly passed.

SECTION II.

THE PRIVILEGES OF CORPORATIONS.

322. Besides the special privileges which may be granted to each corporation by its title of creation or by special law, there are others which result from the fact of incorporation and which exist of right in favour of all corporate bodies, unless taken away, restrained or modified by such title or by law.

323. The principal of these privileges is that which limits the responsibility of the members of a corporation to the interest which each possesses therein, and exempts them from all personal liability for the payment of obligations contracted by the corporation within the scope of its powers and with the formalities required.

SECTION III.

THE DISABILITIES OF CORPORATIONS.

324. Corporations are subject to particular disabilities which either prevent or restrain them from exercising certain rights, powers, privileges and functions, which natural persons may enjoy and exercise. These disabilities arise either from their corporate character or are imposed by law

325. (Am. 34-1956). In consequence of the disabilities which arise from their corporate character, they can neither be tutors nor curators.

Subject to the provisions of any other statute, they cannot be executors of wills or undertake any administration which necessitates the taking of an oath, or imposes personal responsibility.

They cannot be summoned personally, nor appear in Court otherwise than by attorney.

They cannot sue nor be sued for assault, battery or other violence on the person.

They cannot serve as witnesses nor as jurors before the Courts.

They can neither be guardians nor judicial sequestrators, nor can they be charged with any other functions or duties the exercise of which may entail imprisonment.

326. The disabilities arising from the law are :

1. Those which are imposed on each corporation by its title, or by any law applicable to the class to which such corporation belongs :

2. Those which result from the laws imposing particular conditions and formalities for the acquisition, alienation, or hypothecation of immovable property belonging to religious or other corporate bodies.

326A. (Ad. 34-1956). All corporations which, under the provisions of their charters or of the law, cannot acquire real estate except to a limited amount, have the right, whenever they dispose of or alienate any real estate belonging to them, to apply the price thereof to the acquisition of other real estate and also to receive the revenues thereof and to employ the same for the objects for which they were constituted.

327. All corporations are prohibited from issuing promissory notes payable to bearer unless they have been specially authorised to do so by their title of creation.

CHAPTER THIRD.

THE DISSOLUTION AND LIQUIDATION OF CORPORATIONS.

SECTION I.

THE DISSOLUTION OF CORPORATIONS.

328. (Am. 34-1956). Corporations are dissolved :

1. By Ordinance or Imperial Act or Order in Council declaring their dissolution ;

2. By the expiration of the term or the accomplishment of the object for which they were formed, or the happening of the condition attached to their creation ;

3. By forfeiture legally incurred ;

4. By the death of all the members, the diminution of their number, or by any other cause of a nature to interrupt the corporate existence, when the right of succession is not provided for in such cases ;

5. By the mutual consent of all the members, subject to the modifications and under the circumstances hereinafter determined ;

6. By voluntary liquidation in the cases by law provided.

329. Religious and other corporations of a public nature, other than those formed for the mutual assistance of their members, cannot be dissolved by mutual consent without a formal and legal surrender under the direction of the Court ; but if they have been created by Royal Charter, by Order in Council, or by special Act or Ordinance, they can be dissolved only by special law : or under the conditions of the instrument which created them.

SECTION II.

THE LIQUIDATION OF DISSOLVED CORPORATIONS.

330. A dissolved corporation is, for the liquidation of its affairs, in the same position as a vacant succession. The creditors and others interested have the same recourse against the property which belonged to it, as may be exercised against vacant successions and the property belonging to them.

331. In order to facilitate such recourse, the Administrator General represents such corporation as curator, and is seized of the property which belonged to it. A curator may be appointed by the Judge, in the place of the Administrator General, on the petition of an interested party after public notice to other parties interested as to the hearing of such petition.

332. The curator must make an inventory. He obtains the sale of the property by the sheriff, and such sale, whether of movables or immovables, is subject to the same conditions and formalities and has the same effect as a judicial sale.

PART SECOND.

PROPERTY, ITS OWNERSHIP AND DIFFERENT MODIFICATIONS.

BOOK FIRST.

THE DIFFERENT KINDS OF PROPERTY.

333. All property, incorporeal as well as corporeal, is movable or immovable.

CHAPTER FIRST.

IMMOVABLES.

334. Property is immovable either by its nature or by its destination, or by reason of the object to which it is attached, or lastly by determination of law.

335. Lands, steam-mills, water-mills, wind-mills and buildings are immovable by their nature.

336. Growing trees, crops and fruits are also immovable, but become movable when severed from the soil.

337. Movable things which a proprietor has placed on his real property for a permanency or which he has incorporated therewith, are immovable by their destination so long as they remain there.

Thus, within these restrictions, the following and other like objects are immovable :

1. Presses, boilers, stills, vats and tuns ;

2. All utensils necessary for working forges, mills and other manufactories.

Manure, and the straw and other substances intended for manure, are likewise immovable by destination.

3. All cattle, and all carts, cranks and other implements employed in the working of an estate.

338. Those things are considered as being attached for a permanency which are placed by the proprietor and fastened with iron and nails, imbedded in plaster, lime or cement, or which cannot be removed without breakage, or without destroying or deteriorating that part of the property to which they are attached.

Mirrors, pictures and other ornaments are considered to have been placed permanently when without them the part of the room they cover would remain incomplete or imperfect.

339. Rights of emphyteusis, of usufruct of immovable things, of use and habitation, servitudes, and rights or actions which tend to obtain possession of an immovable, are immovable by reason of the objects to which they are attached.

340. All movable property of which the law ordains or authorises the conversion into immovable property becomes immovable by determination of law either absolutely or for certain purposes. Also the monies produced by the redemption of constituted rents which belong to minors are immovable.

Sums accruing to a minor from the sale of his immovables during his minority, remain immovable so long as the minority lasts.

The law declares to be also immovable all sums given by ascendants to their children, in contemplation of marriage, to be used in the purchase of real estate.

CHAPTER SECOND.

MOVABLES.

341. Property is movable by its nature or by determination of law.

342. All bodies which can be moved from one place to another, either by themselves, as animals, or by extrinsic force, as inanimate things, are movable by nature.

343. Materials arising from the demolition of a building, or of a wall or other fence, and those collected for the construction of a new one, are movable so long as they are not used.

But things forming part of a building, wall or fence, and which are only temporarily separated from it, do not cease to be immovable so long as they are destined to be replaced.

344. Those immovables are movable by determination of law, of which the law for certain purposes authorises the conversion into movables : so are all obligations, although secured by mortgage, and actions respecting movable effects, including debts created or guaranteed by the Colony or by corporations, also all shares or interests in financial, commercial or manufacturing companies, although such companies, for the purposes of their business, should own immovables. These immovables are reputed to be movable with regard to each partner, only so long as the company lasts.

345. All rents, even constituted and life rents, and whether derived from real or personal property are movable except those resulting from emphyteusis.

346. Leases of immovable property other than emphyteutic leases are movable.

347. No ground-rent, or other rent, affecting real estate, can be created for a term exceeding ninety-nine years, or the lives of three persons consecutively.

These terms having expired, the creditor of any such rent may exact the capital of it.

Such rents although created for ninety-nine years, or for the lives of three persons, are, at all times, redeemable, at the option of the debtor, in the same manner as constituted rents to which they are assimilated.

348. But it may be stipulated in the act creating constituted or other perpetual rents, that they shall only be redeemed at the end of a certain time agreed upon. But if such term exceeds thirty years the stipulation is void with respect to the excess.

349. All rents except those derived from emphyteusis, those to which the creditor has only a conditional or limited right, and others in this chapter specially excepted, are redeemable at the option of the debtor, unless there be a special stipulation to the contrary.

350. Life rents and other temporary rents at the termination of which no reimbursement of the capital is to take place are not redeemable at the option of either of the parties alone.

In the Twelfth Book of the Third Part, a mode is provided for the redemption of life rents when it is compelled under judicial proceedings.

Temporary rents, other than life rents, and not subject to the reimbursement of the capital, are estimated in like case in the same manner as life rents.

351. When a rent, subject to the reimbursement of the capital, is redeemable, the sum payable for the redemption, when not determined by agreement or otherwise is the original capital for which the rent is consideration; or if the rent was created in respect of a thing other than money, the value in money of such thing. But if the amount of the capital or the value as aforesaid do not appear, the redemption is effected by the payment of a sum sufficient, if bearing interest at the rate of six *per centum* per annum, to produce interest equal to the rent.

352. The word "furniture" comprises only the movables which are destined to furnish and ornament apartments, such as tapestry, beds, seats, mirrors, clocks, tables, china and other objects of a like kind.

It also comprises pictures and statues, but not collections of pictures which are in galleries or particular rooms.

As regards china, likewise, only that which forms part of the decoration of a room comes under the denomination of furniture.

In the sale or the gift of a "furnished house" the word "furnished" comprises no other movables than furniture.

353. The sale or gift of a house with all that it contains, does not comprise ready money, nor debts due or other rights the titles to which happen to be in the house. It comprises all other movable effects.

CHAPTER THIRD.

PROPERTY IN ITS RELATIONS TO ITS OWNERS OR POSSESSORS.

354. Property belongs either to the crown, or to corporations, or to individuals.

That of corporations is subject, in certain respects as to its administration, its acquisition and its alienation, to certain rules and formalities which are peculiar to it.

Individuals have the free disposal of the things belonging to them under the modifications established by law.

355. Roads and public ways maintained by the State, the Queen's chain, the sea-shore, lands reclaimed from the sea, ports, harbours and roadsteads, and generally all those portions of territory which do not constitute private property, are considered as being dependencies of the crown domain.

356. All estates which are vacant or without an owner, and those of persons who die without representatives or whose succession is abandoned, belong to the crown.

357. The gates, walls, ditches, and ramparts of military places and of fortresses also belong to the crown.

358. The same rule applies to the lands, fortifications and ramparts of places which are no longer used for military purposes; they belong to the crown, if they have not been validly alienated.

359. The property of corporations is that to which or to the use of which these bodies have an acquired right.

360. A person may have with respect to property, either a right of ownership, or a simple right of enjoyment, or a servitude to exercise.

BOOK SECOND.

OWNERSHIP.

361. Ownership is the right of enjoying and of disposing of things in the most absolute manner, provided that no use be made of them which is prohibited by law or by regulations made in accordance with law.

362. No one can be compelled to give up his property except for public utility and in consideration of a just indemnity.

363. Ownership in a thing, whether movable or immovable, gives the right to all it produces, and to all that is joined to it as an accessory whether naturally or artificially. This right is called the right of accession.

CHAPTER FIRST.

THE RIGHT OF ACCESSION IN RESPECT OF WHAT IS PRODUCED BY A THING.

364. The natural and industrial fruits of the earth, civil fruits, and the increase of animals, belong to the proprietor by right of accession.

365. The fruits produced by a thing, only belong to the proprietor subject to the obligation of restoring the cost of the ploughing, tilling, planting, weeding, and sowing done by third persons.

366. A mere possessor only acquires the fruits in the case of his possession being in good faith ; otherwise he is obliged to give the produce as well as the thing itself to the proprietor who claims it.

A possessor in good faith is not bound to set off the fruits against improvements for which he has a right to be reimbursed.

367. A possessor is in good faith when he possesses in virtue of a title the defects of which as well as the happening of the resolutory cause which puts an end to it are unknown to him. Such good faith ceases only from the moment that these defects or the resolutory cause are made known to him by proceedings at law.

CHAPTER SECOND.

THE RIGHT OF ACCESSION IN RESPECT OF WHAT BECOMES UNITED AND INCORPORATED WITH A THING.

368. Whatever becomes united or incorporated with a thing belongs to the proprietor, according to the rules hereinafter established.

SECTION I.

THE RIGHT OF ACCESSION IN RELATION TO IMMOVABLE PROPERTY.

369. Ownership of the soil carries with it ownership of what is above and what is below it ; except that a mine may be alienated and owned apart from the land above it.

The owner may make upon the soil any plantations or buildings he thinks proper, saving the exceptions established in the book respecting servitudes.

He may make below it any buildings or excavations he thinks proper, and drawn from such excavations and products

they may yield, provided that no injury is done thereby to the property of others.

370. All buildings, plantations and works on any land or underground, are presumed to have been made by the owner at his own cost, and to belong to him, unless the contrary is proved ; without prejudice to any right of property, either in a cellar under the building of another or in any other part of such building, which a third party may have acquired or may acquire by prescription.

371. The owner of the soil who has constructed buildings or works with materials which do not belong to him, must pay the value of the materials. He may also be condemned to pay damages, if there be any ; but the owner of the materials has no right to take them away.

372. When improvements have been made by a possessor with his own materials, the right of the owner to such improvements depends on their nature and the good or bad faith of such possessor.

If they were necessary, the owner of the land cannot have them taken away. He must, in all cases, pay what they cost, even when they no longer exist ; except, in the case of bad faith, the compensation of rents issues and profits.

If they were not necessary, and were made by a possessor in good faith, the owner is obliged to keep them, if they still exist, and to pay either the amount they cost or that to the extent of which the value of the land has been augmented.

If, on the contrary, the possessor were in bad faith, the owner has the option either of keeping them, upon paying what they cost on their actual value, or of permitting such possessor, if the latter can do so with advantage to himself without deteriorating the land, to remove them at his own expense. Otherwise, in each case, the improvements belong to the owner, without indemnification. The owner may, in every case, compel the possessor in bad faith to remove them.

373. In the case of the third paragraph of the preceding article, if the improvements made by the possessor be so extensive and costly that the owner of the land cannot pay for them, he may, according to the circumstances and the discretion of the court, compel the possessor to keep the property, and to pay the estimated value of it.

374. In case the party in possession is forced to give up the immovable upon which he has made improvements for which he is entitled to be reimbursed, he has a right to retain the property until such reimbursement is made, without prejudice to his personal recourse to obtain repayment; except in the case of surrender in any hypothecary action, as specially provided for in the Book respecting *Privileges and Hypothecs*.

375. Deposits of earth and augmentations which are a stream or river are called alluvion. Alluvion is the property of the owner of the adjacent land.

376. As to ground left dry by running water which insensibly withdraws from one of its banks by bearing in upon gradually and imperceptibly formed on land contiguous to the other, the owner of the uncovered bank gains such ground, and the owner of the opposite bank cannot reclaim the land he has lost.

This right does not exist as regards land reclaimed from the sea, which forms part of the public domain.

377. Islands and deposits of earth which are formed in rivers belong to the owners of the banks on the side where the island is formed. If the island be not formed on one side only, it belongs to the owners of the banks on both sides, divided by a line supposed to be drawn in the middle of the river.

378. If a river or stream, by forming a new branch, cut and surround the land contiguous to it, and thereby form an island, the owner retains the property in such land.

379. If a river or stream abandon its course to take a new one, the proprietors of the land newly occupied take as an indemnity the ancient bed, each in proportion to the land which has been taken from him.

SECTION II.

THE RIGHT OF ACCESSION IN RELATION TO MOVABLE PROPERTY.

380. The right of accession in its application to two movable things, belonging to two different owners, is entirely subordinate to the principles of natural equity.

The following rules which are obligatory in the cases where they apply, serve as examples in the cases not provided for, according to circumstances.

381. When two things belonging to different owners have been united so as to form a whole, although they are separable and one can subsist without the other, the whole belongs to the owner of the thing which forms the principal part, subject to the obligation of paying the value of the other thing, to him to whom it belonged.

382. That part is reputed to be the principal one to which the other has been united only for the use, ornament or completion of the former.

383. However, when the thing united is much more valuable than the principal thing, and has been employed without the knowledge of its owner, he may require that the thing so united be separated in order to be returned to him, although the thing to which it has been joined may thereby suffer some injury.

384. If of two things united so as to form a whole, one cannot be considered as the accessory of the other, the more valuable, or, if the values be nearly equal, the more considerable in bulk, is deemed to be the principal.

385. If an artisan or any other person have made use of any material which did not belong to him to form a thing of a new description, whether the material can resume its previous form or not, he who was the owner of it has a right to demand the thing so formed, on paying the price of the workmanship.

386. If however the workmanship be so important that it greatly exceeds the value of the material employed, it is then considered as the principal part, and the workman has a right to retain the thing, on paying the price of the material to the proprietor.

387. When a person has made use of materials which in part belonged to him and in part did not, to make a thing of a different kind, without either of the two materials being entirely destroyed, but in such a way that they cannot be separated without inconvenience, the thing is common to the two owners, in proportion, as respects the one, to the material belonging to him, and as respects the other, to the material belonging to him, and to the price of the workmanship.

388. When a thing has been formed by the admixture of several materials belonging to different owners, but of which neither can be looked upon as the principal matter, if the materials can be separated, the owner, without whose knowledge the materials have been mixed, may demand their division.

If the materials cannot be separated without inconvenience, the parties acquire the ownership of the thing in common, in proportion to the quantity and value of the materials belonging to each.

389. If the material belonging to one of the owners be much superior in quantity and price, in that case the owner of the material of superior value may claim the thing produced by the admixture, on paying to the other the value of his material.

390. When the thing remains in common among the proprietors of the materials from which it is made, it must be disposed of by licitation for the common benefit, if any one of them demand it.

391. In all cases where an owner whose material has been employed without his consent, to make a thing of a different description, may claim the proprietorship of such thing, he has the choice of demanding the restitution of his material in the same kind, quantity, weight, measure and quality, or its value.

392. Whoever is bound to give back a movable object upon which he has made improvements or additions for which he is entitled to be reimbursed, may retain such object until he has been so reimbursed, without prejudice to his personal remedy.

393. Persons who have employed materials belonging to others and without their consent, may be condemned to pay damages if damage has been suffered.

BOOK THIRD.

USUFRUCT, USE AND HABITATION.

CHAPTER FIRST.

USUFRUCT.

394. Usufruct is the right of using and enjoying things of which another has the ownership, in the same manner as the owner uses and enjoys them, but subject to the obligation of preserving their substance.

395. Usufruct may be established by law, or by the will of man.

396. Usufruct may be established purely or conditionally, and may commence at once or from a certain day.

397. It may be established in respect of property of all kinds, movable or immovable.

SECTION I.

THE RIGHTS OF THE USUFRUCTUARY.

398. The usufructuary has the right to enjoy every kind of fruits, whether natural, industrial or civil, which the thing subject to the usufruct can produce.

399. Natural fruits are those which are the spontaneous produce of the soil. The produce and the increase of animals are also natural fruits.

The industrial fruits of the soil are those obtained by the cultivation or working thereof.

400. Civil fruits are the rent of houses, interest of sums due and arrears of rents. The rent due for the lease of plantations is also included in the class of civil fruits.

401. Natural and industrial fruits attached by branches or roots, at the moment when the usufruct is in operation, belong to the usufructuary.

Those in the same condition at the moment when the usufruct ceases, belong to the proprietor, without recompense on either side for planting, tilling, sowing or weeding, but also without prejudice to the portion of the fruits which may be acquired by a farmer on shares, if there be one at the commencement or at the termination of the usufruct.

402. Civil fruits are considered to be acquired day by day, and belong to the usufructuary in proportion to the duration of his usufruct.

This rule applies to rent from the lease of plantations, as also to the rent of houses and to other civil fruits.

403. If the usufruct comprise things which cannot be used without being consumed, such as money, grain, liquors, the usufructuary has the right to use them, but subject to the obligation of paying back others of like quantity, quality and value, or their equivalent in money, at the end of the usufruct.

404. The usufruct of a life-rent gives also to the usufructuary, during the period of his usufruct, the right to retain the whole of the payments that he has received as payable in advance, without being obliged to make any restitution.

405. If the usufruct comprise things which, without being at once consumed, deteriorate gradually by use, as linen or furniture, the usufructuary has the right to use them for the purpose for which they are destined, and, at the end of the usufruct, he is only obliged to restore them in the condition in which they may be, and not deteriorated by his fraud or fault.

406. The usufructuary cannot fell trees which grow on the land subject to the usufruct. Whatever he may require for his own use must be taken from those which have fallen accidentally.

If however among the latter there be not a sufficient quantity of a suitable kind for the necessary repairs which he is bound to make, and for the keeping in repair and the working of the estate, he has a right to fell whatever may be required for these purposes, conformably to the usage of the place, or to the custom of proprietors ; he may even fell trees for fuel, if there be any of the kind generally used in the locality for that purpose.

407. Any fruit trees which die, even those which are uprooted or broken by accident, belong to the usufructuary, but he is bound to replace them by others, unless the larger proportion has been thus destroyed, in which case he is not bound to replace them.

408. The usufructuary may enjoy his right by himself, or lease it, and may even sell it or dispose of it gratuitously.

If he lease it, the lease expires with his usufruct. But the planter or the tenant has a right and may be compelled to continue his enjoyment during the rest of the year which had begun before the usufruct expired ; payment of the rent being made to the proprietor.

409. He enjoys all rights of servitude, of passage, and generally all the rights of the proprietor in the same manner as the proprietor himself.

410. Mines and quarries are not comprised in the usufruct of land.

The usufructuary may nevertheless take therefrom all the materials necessary for the repair and maintenance of the estate subject to his right.

If however these quarries, before the opening of the usufruct, have been worked as a source of revenue by the proprietor, the usufructuary may continue such working in the way in which it has been begun.

411. The usufructuary has no right over treasure found, during the usufruct, on the land which is subject to it.

412. The proprietor cannot, by any act of his whatever, injure the rights of the usufructuary.

On his side, the usufructuary cannot, at the cessation of the usufruct, claim indemnity for any improvements he has made, even when the value of the thing is augmented thereby.

He may however take away the mirrors, pictures and other ornaments which he has placed there, but subject to the obligation of restoring the property to its former condition.

SECTION II.

THE OBLIGATIONS OF THE USUFRUCTUARY.

413. The usufructuary takes the things in the condition in which they are ; but he can only enter into the enjoyment of them after having caused an inventory of the movable property and a statement of the immovables subject to his right to be drawn up, in the presence of or after due notice given to the proprietor, unless he is dispensed from doing so by the act constituting the usufruct.

414. He gives security to enjoy the usufruct as a prudent administrator, unless the act creating it exempts him from so doing. But the vendor or donor who has reserved the usufruct is not obliged to give security.

415. If the usufructuary cannot give security, the immovables are leased, farmed or sequestrated.

Sums of money comprised in the usufruct are invested ; provisions, and other movable things which are consumable by use, are sold, and the price produced is likewise invested.

The interest of such sums of money, and the rent from leases belong in these cases to the usufructuary.

416. In default of security the proprietor may require that movable property liable to be deteriorated by use, be sold

in order that the price may be invested and received as in the preceding article.

Nevertheless the usufructuary may demand and the court may grant, according to circumstances, that a portion of the movables necessary for his use may be left to him on the simple security of his oath, and subject to the obligation of producing them at the expiration of the usufruct.

417. The delay to give security does not deprive the usufructuary of whatever fruits he is entitled to; they are due to him from the moment the usufruct commences.

418. The usufructuary is only liable for the lesser repairs. For the greater repairs the proprietor remains liable, unless they result from the neglect of the lesser repairs since the commencement of the usufruct, in which case the usufructuary is also held liable.

419. The greater repairs are those of main walls and vaults, the restoration of beams and the entire roofs and also the entire reparation of dams, prop-walls and fences.

All other repairs are lesser repairs.

420. Neither the proprietor nor the usufructuary is obliged to rebuild what has fallen into decay or what has been destroyed by unforeseen event.

421. The usufructuary is liable, during his enjoyment, for all ordinary charges, such as ground-rents and other annual dues and contributions encumbering the property when the usufruct begins.

He is likewise liable for all charges of an extraordinary nature imposed thereupon since that time, such as taxes, rates, and other like burthens.

422. A legacy of a life-rent or alimentary pension, must be entirely paid by the universal legatee of the usufruct, or by

the general legatee of the usufruct according to the extent of his enjoyment, without any recourse in either case.

423. A particular usufructuary is not liable for the payment of any part of the hereditary debts, not even of those for which the land subject to the usufruct is hypothecated.

If he be forced, in order to retain his enjoyment, to pay any of these debts, he has his recourse against the debtor and against the proprietor of the land.

424. A general usufructuary must contribute with the proprietor to the payment of the debts as follows :

The immovables and other things subject to the usufruct are valued, and the contribution to the debts is fixed in proportion to such value.

If the usufructuary advance the sum for which the proprietor must contribute, the capital of it is restored to him at the expiration of the usufruct, without interest.

If the usufructuary will not make this advance, the proprietor has the choice either of paying the sum, and in such case the usufructuary is obliged to pay him the interest thereon during the continuance of the usufruct, or of causing a sufficient portion of the property subject to the usufruct to be sold.

425. The usufructuary is only liable for the costs of such suits as relate to the enjoyment, and for any other condemnations to which these suits may give rise.

426. If during the continuance of the usufruct, a third party commit any encroachments on the land, or otherwise attack the rights of the proprietor, the usufructuary is obliged to notify him of it, and in default thereof he is responsible for all the damage which may result therefrom to the proprietor, in the same manner as he would be if the injury were done by himself.

427 If an animal only be the subject of the usufruct, and it perish without the fault of the usufructuary, he is not bound to give back another, nor to pay its value.

428. If the usufruct be created on a herd or flock, and it perish entirely by accident or disease, and without the fault of the usufructuary, he is only obliged to account to the proprietor for the skins or their value.

If the flock do not perish entirely, the usufructuary is obliged to replace the animals which have perished, up to the number of the increase.

SECTION III.

THE TERMINATION OF USUFRUCT.

429. Usufruct ends, if it be for life, by the death of the usufructuary ;

By the expiration of the time for which it was granted ;

By the confusion or reunion in one person of the two qualities of usufructuary and of proprietor ;

By non-user of the right during thirty years, and prescription thence acquired by third persons ;

By the total loss of the thing on which the usufruct is established.

430. Usufruct may also cease by reason of the abuse the usufructuary makes of his enjoyment, either by committing waste on the property or by allowing it to depreciate for want of care.

The creditors of the usufructuary may intervene in contestations, for the preservation of their rights ; they may offer to repair the injury done and give security for the future.

The courts may, according to the gravity of the circumstances, either pronounce the absolute extinction of the usufruct, or only permit the entry of the proprietor into

possession of the object charged with it, subject to the obligation of annually paying to the usufructuary or to his representatives a fixed sum, until the time when the usufruct shall cease.

431. A usufruct which is granted without term to a corporation only lasts thirty years.

432. A usufruct granted until the date when a third party reaches a certain fixed age, continues until such date, although the third person should die previously.

433. The sale of a thing subject to usufruct does not in any respect change the right of the usufructuary who continues to enjoy his usufruct, unless he has formally renounced it.

434. The creditors of the usufructuary may have his renunciation annulled, if it be made to their prejudice.

435. If only a part of the thing subject to the usufruct perish, the usufruct continues to exist in respect of the remainder.

436. If the usufruct be established upon a building only, and such building be destroyed by fire or other accident, or fall from age, the usufructuary has no right to enjoy either the ground or the materials.

If the usufruct be established in respect of a property of which the building destroyed formed part, the usufructuary enjoys the ground and the materials.

CHAPTER SECOND.

USE AND HABITATION.

437. A right of use is a right to enjoy a thing belonging to another and to take the fruits thereof, but only to the extent of the requirements of the user and of his family.

When applied to a house, right of use is called right of habitation.

438. Rights of use and habitation are established only by the will of man, by deed *inter vivos* or by last will.

They cease in the same manner as usufruct.

439. These rights cannot be exercised without previously giving security, and making statements and inventories as in the case of usufruct.

440. He who has a right of use or of habitation, must exercise it as a prudent administrator.

441. Rights of use and of habitation are governed by the title which creates them, and are more or less extensive according to its dispositions.

442. If the title be not explicit as to the extent of these rights, they are governed as follows.

443. He who has the use of land is only entitled to so much of its fruits as is necessary for his own wants and those of his family.

He may also take what is required for the wants of children born to him after the grant of the right of use.

444. He who has a right of use can neither assign nor lease it to another.

445. He who has a right of habitation in a house may live therein with his family, even if he were not married when such right was granted to him.

446. A right of habitation is confined to what is necessary for the habitation of the person to whom it is granted and his family.

447. A right of habitation can neither be assigned nor leased.

448. If he who has the use take all the fruits of the land, or if he occupy the whole of the house, he is subject to the costs of cultivation, to the lesser repairs, and to the payment of all contributions, like the usufructuary.

If he only take a portion of the fruits, or if he only occupy a part of the house, he contributes in the proportion of his enjoyment.

BOOK FOURTH.

SERVITUDES.

GENERAL PROVISIONS.

449. A servitude is a charge upon real property, which imposes upon the owner or occupant of the property an obligation towards another, either to prevent its condition from affecting such other, or to use or forbear from using it in a particular manner, or to permit it to be used in a manner definite and circumscribed which is short of occupation.

When this obligation exists for the benefit of the owner or occupant of adjoining land, in his quality as such owner or occupant, the charge is called a real servitude.

450. A real servitude arises from the natural position of the property, or from the law, or it is established by private act.

CHAPTER FIRST.

SERVITUDES WHICH ARISE FROM THE SITUATION OF PROPERTY.

451. Lands on a lower level are subject towards those on a higher level to receive such waters as flow from the latter naturally and without the agency of man.

The proprietor of the lower land cannot raise any dam to prevent this flow. The proprietor of the higher land can do nothing to aggravate the servitude of the lower land.

452. He who has a spring on his land may use it and dispose of it as he pleases unless there be a special servitude with respect to it.

453. He whose land borders on a stream, may use it for his own purposes, but in such a manner as not to prevent the exercise of the same right by those to whom it belongs.

He whose land is crossed by such stream may use it within the whole space of its course through the property, but subject to the obligation of allowing it to take its usual course when it leaves his land.

454. Every proprietor may oblige his neighbour to settle the boundaries between their contiguous lands.

The costs of so doing are common ; those of the suit, in case of contestation, are in the discretion of the court.

455. Every proprietor may oblige his neighbour to make in equal portions or at common expense, between their respective lands, a fence, or other sufficient kind of separation according to the custom, the regulations, and the situation of the locality.

CHAPTER SECOND.

SERVITUDES ESTABLISHED BY LAW.

456. Servitudes established by law have for their object public utility or that of individuals.

457. Those established for public utility have for their object the construction or repair of roads or other public works.

Whatever concerns this kind of servitude is determined by particular laws or regulations.

458. The law subjects proprietors to different obligations with regard to one another independently of any stipulation.

459. Some of these obligations are governed by particular ordinances.

The others relate to division walls and ditches, to cases where a counter-wall is necessary, to views upon the property of a neighbour, to the eaves of roofs, and to rights of way.

SECTION I.

DIVISION WALLS AND DITCHES, AND CLEARANCE.

460. Both in town and country, walls serving for separation between buildings up to the required heights, or between yards and gardens, and also between enclosed fields, are presumed to be common, if there be no title, mark or other legal proof to the contrary.

461. It is a mark that a wall is not common when its summit is straight and plumb with the facing on one side, and on the other side exhibits an inclined plane ; and also when one side only has a coping, or mouldings, or corbels of stone, placed there in building the wall.

In such cases the wall is deemed to belong exclusively to the proprietor on whose side are the eaves or the corbels and mouldings.

462. The repairing and rebuilding of a common wall are chargeable to all those who have any right in it, in proportion to the right of each.

463. Nevertheless every coproprietor of a common wall may avoid contributing to its repair and rebuilding by abandoning his share in the wall and renouncing his right of making use of it.

464. Every coproprietor may build against a common wall and place therein joists or beams, to within four inches of

the whole thickness of the wall, without prejudice to the right which the neighbour has to force him to reduce the beam to the half thickness of the wall, in case he should himself desire to put beams in the same place, or to build a chimney against it.

465. Every coproprietor may raise the common wall at will, but at his own cost, upon paying an indemnity for the additional weight imposed, and bearing for the future the expense of keeping it in repair above the height which is common.

The indemnity thus payable is the sixth of the value of the superstructure.

On these conditions such superstructure becomes the exclusive property of him who built it ; but it remains, as to the right of view, subject to the rules applicable to common walls.

466. If the common wall be not in a condition to support the superstructure, he who wishes to raise it must have it rebuilt at his own cost, and the excess of thickness must be taken on his own side.

467. The neighbour who has not contributed to the superstructure may acquire the joint-ownership of it, by paying half of the cost thereof, and the value of one-half of the ground used for the excess of thickness, if there be any.

468. Every owner of property adjoining a wall, has the privilege of making it common in whole or in part, by paying to the proprietor of the wall half the value of the part he wishes to render common, and half the value of the ground on which such wall is built.

469. One neighbour cannot make any recess in the body of a common wall, nor can he apply or rest any work there, without the consent of the other, or on his refusal, without

having caused to be settled by experts the necessary means to prevent the new work from being injurious to the rights of the other.

470. Every person may oblige his neighbour, in towns and villages, to contribute to the building and repair of the fence separating their houses, yards and gardens situated in the said towns and villages to a height of eight feet from the ground or the level of the street.

471. When the different stories of a house belong to different proprietors, if their titles do not regulate the mode of repairing and rebuilding, it must be done as follows :

All the proprietors contribute to the main walls and the roof, each in proportion to the value of the story which belongs to him ;

The proprietor of each story makes the floor under him ;

The proprietor of the first story makes the stairs which lead to it ; the proprietor of the second story makes the stairs which lead from the first to his, and so on.

472. When a common wall or a house is rebuilt, the active and passive servitudes continue with regard to the new wall or to the new house, provided they are not rendered more onerous, and provided the rebuilding be done before prescription is acquired.

473. All ditches between neighbouring properties are presumed to be common if there be no title nor mark to the contrary.

474. When the embankment or the earth thrown out of a ditch is only on one side of it, it raises a presumption that the ditch is not common.

475. A ditch is presumed to belong exclusively to him on whose side the earth is thrown out.

476. A common ditch must be kept at common expense.

477. Every hedge which separates land is reputed to be common, unless only one of the lands is enclosed, or there is a sufficient title or possession to the contrary.

478. No neighbour can plant trees or shrubs or allow any to grow nearer to the line of separation than the distance prescribed by special regulations, or by established and recognized usage; and in default of such regulations and usage, such distance must be determined according to the nature of the trees and their situation, so as not to injure the neighbour.

479. Either neighbour may require that any trees and hedges which contravene the preceding article be uprooted.

He over whose property the branches of his neighbour's trees extend, although the trees are growing at the prescribed distance, may compel his neighbour to cut such branches.

If the roots extend upon his property, he has a right to cut them himself.

480. Trees growing in a common hedge are common as the hedge itself, and either of the neighbours has a right to have them felled.

481. Every proprietor or occupier of land in a state of cultivation, contiguous to uncleared land, may compel the proprietor or occupier of the latter to fell all trees along the line of separation which are of a nature to injure the cultivated land. But an exception may be allowed by the court in favour of fruit trees or of ornamental trees in the neighbourhood of a residence.

SECTION II.

THE DISTANCE AND THE INTERMEDIATE WORKS REQUIRED FOR CERTAIN STRUCTURES.

482. The following provisions are established for towns and villages:

1. He who wishes to have a well near the common wall or that belonging to his neighbour, must make a counter-wall of masonry one foot thick.

2. He who wishes to have a chimney, or a hearth, or a stable, or a store for salt or other corrosive substances, near a common wall or wall belonging to his neighbour, or to raise the ground or heap earth against it, is obliged to make a counter-wall or other work, the sufficiency of which is determined by usage, and, in default of any such, by the courts.

3. He who wishes to have an oven, forge or furnace, must leave a vacant space of six inches between his own wall and the common wall or that of his neighbour.

4. No one is permitted to make or retain a privy to the injury of a neighbouring well.

SECTION III.

VIEW ON THE PROPERTY OF A NEIGHBOUR.

483. One neighbour cannot, without the consent of the other, make in a common wall any window or opening of any kind whatever, not even of fixed glass.

484. The proprietor of a wall whether of wood or otherwise, which is not common and is on the boundary of the land of another, or within three feet of the boundary, may make in such wall openings for windows only in such a manner that neither view nor passage through them can be obtained.

SECTION IV.

THE EAVES OF ROOFS.

485. Roofs must be constructed in such a manner that the rain falls from them upon the land of the proprietor. He has no right to make it fall upon the land of his neighbour.

SECTION V.

THE RIGHT OF WAY.

486. A proprietor whose land is enclosed on all sides by that of others, and who has no communication with the public road, may claim a way upon that of his neighbours for the use of his property, but must pay an indemnity proportionate to the damage he may cause.

487. The way must generally be had on the side where the crossing is shortest from the land so enclosed to the public road.

488. It should however be established over the part where it will be least injurious to him upon whose land it is granted.

489. If the land becomes so enclosed in consequence of a sale, of a partition, or of a will, it is the vendor, the co-partitioner, or the heir, and not the proprietor of the land which offers the shortest crossing, who is bound to furnish the way, which is in such case due, without indemnity.

490. If the way thus granted cease to be necessary, it may be suppressed, and in such case the indemnity paid is restored, or the annuity agreed upon ceases for the future.

491. Right of way is established on behalf of an adjoining proprietor or on behalf of the public, by a prescription of thirty years, even in the absence of any necessity for such right.

CHAPTER THIRD.

SERVITUDES ESTABLISHED BY PRIVATE ACT.

SECTION I.

THE DIFFERENT KINDS OF SERVITUDES WHICH MAY BE ESTABLISHED.

492. Every proprietor having the use of his rights, and being competent to dispose of his immovables, may establish over or in favour of such immovables, such servitudes as he

may think proper, provided they are in no way contrary to public order.

The use and the extent of these servitudes are determined according to the title which constitutes them, or according to the following rules if the title be silent.

493. Real servitudes are established either for the use of buildings or for that of lands.

Those of the former kind are called urban, whether the buildings to which they are due are situated in town or in the country.

Those of the second kind are called rural without regard to their situation.

Real servitudes take their name from the property to which they are due, independently of the one which owes them.

494. Servitudes are either continuous or discontinuous.

Continuous servitudes are those the exercise of which may be continued without the actual intervention of man ; such are water conduits, drains, rights of view and others similar.

Discontinuous servitudes are those which require the actual intervention of man for their exercise ; such are the rights of way, of drawing water, of pasture and others similar.

495. Servitudes are apparent or unapparent.

Apparent servitudes are those which are manifest by external signs, such as a door, a window, an aqueduct, a sewer or drain, and the like.

Unapparent servitudes are those which have no external sign, as for instance, the prohibition to build on a land or to build above a certain fixed height.

SECTION II.

HOW SERVITUDES ARE ESTABLISHED.

496. No real servitude can be established without a title ; possession, even immemorial, is insufficient for that purpose.

497. The want of a title creating the servitude can only be supplied by an act of recognition proceeding from the proprietor of the land subject thereto.

498. He who establishes a servitude is presumed to grant all that is necessary for its exercise.

Thus the right of drawing water from the well of another carries with it the right of way.

SECTION III.

THE RIGHTS OF THE PROPRIETOR OF THE LAND TO WHICH THE SERVITUDE IS DUE.

499. He to whom a servitude is due has the right of making all the works necessary for its exercise and its preservation.

500. These works are made at his cost and not at that of the proprietor of the servient land, unless the title constituting the servitude provides otherwise.

501. Even in the case where the proprietor of the servient land is charged by the title with making the necessary works, for the exercise and for the preservation of the servitude, he may always free himself from the charge by abandoning the servient immovable to the proprietor of the land to which the servitude is due.

502. If the land in favour of which a servitude has been established come to be divided, the servitude remains due for each portion, without however the condition of the servient land being rendered worse.

Thus in the case of a right of way, all the coproprietors have a right to exercise it, but they are obliged to do so over the same portion of ground.

503. The proprietor of the servient land can do nothing which tends to diminish the use of the servitude or to render its exercise more inconvenient.

Thus he cannot change the condition of the premises, nor transfer the exercise of the right to a place different from that on which it was originally assigned.

However if by keeping to the place originally assigned, the servitude should become more onerous to the proprietor of the servient land, or if such proprietor be prevented thereby from making advantageous improvements, he may offer to the proprietor of the land to which it is due another place as convenient for the exercise of his rights, and the latter cannot refuse acceptance.

504. He who has a right of servitude can only make use of it according to his title, without being able to make, either in the land which owes the servitude, or in that to which it is due, any change which renders the servitude more onerous.

SECTION IV.

THE EXTINCTION OF SERVITUDES.

505. A servitude ceases when the things subject thereto are in such a condition that it can no longer be exercised.

506. It revives if the things be restored in such a manner that it may be used again, even after the time of prescription.

507. Every servitude is extinguished, when the land to which it is due and that which owes it are united in the same person by right of ownership.

508. Servitudes are extinguished by non-user during thirty years, between persons of full age and not privileged.

509. The thirty years commence to run for discontinuous servitudes from the day on which they cease to be used, and for continuous servitudes from the day on which any act is done preventing their exercise.

510. The manner of exercising a servitude may be prescribed like the servitude itself and in the same way.

511. If the land in favour of which the servitude is established belong to several persons in undivided shares, the enjoyment by one hinders the prescription with regard to the others.

512. If among the coproprietors there be one against whom prescription cannot run, such as a minor, he preserves the right for all the others.

BOOK FIFTH.

EMPHYTEUSIS.

SECTION I.

GENERAL PROVISIONS.

513. Emphyteusis or emphyteutic lease is a contract by which the proprietor of an immovable conveys it for a time to another, the lessee subjecting himself to make improvements, to pay the lessor an annual rent, and to such other charges as may be agreed upon.

514. The duration of emphyteusis cannot exceed ninety-nine years and must be for more than nine.

515. Emphyteusis carries with it alienation; so long as it lasts, the lessee enjoys all the rights attached to the quality of a proprietor. He alone can constitute it who has the free disposal of his property.

516. The lessee who is in the exercise of his rights, may alienate, transfer and hypothecate the immovable so leased, without prejudice to the rights of the lessor. But if he be not in the exercise of his rights, he can only do so with judicial authorisation and formalities.

517. Immovables held under emphyteusis may be seized as real property, under execution against the lessee by his creditors.

518. The lessee is entitled to bring a possessory action against all those who disturb him in his enjoyment and even against the lessor.

SECTION II.

THE RIGHTS AND OBLIGATIONS OF THE LESSOR AND OF THE LESSEE.

519. The lessor is obliged to guarantee the lessee, and to secure him in the enjoyment of the immovable leased, during the whole time legally agreed upon.

He is also obliged to resume such immovable and to discharge the lessee from the rent or dues stipulated, in the case of the latter wishing to leave it, unless there is an agreement to the contrary.

520. The lessee is bound to pay annually the emphyteutic rent; if he allow three years to pass without doing so, he may be judicially declared to have forfeited the immovable, although there be no stipulation on that subject.

521. The rent is payable in the whole, without the lessee having a right to claim its remission or diminution, either on account of sterility or of unavoidable accidents which may have destroyed the harvest or hindered the enjoyment, or even for the loss of a part of the land.

522. The lessee is held for all the real rights and land charges to which the property is subjected.

523. He is bound to make the improvements which he has undertaken, as well as all greater or lesser repairs.

He may be forced to make them even before the expiration of the lease, if he neglect to do so, and the land suffer thereby any considerable deterioration.

524. The lessee has not the right to deteriorate the immovable leased; if he commit any waste which greatly diminishes its value, the lessor may have him expelled and condemned to restore the things to their former condition.

SECTION III.

THE TERMINATION OF EMPHYTEUSIS.

525. Emphyteusis is not subject to tacit renewal.

It ends:

1. By the expiration of the time for which it was contracted, or after ninety-nine years, in case a longer term has been stipulated;

2. By forfeiture judicially pronounced for the causes set forth in articles 520 and 524, or for other legal causes;

3. By the total loss of the estate leased;

4. By abandonment.

526. The lessee is only allowed to abandon if he have satisfied for the past all the obligations which result from the lease, and particularly if he have paid or tendered all arrears of the dues, and made the improvements agreed upon.

527. At the end of the lease, in whatever way it happens, the lessee must give up, in good condition, the property received from the lessor, as well as the buildings he bound himself to construct, but he is not bound to repair those which he has erected without being obliged to do so.

528. As to improvements which the lessee has made voluntarily, without being bound to do so, the lessor has the option of either keeping them, upon paying what they cost or their actual value, or permitting the lessee, if the latter can do so with advantage to himself and without deteriorating the land, to remove them at his own expense; otherwise, in each case, they belong, without indemnification, to the lessor, who may, nevertheless, compel the lessee to remove them, in conformity with the provisions of article 372.

PART THIRD.

THE ACQUISITION AND EXERCISE OF RIGHTS OF PROPERTY.

GENERAL PROVISIONS.

529. Ownership in property is acquired by prehension or occupation, by accession, by descent, by will, by contract, by prescription, and otherwise by the effect of law and of obligations.

530. Things which have no owner are held to belong to the crown.

531. There are things which have no owner and the use of which is common to all. The enjoyment of these is regulated by laws of public policy.

532. The ownership of a treasure rests with him who finds it in his own property. If it is found in the property of another, it belongs half to the finder, and the other half to the owner of the property.

A treasure is any buried or hidden thing of which no one can prove himself owner, and which is discovered by chance.

533. The right of hunting and fishing is governed by particular laws of public policy, subject to the legally acquired rights of individuals.

534. Things which are the produce of the sea, or are drawn from its bottom, found floating on its waters, or cast upon its shores, and which never had an owner, belong, by right of occupancy, to the finder who has appropriated them.

535. Things once possessed, which are afterwards found at sea, or on the sea shore, or their price, if they have been sold, continue to be the property of the original owner, if he claim them, and if he do not, they are the property of the crown, subject, however, in either case to claims for salvage

and preservation on the part of those who save and preserve them.

536. Things found on the ground, on the public highways or elsewhere, even on the property of others or which are otherwise without a known owner may, when there are no special laws relating to them, be reclaimed by the owner who has not voluntarily abandoned them in the ordinary manner, he being, however, subject to the payment, when due, of an indemnity to the person who found and preserved them. If they be not claimed they belong to such person by right of occupancy.

Rivers are, for the purposes of this article, considered as land.

537. Among the things subject to the special law mentioned in the preceding article are :

1. Unclaimed goods in the hands of wharfingers, warehouse-keepers, and carriers either by land or by water ;

2. Articles remaining in the post office with dead letters ;

3. Things suspected to have been stolen, remaining in the hands of officers of justice ;

4. Animals found straying.

538. Certain matters which come under the heading of the present Book are incidentally treated in the Books preceding.

BOOK FIRST.

SUCCESSIONS.

GENERAL PROVISIONS.

539. " Succession, " " a succession, " and " the succession, " mean respectively as described in article 1.

540. (Am. 34-1956). An intestate succession is established by law alone, and a testamentary succession is derived from a will. The former exists only in the absence of the latter.

Gifts in contemplation of death partake of the nature of testamentary successions.

The person to whom a succession of any kind devolves, or, in the case of a succession devolving on or after the fifth day of April One thousand nine hundred and fifty-two, the person entitled to the residuary succession after administration thereof, is called heir.

541. (Subst. 34-1956). Intestate succession is divided into legitimate succession, which is conferred by law upon the surviving spouse capable of inheriting and lawful relatives, and irregular succession when in default of a surviving spouse capable of inheriting and lawful relatives, it devolves upon others.

542. The law, in regulating a succession, considers neither the origin nor the nature of the property composing it. The whole forms but one inheritance which is transmitted and divided according to uniform rules, or the dispositions made by the proprietor.

CHAPTER FIRST.

DEVOLUTION OF SUCCESSIONS AND THE SEIZIN OF HEIRS.

SECTION I.

DEVOLUTION OF SUCCESSIONS.

543. The place where a succession devolves is determined by the domicile.

544. Successions devolve by death from the moment at which it occurs.

545. Succession in the case of movable property is governed by the law of the domicile ; in the case of immovable property by the law of the Colony.

546. Where several persons, who are entitled to succeed one to the other, or others perish by one and the same accident, so that it is impossible to ascertain which of them died first, the presumption of survivorship is determined by circumstances, and, in their absence, by the considerations of age and sex, conformably to the rules contained in the following articles.

547. Where those who perished together were under fifteen years of age, the eldest is presumed to have survived.

If they were all above the age of sixty, the youngest is presumed to have survived ;

If some were under the age of fifteen and others over that of sixty, the former are presumed to have survived ;

If some were under fifteen or over sixty years of age, and the others in the intermediate age, the presumption of survivorship is in favour of the latter.

548. If those who perished together were all between the full ages of fifteen and sixty, and of the same sex, the order of nature is followed, according to which the youngest is presumed to survive ;

But if they were of different sexes, the male is always presumed to have survived.

SECTION II.

THE SEIZIN OF HEIRS.

549. (Subst. 34-1956). Intestate successions pass to the lawful heirs in the order established by law ; in default of such heirs they devolve in the manner provided in article 579.

550. The lawful heirs, when they inherit, are seized by law alone of the property, rights and actions of the deceased, subject to the obligation of discharging all the liabilities of the succession.

CHAPTER SECOND.

THE QUALITIES REQUISITE TO INHERIT.

551. In order to inherit, it is necessary to be in existence at the moment when the succession devolves ; thus, the following are incapable of inheriting.

1. Persons who are not yet conceived ;

2. Infants who are not viable when born.

552. Aliens may inherit in the same manner as British subjects.

553. The following persons are unworthy of inheriting and, as such, are excluded from successions :

1. He who has been convicted of killing or attempting to kill the deceased ;

2. He who has brought against the deceased a capital charge, adjudged to be calumnious ;

3. The heir of full age, who, being cognizant of the murder of the deceased, has failed to give judicial information of it.

554. The failure to inform cannot however be set up against the ascendants or descendants, or the husband or wife of the murderer, nor against the brothers or sisters, uncles or aunts, nephews or nieces of the murderer, nor against persons allied to him in the same degrees.

555. Any heir who is excluded from the succession by reason of unworthiness is bound to restore all the fruits and revenues that he has received since the succession devolved.

556. The children of an unworthy heir are not excluded from the succession by reason of the fault of their father, if they come to it in their own right and without the aid of representation, which in this case does not take place.

CHAPTER THIRD.

THE DIFFERENT ORDERS OF SUCCESSION.

SECTION I.

GENERAL PROVISIONS.

557. (Subst. 34-1956). Successions devolve to the surviving spouse capable of inheriting, children and descendants of the deceased, and to his ascendants and collateral relations, in the order and according to the rules hereinafter laid down.

558. Proximity of relationship is determined by the number of generations, each generation forming a degree.

559. The sequence of degrees forms the line.

The sequence of degrees between persons who descend one from the other is called the direct line ; that between persons who do not descend the one from the other, but from a common ancestor, is called the collateral line.

The direct line is either the direct descending, or the direct ascending line.

The former connects the ancestor with his descendants ; the latter connects the descendant with his ancestors.

560. In the direct line the degrees are computed to be as many as there are generations between the persons ; thus the son is, with respect to the father, in the first degree, the grandson, with respect to the grandfather, in the second, and reciprocally as to the father and grandfather in respect of the son and grandson.

561. In the collateral line the degrees are reckoned by the generations from one relation up to the common ancestor, and from the latter to the other relation.

Thus two brothers are in the second degree, uncle and nephew in the third, cousins-german in the fourth, and so on.

SECTION II.

REPRESENTATION.

562. Representation is a fiction of law, the effect of which is to put the representatives in the place, in the degree and in the rights of the person represented.

563. Representation takes place without limit in the direct line descending; it is allowed whether the children of the deceased compete with the descendants of a predeceased child, or whether all the children of the deceased having died before him, the descendants of these children happen to be in equal or unequal degrees amongst themselves.

564. Representation does not take place in favour of ascendants; the nearest in each line excludes the more distant.

565. In the collateral line representation is admitted only where nephews and nieces succeed to their uncle and aunt concurrently with the brother and sister of the deceased.

566. In all cases where representation is admitted, the partition is effected according to roots; if one root have several branches, the subdivision is also made according to roots in each branch, and the members of the same branch divide among themselves by heads.

567. Living persons cannot be represented, but only those who are dead.

A person may represent him whose succession he has renounced.

SECTION III.

SUCCESSIONS DEVOLVING TO THE SURVIVING SPOUSE AND DESCENDANTS.

567A. (Ad. 34-1956). The wife succeeds to her husband, and the husband to his wife, when the deceased leaves no issue and has no father or mother living, and is without

collateral relations up to nephews or nieces in the first degree inclusively.

624b **567B.** (Ad. 34-1956). (1) If the deceased leave a spouse capable of inheriting, and issue, the surviving spouse takes one-third, and the child or the children take the other two-thirds, to be divided between them in case there is more than one child, in equal shares.

(2) If the deceased die leaving no issue, but leaving a spouse capable of inheriting, and a father and mother, or either of them, and collateral relations up to nephews or nieces in the first degree inclusively, the surviving spouse takes one-third, the father and mother or the one of them surviving take one-third, and the collateral relations above mentioned take the other third.

(3) If the deceased die leaving no issue, but leaving a spouse capable of inheriting, and a father or mother, or both, but leaving no collateral relations up to nephews or nieces in the first degree inclusively, the surviving spouse takes half, and the other half devolves to the father or mother, or to both as the case may be.

(4) If the deceased die leaving no issue, nor father nor mother, but leaving a spouse capable of inheriting, and collateral relations up to nephews and nieces in the first degree inclusively, the surviving spouse takes half, and the other half is divided among the collateral relations above mentioned.

624c **567C.** (Ad. 34-1956). (1) If there be issue, or a father or mother, or both, or collateral relations up to nephews or nieces in the first degree inclusively, as the case may be, the wife in order to be able to succeed to her husband must abandon all her rights in any community of property that may have existed between herself and the deceased, as well as all rights of survivorship accruing to her under her marriage contract or by law; nor can the husband succeed to his wife unless he first pay into the mass, as if it were a return made under the provisions of article 700, his share in any community of property which may have existed between him and his wife, when such community has been accepted

by the succession of his said wife, or abandon to such mass all the rights and advantages conferred on him by any marriage contract which may have existed between them.

(2) In the case mentioned in this article, the surviving spouse, in order to be entitled to succeed to the deceased spouse, must also renounce his or her rights to the proceeds of insurance policies made in his or her favour by the deceased spouse, and return such proceeds to the mass.

567D. (Ad. 34-1956). The surviving spouse is excluded from the succession when the deceased spouse died before having reached the age of majority.

568. (Subst. 34-1956). (1) If there be no surviving spouse capable of inheriting, children or their descendants succeed to their father and mother and grandfather and grandmother, or other ascendants.

(2) In all cases, children or other decendants succeed without distinction of sex or primogeniture, and whether they are the issue of the same or of different marriages. In all cases they inherit in equal portions and by heads when they are all in the same degree and in their own right ; they inherit by roots when all, or some of them come by representation.

SECTION IV.

SUCCESSIONS DEVOLVING TO ASCENDANTS.

569. (Subst. 34-1956). If a person dying without a spouse capable of inheriting or issue surviving, leave his father and mother and also brothers or sisters, or nephews or nieces in the first degree, the succession is divided into two equal portions, one of which devolves to the father and mother, who share it equally, and the other to the brothers and sisters, nephews and nieces of the deceased, according to the rules laid down in the following section.

570. If in the case of the preceding article, the father or mother had previously died, the share he or she would have received accrues to the survivor of them.

571. (Subst. 34-1956). If the deceased leave no spouse capable of inheriting or issue surviving, nor brothers nor sisters, nephews or nieces in the first degree, nor father nor mother, but only other ascendants, the latter succeed to him to the exclusion of all other collaterals.

572. In the case of the preceding article the succession is divided equally between the ascendants of the paternal line and those of the maternal line.

The ascendant nearest in degree takes the half accruing to his line to the exclusion of all others.

Ascendants in the same degree inherit by heads in their line.

573. (Subst. 34-1956). (1) Ascendants inherit, to the exclusion of all others, property given by them to their children or other descendants who die without leaving a spouse capable of inheriting or issue surviving, where the objects given are still in kind in the succession; and if they have been alienated, the price, if still due, accrues to such ascendants.

(2) They also inherit the right which the donee may have had of resuming the property thus given.

SECTION V.

COLLATERAL SUCCESSIONS.

574. (Subst. 34-1956). If the father and mother of a person dying without leaving a spouse capable of inheriting or issue surviving, or one of them, have survived him, his brothers and sisters as well as his nephews and nieces in the first degree, are entitled to one-half of the succession.

575. (Subst. 34-1956). If both father and mother have previously died, the brothers, sisters, and nephews and nieces in the first degree, of the deceased succeed to him, to the exclusion of the ascendants and the other collaterals. They succeed either in their own right, or by representation as provided in the Second Section of this Chapter.

576. (Subst. 34-1956). The division of the half or of the whole of the succession coming to the brothers, sisters, nephews or nieces, according to the terms of the two preceding articles, is effected in equal portions among them, if they be all born of the same marriage ; if they be the issue of different marriages, an equal division is made between the two lines paternal and maternal of the deceased, those of the whole blood sharing in each line, and those of the half blood sharing each in his own line only. If there be brothers and sisters, nephews and nieces on one side only, they inherit the whole of the succession to the exclusion of all the relations of the other line.

577. (Subst. 34-1956). (1) If the deceased, having left no spouse capable of inheriting nor issue surviving, nor father nor mother, nor brothers, nor sisters, nor nephews, nor nieces in the first degree leave ascendants in one line only, the nearest of such ascendants takes one-half of the succession, the other half of which devolves to the nearest collateral relation of the other line.

(2) If in the same case, there be no ascendants, the whole succession is divided into equal portions one of which devolves to the nearest collateral relation of the paternal line, and the other to the nearest of the maternal line.

(3) Among collaterals, saving the case or representation, the nearest excludes all the others ; those who are in the same degree partake by heads.

578. Relations beyond the twelfth degree do not inherit.

In default of relations within the heritable degree in one line, the relations of the other line inherit the whole.

SECTION VI.

IRREGULAR SUCCESSIONS.

579. (Subst. 34-1956). When the deceased leaves no surviving spouse capable of inheriting nor relations within the heritable degree, the following provisions take effect :—

(1) If the deceased being a woman leaves illegitimate children, or the lawful children of her deceased illegitimate children, her succession falls to them in the same manner as if they had been born legitimate and had inherited under article 568 ;

(2) in default of such illegitimate issue, if the deceased being illegitimate leaves his mother, his succession falls to her ;

(3) in default of an illegitimate heir, his succession falls to the Crown.

580 — 581. (Rep. 34-1956).

582. (Am. 34-1956). The Crown must demand possession from the Court, and the suit is prosecuted and adjudicated upon in the manner, and according to the forms determined in the Code of Civil Procedure.

583. Whenever the prescribed rules and formalities have not been complied with, the heirs, if any appear, may claim an indemnity, and even damages, according to circumstances, for the consequent losses incurred.

CHAPTER FOURTH

(Subst. 34-1956).

ADMINISTRATION OF SUCCESSIONS.

584. In the case of persons dying on or after the fifth day of April One thousand nine hundred and fifty-two the following provisions of this Chapter shall have effect, and the other provisions of this Code relating to successions, whether intestate or testamentary, shall be read and construed subject thereto.

585. In this Chapter, unless the context otherwise requires, the following expressions shall have the meanings herein assigned to them respectively, that is to say —

(*a*) " Administrator " means a person or persons to whom letters of administration, whether general or limited or with the will annexed, have been granted under this Chapter ;

(*b*) " Chief Justice " means the Chief Justice of the Court ;

(*c*) " Common form business " means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court in contentious cases when the contest is terminated, and the business of lodging caveats against the grant of probate or administration ;

(*d*) " Court " means the Supreme Court of the Windward Islands and Leeward Islands established by the Leeward Islands and Windward Islands (Courts) Order in Council, 1939 (Imperial) ;

(*e*) " Intestate " includes a person who leaves a will but dies intestate as to some part of his movable or immovable property ;

(*f*) " Judge " means a Judge of the Court ;

(*g*) " Personal chattels " means carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes) garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money ;

(*h*) " Personal representative " means the executor or executors named in a will or the administrator or administrators for the time being of a deceased person and as regards any liability for the payment of succession duty, includes any person who takes

possession of or intermeddles with the property of a deceased person without the authority of the personal representative or the Court ;

(*i*) " Prescribed " means prescribed by the Code of Civil Procedure or by rules made under this Chapter ;

(*j*) " Purchaser " means a purchaser for money or money's worth ;

(*k*) " Solemn form " means the propounding of a will in an action by the executor or a person interested under the will, the persons prejudiced by the will being made parties thereto in order that the Court upon hearing evidence may pronounce on the validity of the will.

586. (1) All movable and immovable property, comprising the testamentary succession or the intestate succession of a deceased person shall, notwithstanding any provisions of the will or of this Code relating to the devolution of such intestate succession, devolve to and become vested in the personal representative of the deceased.

(2) Where a person dies an intestate, his movable and immovable property, until administration is granted in respect thereof, shall vest in the Chief Justice and Puisne Judges severally.

(3) In every case where a person dies an intestate, it shall be lawful for the Court or a Judge thereof to appoint an administrator to administer the intestate succession of the deceased, and for that purpose the Court shall grant letters of administration to that administrator.

(4) Administration, limited as to duration, powers or purposes, may be granted by the Court or a Judge, and it shall be lawful for the Court or a Judge to revoke any letters of administration for such cause as it or he may consider sufficient without, however, affecting the liability of the administrator to render an account of his intromissions up to the date of such revocation.

(5) Letters of administration shall not be granted to more than four persons in regard to the same succession.

(6) In granting letters of administration, the Court shall have regard to the rights of all persons interested in the succession or the proceeds thereof and to any prescribed provisions :

Provided that —

(*a*) where the deceased died wholly intestate, administration shall be granted to some one or more persons interested in the residuary succession of the deceased, if they make application for the purpose ; and

(*b*) if, by reason of the insolvency of the succession of the deceased or of any other special circumstances, it appears to the Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to the grant of administration, the Court may, in its discretion, notwithstanding anything in this Chapter, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the Court thinks fit.

587. Where all the persons entitled to the intestate succession of the deceased accept it unconditionally, the Court may for good cause decline to appoint an administrator of such succession, and in such case the provisions of this Chapter relating to administrators shall not apply and the Code shall have effect as if this Chapter had not been passed :

Provided, however, that the Court may in such case make a declaration in writing of the persons upon whom the succession devolved in the manner provided in article 606.

588. Where an administrator of an intestate succession has been appointed by the Court, article 550 of this Code and every other provision thereof inconsistent with this Chapter shall have no effect.

589. (1) If at the expiration of twelve months from the death of a person, any personal representative to whom representation has been granted is residing out of the jurisdiction of the Court, the Court may, on application of any creditor or person interested in the succession of the deceased, grant to such creditor or person interested special administration in the prescribed form of the movable and immovable property belonging to the succession.

(2) The Court may, for the purpose of any legal proceeding to which the administrator under the special administration is a party, order the transfer into Court of any money or securities belonging to the succession of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns and resides within the jurisdiction of the Court while any legal proceeding to which a special administrator is a party is pending, such representative shall be made a party to the legal proceeding, and the costs of and incidental to the special administration and of any such legal proceeding shall be paid by such persons and out of such funds as the Court in which the proceeding is pending may direct.

590. (1) Subject to the provisions of this Code, administration with the will annexed may be granted in every case where —

(*a*) the testator has failed to appoint an executor, or

(*b*) the executor or executors have all died or become incapable of fulfilling the duties of their office, or

(*c*) the executor or executors have all refused or neglected to accept office, or

(*d*) the executor or executors have all been removed by the Court, or

(*e*) the testamentary succession is left without a representative from any other cause,

and in every such case the administrator to whom letters of administration are granted shall have all the powers and duties of an executor named in a will.

(2) This article applies whether the testator died before or after the fifth day of April, One thousand nine hundred and fifty-two.

591. (1) Where a minor is appointed or becomes sole executor of a will, administration with the will annexed shall be granted to his tutor, or to such other person as the Court thinks fit, until the minor attains the age of twenty-one years, at which time and not before, probate of the will may be granted to him.

(2) The appointment in a will by a testator of a minor to be an executor shall not operate to transfer any interest in the property of the deceased to the minor or to constitute him a personal representative for any purpose unless and until probate is granted to him after he has attained full age.

592. (1) Every person to whom administration of an intestate succession is granted shall, subject to such limitations as may be contained in the grant, have all the rights, powers and obligations of and be accountable in like manner as if he were the executor of the will of a deceased person.

(2) The personal representatives shall be the representatives for the time being of the deceased in regard to the property movable and immovable comprised in the succession of the deceased.

(3) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts.

593. (1) For the purposes of administration, the personal representatives shall have all the rights, powers and obligations conferred and imposed on an heir under this Code (but subject in the case of an administrator to such limitations as

may be contained in the grant) and in particular shall have power —

(*a*) to sell the movable and immovable property of the succession, so however, that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason ;

(*b*) to raise money by hypothec or otherwise.

(2) Every contract entered into by a personal representative shall be binding on and enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(3) Nothing in this article shall affect the right of any person to require an assent or conveyance to be made.

594. (1) Where an administrator of an intestate succession has been appointed by the Court or where probate of a will has been granted to an executor the heirs or legatees shall not be liable for the debts of the succession except to the extent of the property acquired by them by devolution or bequest or which becomes vested in them, or unless liable therefor otherwise than as such heirs or legatees : Provided that all the property of the succession of a deceased person shall be assets to be administered for the payment of all the just debts of such person.

(2) If any person to whom any such beneficial interest devolves, or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process ; saving however the right of the creditor of a duly registered hypothecary obligation to follow the property hypothecated.

595. (1) The personal representative of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy or interest given by the deceased person or to a share in his residuary succession, or, if the person entitled is a person of unsound mind or a minor, with the consent of his curator, trustee, or tutor, appropriate any part of the residuary succession of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in the prescribed manner the whole or any part of the property of the deceased person in such manner as they think fit : Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary succession, any of whom may thereupon, within the prescribed time, apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(2) In the case of immovable property, the production of sufficient evidence of an appropriation under this section shall, subject to the provisions of this Code, authorise the Registrar to register the person to whom the property is appropriated as proprietor of the said property, and the sufficiency of such evidence shall be determined by the Registrar, subject to any directions which may be given by a Judge.

596. The personal representative may, in lieu of conveying the immovable property or residuary immovable property of the succession of the intestate to any persons interested therein in undivided ownership, convey the same or any part thereof to each of several persons entitled in undivided ownership, in severalty by way of partition by deed or deeds under article 597.

Provided that the partition effected by such deed or deeds shall be with the consent of such persons as are *sui juris* and by order of the Court to be obtained on petition in the case of such as are minors or of unsound mind. In the absence of agreement among the persons entitled of full age as to

any such conveyance by way of partition, it shall be lawful for the executor or administrator or any party entitled *sui juris* or the tutor of any minor or curator of any person of unsound mind entitled, to apply in the prescribed manner by petition for directions in respect of such proposed partition; and the Judge upon such petition shall have all the powers of a judge on the hearing of an action for partition or for sale in lieu of partition.

597. (1) A personal representative may assent to the vesting in any person who (whether by legacy, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any immovable property or interest therein to which the testator or intestate was entitled, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the interest in the property to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) An assent to the vesting of immovable property shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the immovable property to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass the property.

(4) A conveyance of an immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(5) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser, prejudice the right of the legal representative or any other person to recover the property or interest therein to which the assent or conveyance relates, or to be indemnified out of such property or interest therein against any duties,

debts, or liability to which such property or interest would have been subject if there had not been any assent or conveyance.

(6) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same ; and an assent may be given subject to any charge by way of mortgage.

(7) This article shall not operate to impose any stamp duty in respect of an assent.

(8) It shall be the duty of the person in favour of whom the conveyance or assent has been made to cause the same to be registered in the Registry of Deeds and Mortgages within two weeks after the same has been made, and in default of registration he shall be liable to a penalty of fifty dollars for every month it remains unregistered unless he proves to the satisfaction of the Court that the Notary who executed the assent or conveyance was supplied with funds for the purpose, and the Notary who has been supplied with funds for the purpose is also liable similarly to a like penalty on default.

598. The validity of a conveyance of any interest in movable or immovable property made to a purchaser by a person to whom probate or letters of administration have been granted shall not be affected by any subsequent revocation or variation of the probate or administration.

599. (1) Subject to the provisions of this Code, a personal representative shall administer the succession which by law devolved upon and vested in him and shall perform all his obligations with the least possible delay, and he shall thereafter, not later than one year from the date of the probate or letters of administration, distribute amongst the heirs or

legatees, the property of the succession in accordance with the will of the deceased or the provisions of this Code relating to the devolution of successions.

(2) If the succession has been fully and finally administered within a shorter period than one year from the date of the probate or letters of administration, the personal representative shall be bound to hand over the residuary succession to the person entitled thereto without waiting for the expiration of the year.

(3) The Court or a Judge may extend the time for administering the succession beyond the year for such reasons as it or he may think sufficient.

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600. (1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance the Court may, on the application of any creditor or other person interested, —

(*a*) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested ;

(*b*) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes ;

(*c*) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order ;

(*d*) make any vesting order, or appoint a person to convey in accordance with the provisions of this Code relating to trustees.

(3) This article does not prejudice the rights of a purchaser or a person deriving title under him.

601. (1) A personal representative before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the immovable property, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the property as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the property.

(2) Any person who as against the personal representative claims possession of immovable property, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof, may apply to the Court for directions with reference thereto, and the Court may make such vesting or other order as may be deemed proper, and the provisions of the Fourth Part of this Code (Trustees) relating to vesting orders and to the appointment of a person to convey, shall apply.

(3) This article applies whether the testator or intestate died before or after the commencement of this Chapter.

602. (1) In granting letters of administration to an administrator, the Court or a Judge may require the person to be appointed to give security by bond or otherwise for the due and faithful performance of his office in accordance with any prescribed provisions, or the Court may in lieu thereof direct that the whole or part of any money, or the proceeds of any property which will devolve upon or become vested in the person on his appointment, be deposited into Court.

(2) When any money or the proceeds of any property are deposited into Court under paragraph (1) of this article, the administrator shall be entitled to have paid out to him from time to time all sums of money approved by the Court upon a statement of payments, disbursements and expenses

lawfully payable by the administrator out of the succession, and any balance of such money or proceeds shall be paid out to the person or persons entitled thereto after the full and final administration of the succession.

603. (1) The executor or other person interested under a will or other testamentary paper, or any person opposed thereto, may bring an action for the determination by the Court of the question whether the will or other testamentary paper is or is not, in whole or in part, valid as a testamentary instrument.

(2) Any person having an interest in any testamentary or intestate succession may bring an action for the revocation of any probate or letters of administration obtained in common form on the ground that the will is invalid or that the grant was improperly obtained.

(3) Any heir, legatee, creditor or other person interested in any succession may bring an administration action against a personal representative claiming —

(*a*) an account of the dealings and intromissions of that personal representative with the succession and payment to him of whatever sum of money may be found to be due and payable by that personal representative ;

(*b*) damages for loss to the succession caused by conversion, waste or neglect on the part of the personal representative ; or

(*c*) any other relief to which the person bringing the action may in law be entitled.

604. (1) The Court or a Judge may, at any time and from time to time, order —

(*a*) any person to whom probate of a will has been granted, whether before or after the commencement of this Chapter in respect of a succession in which a minor is entitled to any property, or

(*b*) any tutor to a minor, whensoever appointed, who is entitled to any property in any succession,

to disclose to the Court or a Judge the state of the assets of the succession and to render into Court an account of his dealings with the succession up to a date specified in such order.

(2) The Court or a Judge may, at any time and from time to time, order a personal representative or a tutor having in his possession any money falling to a minor under any succession, and notwithstanding any directions in any will or other instrument contained, to pay the whole sum or any part thereof into Court, and any such personal representative or tutor shall forthwith comply with any such order.

(3) Every person who, being required to do any act or to comply with any order under this article, fails or neglects to do that act or to comply with that order shall be guilty of contempt of Court and be punished accordingly.

(4) The Court or a Judge may, notwithstanding any directions in any will or other instrument contained, make such order as it or he may think fit for the payment of periodic sums to any person for the maintenance and education of a minor out of any money in Court belonging to such minor or in the hands of a personal representative.

605. (1) Where any person dies effectively disposing of part only of his property, the provisions of this Code relating to the devolution of intestate successions shall have effect as respects the beneficial interests in that part of his property not so disposed of.

(2) For the purposes of administering the whole succession, that part of the property not expressly disposed of shall vest in the personal representative executing the will of the deceased person and shall be liable for the debts of the deceased and the expenses of administration *pro rata* with that part effectively disposed of.

606. With respect to any succession which before the fifth day of April One thousand nine hundred and fifty-two vested in an heir in accordance with the provisions of this Code, it shall be lawful for the Court or a Judge, upon such evidence

as it or he may think fit and in such form as may be prescribed to grant to the heir a declaration in writing to the effect that the succession of the deceased devolved upon and vested in him as the lawful heir.

607. (1) The provisions of this Chapter bind the Crown with respect to successions vesting in it after the commencement of this Chapter, but nothing in this Chapter shall limit the time within which proceedings for taking possession of a succession devolving on the Crown by virtue of this Code may be taken.

(2) Where property devolves upon the Crown by way of irregular succession under this Code, administration may be granted to and upon the application of any person nominated by the Governor.

(3) Nothing in this Chapter shall in any manner affect or alter the position of the Crown as regards successions already vested in the Crown.

608. Whenever any person dies an intestate and the persons entitled as heirs have renounced their interest in the succession, or whenever the heirs or the executors of the will of any deceased person are absent from the Colony and not represented therein, or whenever from any cause a succession is without a representative for twelve months after the death of a person, the succession of such deceased person shall, notwithstanding anything in any other law contained, vest in the Administrator General who shall administer the same and perform all the duties and have and enjoy all the rights, powers privileges attached by law to the office of an administrator appointed by the Court under this Chapter. The Court or a Judge may nevertheless on petition of a person interested appoint an administrator in the place of the Administrator General.

609. (1) On the death of any person after the commencement of this Chapter, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his succession :

Provided that this paragraph shall not apply to the following causes of action :

(*a*) defamation ;

(*b*) seduction, or inducing one spouse to leave or remain apart from the other.

(2) Where a cause of action survives as aforesaid for the benefit of the succession of a deceased person, the damages recoverable for the benefit of the succession of that person —

(*a*) shall not include any exemplary damages ;

(*b*) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry ;

(*c*) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his succession consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in delict or quasi-delict which by virtue of this article has survived against the succession of a deceased person, unless either —

(*a*) proceedings against him in respect of that cause of action were pending at the date of his death ; or

(*b*) proceedings are taken in respect thereof not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this Chapter, to have been subsisting against him before his death such cause of

action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this article for the benefit of the successions of deceased persons shall be in addition to and not in derogation of any right conferred on the dependants of deceased persons by the provisions of article 988, and so much of this article as relates to causes of action against the successions of deceased persons shall apply in relation to causes of action under the said article as it applies in relation to other causes of action not expressly excepted from the operation of paragraph (1) of this article.

(6) In the event of the insolvency of a succession against which proceedings are maintainable by virtue of this article, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the succession, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

610. (1) The Chief Justice may make rules for carrying this Chapter into effect and in particular for regulating —

(*a*) the practice and procedure for making application for the probate of wills and for letters of administration,

(*b*) the practice and procedure for common form business in the Registry Office,

(*c*) the registration of grants of probate and letters of administration issued outside the Colony, and declaring the effect of such registration

(*d*) the practice and procedure in actions for pronouncing for or against the validity of a will, in administration actions and in actions for the revocation of probates and letters of administration, and

(*e*) the forms to be used in connection with any practice or procedure.

(2) Rules made under this article shall come into effect when approved by the Governor and published in the *Gazette*.

611 — 631. (Rep. 34-1956).

CHAPTER FIFTH.

PARTITION AND RETURNS.

SECTION I.

THE ACTION OF PARTITION AND ITS FORM.

632. No one can be compelled to remain in undivided ownership. A partition may always be demanded notwithstanding any prohibition or agreement to the contrary.

It may however be agreed or ordered that the partition shall be deferred during a limited time, if there be any valid reason for the delay.

633. Partition may be demanded even though one of the coheirs enjoys separately a part of the property of the succession, if there have been no act of partition, nor a sufficient possession to produce prescription.

634. (Subst. 34-1956). (1) Neither the tutor of a minor, nor the curator of an interdicted person or of an absentee, can demand the partition of the immovables of a succession which has devolved to or become vested in such minor, interdicted person or absentee, but he may be compelled or required to join in it, and in such case the partition is effected judicially, and with the formalities required for the alienation of the property of minors.

(2) The tutor or curator may however demand the final partition of the movables and the provisional division of the immovables of the succession.

635. (Subst. 34-1956). A husband may with the consent of his wife demand the partition of the movables or immovables which have accrued to her and have fallen into the community. The coheirs with the wife cannot demand a final partition without suing both husband and wife.

636. (Subst. 34-1956). (1) If all the heirs be of full age, be present, and agree, the partition may be effected in such form and by such act as the parties interested deem proper.

(2) If any of the heirs be unwilling, the partition can only be effected by an action. If any of the heirs are minors or otherwise under disability or absentees but all the proprietors who are of full age agree, the partition or licitation can be effected voluntarily, without an action, on the mere authorisation of the Judge, who may give all necessary or proper consequential directions. It shall be sufficient to justify the tutor or curator for proceeding in this manner that he has been so required by one of the coheirs of full age.

(3) If there be several minors represented by one tutor and having adverse interests, a special and separate tutor must be given to each, to represent him in the partition.

637. In the action of partition and its incidents, proceedings are the same as in ordinary suits, except as regards any modifications set forth in the Code of Civil Procedure.

638. The valuation of immovables is made by experts who are chosen by the parties interested, or who, upon the refusal of such parties, are officially appointed.

The report of the experts must declare the grounds of the valuation, it must indicate whether the property valued can be conveniently divided, and in what manner, and must determine, in case of division, the portions which may be made of it, and the value of each portion.

639. Each of the coheirs may demand his share in kind of the movable and immovable property of the succession. Nevertheless, if there be seizing or opposing creditors, or if the majority of the coheirs deem a sale necessary to discharge the liabilities of the succession, the movable property is publicly sold in the ordinary manner.

640. If the immovables cannot conveniently be divided they must be brought to sale by licitation.

Nevertheless the parties, if they be all of full age, may consent to the licitation being made before a notary, upon the choice of whom they agree.

641. After the movable and immovable property have been estimated, and sold if there be cause for it, the Judge may send the parties before a notary upon whom they have agreed, or who has been officially named if they do not agree in their choice.

They are to proceed, before such notary, to the account which they are bound to make to one another, and also to the formation of the general mass, the apportionment of the shares and the fixing of the compensation to be made to any of the copartitioners.

642. Each coheir returns into the mass, according to the rules hereinafter laid down, the gifts made to him and the sums in which he is indebted, except in the cases specified in articles 654, 655 and 669.

643. If the return be not made in kind, the coheirs entitled to it pretake an equal portion from the mass of the succession.

These pretakings are made as much as possible in objects of the same nature and quality as those which are not returned in kind.

644. After these pretakings, the parties are to proceed to the formation, out of what remains in the mass, of as many shares as there are partitioning heirs or roots.

645. In the apportionment of the shares, the separation of immovables into small parcels and the division of industrial establishments is to be avoided as much as possible. It is also proper to put into each share, if possible, the same quantity of movables, immovables, rights and credits, of the same nature and value.

646. The inequality of shares in kind, when it is unavoidable, is to be compensated by payment of the difference.

647. The shares are to be formed by one of the coheirs, if they can agree amongst themselves in the choice, and if he who is chosen accept the office; in any other case the shares are to be formed by an expert appointed by the Court, and are afterwards to be drawn by lot.

648. Before proceeding to draw, each copartitioner is allowed to propose his objections as to the formation of the shares.

649. The rules laid down for the division of the masses to be apportioned are also to be observed in the subdivisions of the roots sharing in the partition.

650. If in the performance of duties delegated to a notary contestations arise, he must draw up a statement of them and of the respective allegations of the parties for the decision of the Court. The proceedings in such case are according to the forms prescribed in the Code of Civil Procedure.

651. (Subst. 34-1956). Where partition or licitation takes place by reason of their being amongst the heirs absentees, minors or other persons under disability, and one of the coproprietors of full age refuses to proceed upon the mere authorisation of a Judge under the provisions of article 636, it can only be effected by means of an action.

652. Every person, even a relation, who is not entitled to succeed to the deceased, and to whom one of the coheirs has

assigned his right in the succession, may be excluded from the partition, either by all the coheirs or by one of them, on being reimbursed the price of such assignment.

653. After the partition, each of the parties has a right to be put in possession of the title deeds belonging to the objects which have fallen to him.

The title deeds to a divided property remain with him who has the greatest share in it, who, however, is under the obligation of giving the use of them, when required, to the copartitioners interested therein.

The title deeds common to the whole inheritance are delivered to him whom the heirs have chosen to be the depositary of them; subject to the obligation of giving the use of them to the other copartitioners whenever required. If they disagree in the choice it is made by the Judge.

SECTION IA.

(Ad. 34-1956).

SPECIAL PROVISIONS WITH RESPECT TO PARTITION ACTIONS.

653A. In an action for partition, where, if this section had not been passed, a decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the action relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

653B. In an action for partition, where, if this section had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively to the extent of one moiety or upwards in the property to which the action relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

653C. In an action for partition, where, if this section had not been passed, a decree for partition might have been made, then if any party interested in the property to which the action relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions ; and in case of such undertaking being given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

653D. On any sale under this section, the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase money or any part thereof instead of paying the same, or as to any other matters as to the Court seem reasonable.

653E. Where the Court, in an action for partition, directs a sale instead of a division of the property, the property shall be sold and conveyed by the Sheriff with the formalities to be observed in cases of execution, and such sale and conveyance shall have all the effects of a judicial sale.

653F. Any person who, if this section had not been passed, might have maintained an action for partition may maintain such action against any one or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration; but all persons who, if this section had not been passed, would have been necessary parties to the action shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the action, and shall be deemed parties to the action; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by rules of Court, apply to the Court to add to the decree or order.

653G. Where in an action for partition it appears to the Court that notice of the decree or order on the hearing of the cause cannot be served on all the persons on whom that notice is by the last preceding article required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the Court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the Judge in Chambers within a time to be thereby limited. After the expiration of the time so limited, all persons who shall not have so come in and established such claims, whether they are

within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the action as if on the day of the date of the order dispensing with service they had been served with notice of the decree or order service whereof is dispensed with, and thereupon the powers of the Court under the provisions of this Code relating to trustees shall extend to their interests in the property to which the action relates as if they had been parties to the action, and the Court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

653H. Where an order is made under this section dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect, —

(*a*) the proceeds of the sale shall be paid into Court to abide the further order of the Court ;

(*b*) the Court shall, by order, fix a time at the expiration of which the proceeds will be distributed, and may from time to time by further order extend that time ;

(*c*) The Court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made ;

(*d*) if at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons ;

(*e*) if at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court

that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the Court to have any *prima facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons; and thereupon all such other persons shall by virtue of this section be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

653I. Where in an action for partition two or more sales are made, if any person who has by virtue of this section been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

653J. In an action for partition a request for sale may be made or an undertaking to purchase given on the part of a minor, a person of unsound mind, or a person under any other disability, by the tutor, curator (if so authorised by the

Judge), or other person authorised to act on behalf of the person under such disability, but the Court shall not be bound to comply with any such request or undertaking on the part of a minor unless it appear that the sale or purchase will be for his benefit.

653K. For the purposes of this section, an action for partition shall include an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

653L. In an action for partition the Court may make such order as it thinks just respecting costs.

SECTION II.

RETURNS.

654. (Am. 34-1956). Every heir coming to a succession must return to the general mass all that he has received from the deceased by gift *inter vivos*, directly or indirectly; he cannot retain the gifts made nor claim the legacies bequeathed by the deceased, unless such gifts and legacies have been given him expressly by preference and beyond his share, or with an exemption from return.

655. The heir may nevertheless, by renouncing the succession, retain the gifts or claim the legacies made to him.

656. A donee who at the time of the gift was not an heir, but who at the time when the succession devolves is entitled to succeed, is bound to return the gift, unless the testator has exempted him from doing so.

657. Gifts and legacies made to the son of a person who, at the time when the succession devolves has become entitled to succeed, are subject to be returned.

The father coming to the succession of the donor or testator is bound to return them.

658. A grandson coming to the succession of his grandfather is bound to return what has been given to his father, although he should renounce the succession of the latter.

659. The obligation to return the gifts and legacies made during the marriage, either to the spouse who is entitled to succeed, or to the other spouse alone, or to both, depends upon the interest of the heir who is capable of succeeding and the advantage he derives therefrom, according to the rules respecting the effect of gifts and legacies made to the spouses during marriage in the articles relating to marriage covenants.

660. Return is only made to the succession of the donor or testator.

661. With the exceptions contained in the two following articles, whatever has been laid out for the establishment of one of the coheirs, or for the payment of his debts, must be returned.

662. The expenses of nourishment, maintenance, education, and apprenticeship, the ordinary expenses of equipment, of weddings, and customary presents, are not subject to be returned.

663. The same rule applies to the profits which the heir may have derived from agreements made with the deceased, if at the time at which they are made they do not confer an unfair advantage.

664. The profits and interest of the things subject to be returned are due only from the day when the succession devolves.

665. Returns are due only from coheir to coheir ; they are not due to the legatees nor to the creditors of the succession.

666. Returns may be effected either in kind or by deduction from the share of those bound to make them.

667. The return of movable property is made by deduction alone.

668. The return of money received is also made by deduction. In case of insufficiency, the donee or legatee is absolved from the return of money, by abandoning a proportionate value in the movable property, or in default of movable property, in the immovables of the succession.

669. An immovable given or bequeathed, which has perished by a fortuitous event, and without the fault of the donee or legatee, is not subject to be returned.

670. As to immovables, the donee or legatee may at his option return them in all cases, either in kind or by way of deduction according to valuation.

671. If the immovable be returned in kind, the donee or legatee has a right to be reimbursed the expenditures made upon it; those which were necessary, conformably to the rules established by article 372, and those which were unnecessary, according to article 528.

672. The donee or legatee must, on the other hand, account for the injuries and deteriorations which have diminished the value of the immovable returned in kind, if they result from his own act or from that of his representatives.

This rule does not apply if they have been caused by a fortuitous event, and without his or their participation.

673. When the return is made in kind, if the immovable returned be hypothecated or encumbered, the co-partitioners may require the donee or legatee to discharge it from such hypothec or incumbrance; if he fail to do so, he can only return by way of deduction.

The parties may, however, agree that the return shall be made in kind. But this is effected without prejudice to the

claims of the hypothecary creditors, which are charged in the partition of the succession to the party making the return.

674. The coheir who returns an immovable in kind may retain possession of it until he is effectively reimbursed the sums due to him for disbursements and ameliorations.

675. The immovables remaining in the succession are estimated according to their condition and value at the time of the partition.

Those which are subject to return, or which have been returned in kind, whether they have been given or bequeathed, are to be estimated according to their value at the time of the partition, and according to the condition in which they were at the time of the gift, or in the case of legacies, at the time when the succession devolved; regard being had to the provisions contained in the preceding articles.

676. The movable things found in the succession, and those which are returned as being legacies, are estimated according to their condition and value at the time of the partition, and those which are returned as having been given, according to their condition and value at the time of the gift.

SECTION III.

PAYMENT OF DEBTS.

677. An heir who comes alone to the succession is bound to discharge all the debts and liabilities.

The same rule applies to a universal legatee.

A general legatee is held to contribute in proportion to his share in the succession.

A particular legatee is bound only in case of the insufficiency of the other property, and is also subject to hypothecary claims against the property bequeathed; with recourse however against those who are personally responsible.

678. If there be several heirs or several universal legatees, they contribute to the payment of the debts and charges, each in proportion to his share in the succession.

679. A general legatee, who takes concurrently with the heirs, contributes to the debts and charges in the same proportion.

680. The obligation resulting from the preceding articles is personal to the heir and universal or general legatees; and upon it is founded a right of action, against each of them respectively on the part of the particular legatees and the creditors of the succession.

681. In addition to the personal action, the heir or universal or general legatee, is responsible hypothecarily for whatever claims affect the immovables included in his share; with recourse, however, for the share of those personally responsible, according to the rules applicable to warranty.

682. An heir or universal or general legatee, who, not being personally bound, pays the hypothecary debts charged upon the immovable included in his share, becomes subrogated in all the rights of the creditor against the other coheirs or co-legatees for their share.

683. A particular legatee who pays an hypothecary debt for which he is not liable in order to free the immovable bequeathed to him, has his recourse against those who take the succession, each for his share, with subrogation in the same manner as any other person acquiring under particular title.

684. In the event of heirs or legatees exercising their recourse against their coheirs or co-legatees, by reason of an hypothecary debt, the liability of such as are insolvent is divided rateably among all the others, in proportion to their respective shares.

685. The creditors of the deceased and his legatees have a right to a separation of the property of the succession from that of the heirs and from that of the universal and general legatees, unless there is novation. This right may be exercised as long as the property exists in the hands of the latter, or upon the price of the sale, if it be yet unpaid.

686. The creditors of the heir or legatee are not allowed to claim this separation of property, nor to exercise any right of preference, against the creditors of the succession.

687. The creditors of the succession and those of the co-partitioners have a right to be present at the partition if they require it.

If the partition be made in fraud of their rights, they may impugn it in the same manner as any other act made to their detriment.

SECTION IV.

THE EFFECTS OF PARTITION AND OF THE WARRANTY OF SHARES.

688. Each co-partitioner is deemed to have inherited alone and directly all the things comprised in his share, or which he has obtained by licitation, and to have never had the ownership of the other property of the succession.

689. Every act having for its object to put an end to indivision amongst coheirs and legatees is deemed to be a partition, although it should purport to be a sale, an exchange, a transaction, or have received any other name.

690. The co-partitioners are respectively warrantors towards each other for all disturbances or evictions proceeding from a cause anterior to the partition.

Such warranty does not take place if the kind of eviction suffered have been excepted by some provision of the act of partition ; it ceases if the party suffer eviction through his own fault.

691. Each of the co-partitioners is personally bound, in proportion to his share, to indemnify his coheir for the loss caused to him by the eviction.

If one of the co-partitioners be insolvent, the portion for which he is liable must be divided rateably among all the solvent coheirs, according to their respective shares.

692. There is no warranty against the insolvency of the debtor of a claim which has fallen to one of the coheirs, if such insolvency do not occur until after the partition.

Nevertheless, there is an action of warranty in the case of a rent, when the debtor of it has become insolvent at any time since the partition ; unless the loss arises from the fault of the party to whom the rent was allotted.

The insolvency of debtors which exists at the time of the partition gives rise to warranty in the same manner as eviction.

SECTION V.

RESCISSION IN MATTERS OF PARTITION.

693. Partitions may be rescinded for the same causes as other contracts.

Rescission on the ground of lesion takes place in the case of minors only, according to the rules declared in the Book respecting *Obligations*.

The mere omission of an object belonging to the succession does not give rise to the action of rescission, but only gives a right to a supplement of the act of partition.

694. The defendant in an action of rescission of partition may arrest its progress and prevent the bringing of another, by offering and delivering to the plaintiff the supplement of his share in the succession, either in money or in kind.

BOOK SECOND.

GIFTS INTER VIVOS AND BY WILL.

CHAPTER FIRST.

GENERAL PROVISIONS.

695. A person cannot dispose of his property by gratuitous title, otherwise than by gift *inter vivos* or by will.

696. Gift *inter vivos* is an act by which the donor divests himself, by gratuitous title, of the ownership of a thing, in favour of the donee, whose acceptance is requisite and renders the contract perfect. This acceptance makes it irrevocable, saving the cases provided for by law, or a valid resolutive condition.

697. A will is an act of gift in contemplation of death, by means of which the testator, without the intervention of the person benefited, makes a free disposal of the whole or of a part of his property, to take effect only after his death, with power at all times to revoke it. Any acceptance of it purporting to be made in his lifetime is of no effect. Every will is construed with reference to all property comprised in its disposition, as though it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

698. Certain gifts may in a contract be made irrevocably *inter vivos* to take effect after the death of the giver. They partake of gifts *inter vivos* and of wills, and are treated of specially in the Sixth Section of the Second Chapter of this Book.

699. Every gift made so as to take effect only after death, which is not valid as a will, or as permitted in a contract of marriage, is void.

700. The prohibitions and restrictions as to the capacity for contracting, alienating, or acquiring, established elsewhere

in this Code, apply to gifts *inter vivos* and wills whether they are made in the Colony or elsewhere, with the modifications contained in this Book.

701. Gifts *inter vivos* or by will may be conditional.

An impossible condition, or one contrary to good morals, to law, or to public order, upon which a gift *inter vivos* depends, is void, and renders void the disposition itself, as in other contracts.

In a will such a condition is void, but does not annul the disposition.

CHAPTER SECOND.

GIFTS INTER VIVOS.

SECTION I.

THE CAPACITY TO GIVE AND TO RECEIVE BY GIFT INTER VIVOS.

702. All persons capable of disposing freely of their property, may do so by gift *inter vivos,* save the exceptions specified in this Code.

703. Gifts *inter vivos* are void, as presumed to be in contemplation of death, when made by the donor during an illness supposed to be mortal, whether it be followed or not by his death, unless circumstances tend to render them valid.

If the donor recover from his illness, and leave the donee in peaceable possession for two years, the nullity is covered.

704. (Am. 34-1956). Minors cannot give *inter vivos,* even with the assistance of their tutors, unless it be by their contract of marriage, as provided in the Book respecting *Obligations.*

Minors who are married may nevertheless give movable articles, according to their condition and means, and provided they do not materially affect their capital.

Tutors, curators and other administrators cannot give the property entrusted to them, except things of moderate value, in the interest of their charge.

Public corporations, even those having power to alienate, besides the special provisions and formalities which concern them, cannot give gratuitously without the sanction of the authorities to whom they are subject and of the main body of corporators. Those who administer generally for corporations may nevetheless give alone, within the limits above defined as to tutors and curators.

Private corporations may give *inter vivos* in the same manner as individuals, with the consent of the main body of corporators.

705. The prohibitions and restrictions respecting gifts and benefits bestowed by future spouses in case of second marriages no longer exist.

706. Any person capable of succeeding and of acquiring may receive by gift *inter vivos*, saving any exception established by law, but is not responsible in respect of the gift unless he accept in person or by some one qualified to do so on his behalf.

707. (Subst. 34-1956). Corporations may acquire by gifts *inter vivos,* as by other contracts, such property as they are allowed to possess.

708. Persons who have been under the control of others, cannot give *inter vivos* to their former tutors or curators, if their accounts have not been rendered. They may, however, give to their own ascendants who have exercised these offices.

709. Gifts *inter vivos* made in favour of the person with whom the donor has lived in concubinage, or of the incestuous or adulterous children of such donor, are limited to maintenance.

This restriction does not apply to gifts made in a contract of marriage entered into between the concubinaries.

Other illegitimate children may receive by gift *inter vivos* like all other persons.

710. Gifts *inter vivos* made in favour of ministers of religion, of physicians and others attending the donor with the view of restoring his health, or of advocates and attorneys engaged in lawsuits in his behalf, are presumed to be invalid, but may be confirmed by the Court in whole or in part. Transfers made under the above circumstances, even when apparently under the form of onerous contracts, are presumed to be gifts *inter vivos*, and are liable to be impugned as such.

711. (Rep. 34-1956).

712. The capacity to give or to receive *inter vivos* is to be considered relatively to the time of the gift. It must exist at each period, with the donor and with the donee, when the gift and the acceptance are effected by different acts.

It suffices that the donee be conceived at the time of the gift or when it takes effect in his favour, provided he be afterwards born viable.

713. The favour extended to contracts of marriage renders valid the gifts therein made to the children to be born of the intended marriage.

It is not necessary that the substitute should be in existence at the time of the gift by which the substitution is created.

714. A gift *inter vivos* of the property of another is valid if the donor subsequently become proprietor of it.

715. Dispositions made in favour of persons incapable of receiving are void, whether they are concealed under the form of onerous contracts, or executed in the name of persons interposed.

The ascendants, the descendants, the presumptive heir at the time of the gift, and the spouse of the incapable person are held to be interposed, unless relations of kindred, or of services rendered, or other circumstances tend to destroy the presumption.

This nullity takes place even when the person interposed survives the person who is incapable.

716. Children of a deceased person cannot claim legitimacy in respect of gifts *inter vivos* made by him.

SECTION II.

THE FORM OF GIFTS AND THEIR ACCEPTANCE.

717. Deeds containing gifts *inter vivos* must under pain of nullity be executed in notarial form and the original thereof be kept of record. The acceptance must be made in the same form.

Gifts of movable property, accompanied by delivery, may however be made and accepted by private writings, or verbal agreements.

Gifts made out of the Colony and valid according to the law of the place where they are made, are valid in the Colony though not in notarial form. But such gifts, though valid as regards form, may be wholly or partly void of effect if contravening the law of the Colony in other respects. Any transfer of immovable property must be in such form as to be capable of registration.

718. It is essential to gifts intended to take effect *inter vivos* that the donor should actually divest himself of his ownership in the thing given.

The donor may reserve to himself the usufruct or precarious possession, or he may pass the usufruct to one person, and the bare ownership to another, provided he completely divests himself of his ownership.

The thing given may be claimed, as in the case of sale, from the donor who withholds it, and the donee may demand the

rescission of the gift in default of its being delivered, without prejudice to his damages in cases where he may claim them.

If without reservation of usufruct or of precarious possession, the thing given remain unclaimed in the hands of the donor until his death, it may be revendicated from his heirs, provided the deed has been registered during the lifetime of the donor.

The gift of an annuity created by the deed of such gift, or of a sum of money or other indeterminate thing which the donor promises to pay or to deliver, divests the donor in the sense that he becomes the debtor of the donee.

719. Present property only can be given by acts *inter vivos*. All gifts of future property by such acts are void, as made in contemplation of death. Gifts comprising both present and future property are void only as to the latter.

The prohibition contained in this article does not extend to gifts made in a contract of marriage.

720. A donor may stipulate for the right of taking back the thing given, in the event of the donee alone, or of the donee and his descendants dying before him.

A resolutive condition may in all cases be stipulated, either in favour of the donor alone, or of third persons.

The right to take back, or any other resolutive right, is exercised in cases of gift in the same manner and with the same effects as the right of redemption in the case of sale.

721. (Am. 34-1956). A gift may consist of a person's whole property, and it is then universal ; or of the whole of the movable or immovable property, of the whole of the property of the matrimonial community or of any other universality, or of an aliquot portion of such property, and is in such cases a general gift ; or it may be limited to things particularly described, and is then a particular gift.

722. The distribution of present property among children or other descendants is considered as a gift *inter vivos*, and is subject to the same rules.

The same disposition cannot be made in contemplation of death in an act *inter vivos*, except by means of a gift inserted in a contract of marriage as set forth in the Sixth Section of this Chapter.

723. It may be stipulated that a gift *inter vivos* shall be suspended, revoked, or reduced, under conditions which do not depend solely upon the will of the donor.

If the donor reserve to himself the right to dispose of or to take back at pleasure some object included in the gift, or a sum of money out of the property given, the gift holds good for the remainder, but is void as to the part reserved, which continues to belong to the donor, except in gifts by contract of marriage.

724. All gifts *inter vivos* stipulated to be revocable at the mere will of the donor are void.

725. Gifts *inter vivos* of present property are void if they are made subject to the condition of paying other debts or charges than those which exist at the time of such gifts, or than those to come, the nature and amount of which are expressed and defined in the deed or in the statement annexed to it.

This article does not apply to gifts by contract of marriage.

726. (Am. 34-1956). The causes of nullity and prohibitions specified in the last three preceding articles and article 719, take effect notwithstanding all stipulations or renunciations by which it may be sought to evade them.

727. Unless some special law requires it, a deed of gift need not be accompanied by a statement of the movable property given ; the legal proof of its nature and quantity devolves upon the donee.

728. Gifts *inter vivos* do not bind the donor nor produce any effect until after they are accepted. If the donor be not present at the acceptance, they take effect only from the day on which he acknowledges or is notified of it.

729. The acceptance of a gift need not be in express terms. It may be inferred from the deed or from circumstances, among which may be counted the presence of the donee to the deed, and his signature.

The acceptance is presumed in a contract of marriage, as well with regard to the spouses as to the future children. In gifts of movable property this presumption also results from the delivery.

730. (Am. 34-1956). (1) Gifts *inter vivos* may be accepted by the donee himself, authorised and assisted if so it be as in other contracts. Minors, and persons to whom a receiver has been appointed, may also accept unassisted, with the right however to be relieved. Tutors and ascendants may accept on behalf of minors, and curators appointed to interdicted persons may also accept for such persons.

(2) The persons who compose a corporation or administer for it may also accept gifts in its behalf.

731. In gifts *inter vivos* in favour of children born and to be born, where such gifts may be made, the acceptance by those who are born, or by a qualified person for them, holds good for the others not yet born, if they avail themselves of it.

732. The acceptance may be subsequent to the deed of gift; but it must be made during the lifetime of the donor, and while he is still capable of giving.

733. Minors and interdicted persons cannot be relieved from the acceptance or repudiation made in their name by a qualified person, if it have been previously authorised by a Judge. With these formalities the acceptance is as effectual

as if it were made by a person of age, in the full exercise of his rights.

734. Deeds of gift may be executed subject to acceptance, without the donee being therein represented. An acceptance purporting to be made by the notary, or other person not specially authorised, does not render the gift void, but it is without effect, and the confirmation by the donee can only avail as an acceptance from the time at which it takes place.

735. A gift cannot be accepted after the death of the donee by his heirs or representatives.

SECTION III.

THE EFFECT OF GIFTS.

736. Gifts *inter vivos* of present property when they are accepted, divest the donor of and vest the donee with the ownership of the thing given, as in sale, without any delivery being necessary. But to affect the rights of third parties in the case of movables, either delivery must be made or, in the case of immovables, the deed of gift must be registered.

737. Gifts do not by the mere effect of law give rise to any obligation of warranty on the part of the donor, who is deemed to give the thing only in so far as it belongs to him.

Nevertheless if the cause of eviction arise from the indebtedness or the act of the donor, he is obliged, though he have acted in good faith, to reimburse the donee who has paid to free himself ; unless the latter be bound to make such payment in virtue of the deed of gift, either by law or by agreement.

Warranty to a greater or less extent may be specially attached to gifts.

738. A universal donee *inter vivos* of present property is personally liable for all the debts due by the donor at the time of the gift.

A donee by general title *inter vivos* of such property is personally liable for such debts in proportion to what he receives.

739. Nevertheless the donee, by whatsoever title, may, if the things given be sufficiently particularised in the gift, or if he have made an inventory, free himself from the debts of the donor by rendering an account and giving up all that he has received.

740. A donee by particular title *inter vivos* is not personally liable for the debts of the donor.

A donee, whether by general or particular title, if sued only in respect of an hypothecated immovable, may, like any other possessor free himself by abandoning it, without prejudice to the rights of the donor towards whom he may be bound to make payment.

741. The obligation to pay the debts of the donor may be extended or limited by the deed of gift, subject to the legal prohibitions concerning future and uncertain debts.

The right of the creditor in such case against the donee personally, beyond that which results from the law, is governed by the rules set forth as to delegation and indication in matters of payment in the Book respecting *Obligations.*

742. The exception of particular things, whatever may be their number or value, in a universal gift or a gift by general title, does not exonerate the donee from payment of the debts.

743. The creditors of the donor have a right to demand the separation of his property from that of the donee, whenever the latter is liable for the debt, according to the rules laid down in the preceding title as to such separations in matters of succession.

744. (Am. 34-1956). If at the time of the gift, and deduction being made of its value, the donor was insolvent, the previous creditors of the donor may obtain the revocation

of the gift, even though the insolvency were unknown to the donee.

Gifts by bankrupts are treated of in the Commercial Code.

SECTION IV.

REGISTRATION AS REGARDS GIFTS INTER VIVOS IN PARTICULAR.

745 Inscription of gifts *inter vivos* in the Supreme Court is abolished. Registration in the Office of Deeds and Mortgages is sufficient.

746. The effect of the registration of gifts *inter vivos* and of the neglect of such registration, is regulated, as to immovables and real rights, by the general laws concerning the registration of such rights.

Beyond this the registration of gifts is required particularly in the interest of the heirs and the legatees of the donor, his creditors, and all others interested, according to the following rules.

747. All gifts *inter vivos*, of movable or immovable property, must be registered ; save the exceptions contained in the following article. The donor himself cannot set up the want of registration, neither can the donee or his heirs ; but it may be set up by any person entitled to do so under the registry law, by the heir, legatee, or creditor of the donor, or by any other persons interested in having the gift declared void.

748. Gifts of movable effects, whether universal or particular, are exempt from registration when they are followed by actual delivery and public possession by the donee.

749. The registration of all gifts *inter vivos* is subject to the rules concerning registration contained in the Eighteenth Book of this Part.

750. The donor is not liable for the consequences of the want of registration.

Married women, minors or interdicted persons are not relieved from the failure to register the gift, but they have their recourse against those who neglected to effect such registration.

Husbands, tutors, administrators, and others whose duty it is to effect registration, cannot avail themselves of the absence of it.

SECTION V.

THE REVOCATION OF GIFTS.

751. Gifts *inter vivos* accepted are liable to be revoked :

1. By reason of ingratitude on the part of the donee ;

2. By means of the resolutive condition, in cases where it may be validly stipulated ;

3. For the other causes by which a contract may be annulled, unless some particular exception is applicable.

752. A gift is not revoked by the subsequent birth of a child to the donor unless a condition to that effect is attached.

753. Ingratitude on the part of a donee justifying revocation of a gift consists in —

1. Ill-usage of donor, grievous injury done to him, or crime committed against him.

2. Refusal to maintain donor, regard being had to the nature of the gift and the circumstances of the parties.

A gift by contract of marriage is subject to this revocation, as also is an onerous gift, in so far as it exceeds the value of the charges upon it.

754. The demand of revocation on the ground of ingratitude must be made within a year from the date of the offence imputed to the donee, or within a year from the day when such offence became known to the donor.

Such revocation cannot be demanded by the donor against the heirs of the donee, nor by the heirs of the donor against the donee or his heirs, unless the action has been commenced by the donor against the donee himself, or unless, in the second case, the donor died within a year after the offence was committed or became known to him.

755. Revocation on the ground of ingratitude does not prejudice alienations made by the donee, nor hypothecs or other charges created by him, previously to the registration of the judgment of revocation, when the purchaser or creditor has acted in good faith.

In a case of revocation on the ground of ingratitude the donee is condemned to restore the thing given, if it be still in his possession, together with its fruits from the date of the judicial demand. If he have alienated it, he is condemned to restore its value at the time of alienation.

756. A gift cannot be revoked by reason of the nonfulfilment of an obligation attached to it, unless the revocation is stipulated in the deed; and such revocation is subject in all respects to the same rules as the rescission of sale in default of payment of price.

All other resolutive conditions have effect in respect of gifts as in case of contracts.

SECTION VI.

GIFTS BY CONTRACT OF MARRIAGE WHETHER OF PRESENT PROPERTY OR MADE IN CONTEMPLATION OF DEATH.

757. The rules concerning gifts *inter vivos* apply to those which are made by contract of marriage, with such modifications as result from special provisions.

758. Any person, a future spouse included, may in a contract of marriage give to the future husband or wife or to both of them, or to the children to be born of their marriage, the whole or a portion of his present property, or of the property he may leave at his death, or of both together.

759. Any person, a future spouse included, in any contract of marriage by which he has conferred benefit on the future husband or wife or both of them, or their children, may make any gift involving immediate transfer of property to any third person, whether a relation or stranger. But gifts to third persons, intended to take effect after the death of the donor are void, except when made by an ascendant in favour of the brother or sister of the future spouse in a marriage contract, when such spouse is also benefited.

760. A gift of present property by contract of marriage is, like any other, subject to acceptance *inter vivos*. The acceptance is presumed in the cases mentioned in the Second Section of this Chapter. A third party not present at the execution of the deed may accept, either before or after the marriage, a gift made in his favour.

761. A gift by contract of marriage of present or future property is valid, even as regards third parties, only in the event of the marriage taking place. If the donor or the third party who has accepted the gift die before the marriage, the gift is not void, but remains suspended by the condition that the marriage will take place.

762. A gift of present property by contract of marriage cannot be revoked by the donor, even as regards third parties benefited who have not yet accepted, except under a resolutive condition validly stipulated.

A gift in contemplation of death, made in such a contract, is irrevocable in so far that the donor, without legal grounds or a valid resolutive condition, cannot revoke it, nor dispose of the given property by gift *inter vivos* or by will except in small amounts, by way of recompense or otherwise. He remains nevertheless owner in other respects of the property thus given and may dispose of it by onerous title and for his own benefit. Even if the gift in contemplation of death be universal he may acquire and possess property and dispose of it under the foregoing restrictions, and may contract,

otherwise than by gratuitous title, obligations which affect the property thus given.

763. It may be stipulated that a gift, either of present property or in contemplation of death, made in a contract of marriage, shall be suspended, revocable, reducible, or subject to changeable or indeterminate reservations and rights of resumption, although the effect of the stipulation depends upon the will of the donor. If, in the case of reservations and of a right of resumption, the donor do not exercise his right, the donee retains the full benefit of the gift to the exclusion of the heir of the donor.

764. A gift by contract of marriage may be made subject to the charge of paying the debts due by the donor at the time of his death, whether they are determinate or not.

In the case of a universal gift or a general gift of future property, or of present and future property together, this obligation, without stipulation to that effect, falls on the donee in proportion to what he receives.

765. The donee, however, after the death of the donor, in the case of a gift made wholly in contemplation of death, and so long as he has not otherwise accepted, may free himself from the debts by renouncing the gift, after making an inventory and rendering an account, and by giving back any property of the donor remaining in his possession, or which he may have alienated or mixed up with his own.

766. When present and future property is conveyed by the same gift, the donee after the death of the donor, and so long as he has not accepted otherwise the property given in contemplation of death, may free himself from the debts of the donor, other than those for which he is liable in respect of the property given him, by renouncing in the same manner the property given in contemplation of death, and restricting himself to the present property.

767. The donee may also at the same time renounce the present property and free himself from all liability, by making an inventory, rendering an account, and returning the property given in the manner provided in respect of gifts in general.

768. Gifts in contemplation of death made in favour of future spouses, or of one of them, are always, in the event of the donor surviving the spouse benefited, presumed in the absence of express stipulation to be made in favour of the children to be born of the marriage.

The gift becomes extinct if, when the donor dies, neither the spouses or spouse benefited, nor any children of theirs be living.

769. (Am. 34-1956). Gifts in contemplation of death made by contract of marriage, may be expressed in the terms of a gift, of an appointment of heir, of a legacy, or in any other terms which indicate the intentions of the donor.

CHAPTER THIRD.

WILLS.

SECTION I.

THE CAPACITY TO GIVE AND TO RECEIVE BY WILL.

770. Every person of full age, of sound intellect and capable of alienating his property, may dispose of it by will ; and any disposition so made is valid if not contrary to public order or goods morals, or in contravention of the special prohibitions, restrictions, or provisions of this Code.

771. The capacity of married women to dispose of property by will is established in the First Part of this Code, in the Book respecting *Marriage*.

772. No minor is capable of bequeathing any part of his property.

773. (Am. 34-1956). Tutors and curators cannot bequeath the property of the persons under their control, either alone or conjointly with such persons.

Interdicted persons cannot dispose of property by will. In the case of a person proved to have been of unsound mind, though not interdicted, at any time prior to the making of his will, the will is presumed to be invalid, until it is proved that he was of sound mind when he made it.

A will made while the testator was in a state of drunkenness inconsistent with due understanding is invalid.

774. Corporations can receive by will such property only as they may legally possess, and can receive no property unless the will be executed and deposited with the Registrar, at least one year before the death of the testator.

775. Minors and interdicted persons or persons of unsound mind, though incapable of bequeathing, may receive by will.

776. The capacity to receive by will is considered relatively to the time of the death of the testator ; in legacies the effect of which remain suspended after the death of the testator, whether in consequence of a condition, or in the case of a legacy to children not yet born, or of a substitution, this capacity is considered relatively to the time at which the right comes into effect.

Persons benefited by a will need not be in existence at the time of such will, nor be absolutely described or identified therein. It is sufficient that at the time of the death of the testator they be in existence, or that they be then conceived and subsequently born viable, and be clearly known to be the persons intended by the testator. Even in the case of suspended legacies, already referred to in this article, it suffices that the legatee be alive, or conceived, subject to the condition of being afterwards born viable, and proving to be the person indicated, at the time the legacy takes effect in his favour.

777. A testamentary disposition in favour of a person holding the relation to the testator of minister of religion, medical attendant, or legal adviser is presumed to be invalid, but may be allowed by the Court in whole or in part.

SECTION II.

THE FORM OF WILLS.

778. A disposition made by will or codicil, whether appointing an heir, or in the form of a legacy, or expressed in other terms indicating the intentions of the testator, takes effect according to the rules hereinafter laid down, as a universal, a general, or a particular legacy.

779. Two or more persons cannot make their wills by one and the same instrument.

780. A will may be :—

1. Notarial ;

2. Holograph ;

3. According to the English form, hereinafter called an English will.

781. A notarial will is received before two notaries or before a notary and two witnesses. The testator, in their presence and with them, signs the will or declares that he cannot do so, after it has been read to him by one of the notaries in presence of the other, or by the notary in presence of the witnesses. Mention is made in the will of the observance of the formalities.

782. A notarial will must be made as an original remaining with the notary.

The witnesses must be named and described in the will.

Any person may be a witness who is of full age, has not been convicted of felony, and is not in the employment of the executing notaries.

The date and place of execution must be stated in the will.

783. A will cannot be executed before notaries one of whom bears to the testator or to the other notary the relation of father, son, brother, uncle, or nephew.

784. Legacies made in favour of the notaries or witnesses, or to the wife of any such notary or witness, or to any relation of such notary or witness in the first degree, are void, but do not annul the other provisions of the will.

Testamentary executors who are neither benefited nor compensated by the will may serve as witnesses to its execution.

785. A notarial will cannot be dictated by signs.

Deaf mutes and others who cannot declare their will by word of mouth, may do so, if they are sufficiently educated, by means of instructions written by themselves and handed to the notary, before or at the execution of the will.

Any person that cannot hear the will read, must read it, and, unless he be dumb, must read it aloud.

A written declaration that the deed contains the will of the testator and is prepared in accordance with his instructions, may be substituted for the same declaration by word of mouth, when it is required.

Mention must be made of the observance of these exceptional formalities and of their cause.

786. A person unable to hear or speak, who cannot avail himself of the provisions of the preceding article, cannot make a notarial will.

787. A will that, as regards form, would be valid in England is valid in the Colony, if made by a soldier in actual military service, or any mariner or seaman at sea.

788. A holograph will must be written and signed by the testator, it requires neither notaries nor witnesses, and is

subject to no particular form. Such a will may be made by a deaf mute.

789. An English will, whether affecting movable or immovable property, must be in writing and signed at the end with the signature of the testator, or his mark, made by himself or by another person for him, in his presence, and under his express direction, which signature or mark is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses, one of whom must be a Justice of the Peace, who attest and sign the will immediately in presence and at the request of the testator, and in the presence of one another. The signature of a witness cannot be by mark.

The competency of witnesses is determined by the rules with respect to notarial wills.

790. A deaf mute or any other person capable of understanding the meaning of a will and the manner of making one, may dispose of property by will in the English form, provided his intention and the acknowledgment of his signature or mark are manifested in presence of witnesses.

791. In an English will a legacy made to any of the witnesses, or to the husband or wife of any such witness, or to any relations of such witness in the first degree, is void, but does not annul the other provisions of the will.

The competency of testamentary executors to serve as witnesses to such wills, is subject to the same rules as in the case of notarial wills.

792. The signature or mark of the testator in holograph and English wills, ratifies only the words preceding it.

No will except a notarial will is invalid by absence of date and place.

The Court decides in each case whether the absence creates presumption against the will or renders uncertain any of its provisions.

An English will must be signed or initialled on each sheet.

793. Subject to the exceptions mentioned, a will is invalidated by failure to observe the formalities prescribed in this section.

But a will purporting to be made in one form which would be void if in that form alone, may yet be valid if fulfilling the conditions required for another form.

SECTION III.

PROBATE AND PROOF OF WILLS.

794. (Subst. 23-1916). All wills must be presented for probate to the Supreme Court, together with a certificate of the death of the testator.

Where no certificate of death can be procured, the person presenting the will must adduce such other evidence of death as the Court may require.

In matters of probate " Court " includes Judge or Registrar of the Supreme Court.

795. (Subst. 23-1916). Probate is granted as of course in case of the original or a certified copy of a notarial will ; in the case of other wills, the authenticity of the handwriting of the testator, or the attestation of his will, must be proved by affidavit, or otherwise as may be directed.

The Court has a discretion as to what evidence is necessary to establish the validity of a will.

The will must remain deposited in the Court unless it is a notarial will, the original of which is in the custody of a notary in the Colony.

796. (Subst. 23-1916). When the Court is satisfied that the will is valid, and that all requirements, including the

requirements of the Succession Duty Ordinance, have been complied with, probate is granted.

A certified office copy of any probate may be obtained with a copy of the will or other instrument annexed, which, if it is notarial, may be a certified notarial copy.

On the registration of the probate and will in the Registry of Deeds effect is given to the will.

The probate of wills does not prevent their contestation by persons interested.

797. (Subst. 23-1916). Where a will has been lost or accidentally destroyed, probate may be granted of the contents thereof upon proof of such contents and of the formalities required for execution, and of the facts which render production of the will impossible.

If it appears that the testator knew of and acquiesced in the loss or destruction of the will, such will is deemed to have been revoked.

The person who propounds an alleged will and cannot adduce any written evidence of its contents must prove such contents beyond all reasonable doubt. Where such proof is forthcoming, and there is evidence of a definite intention on the part of the testator to do some formal act and the evidence is consistent with that intention having been carried into effect, the Court may infer the actual observance of all due formalities.

798. When a will admits of proof under the preceding article, a probate may be obtained upon petition after positive proof, not only of the contents but of the facts which render production impossible. Probate of the will is held to be established according to the proof deemed sufficient and to such modifications as are made in the judgment.

798A. (Ad. 34-1956). When any person who has had and has ceased to have his domicile in the Colony dies outside the Colony having made, outside the Colony, a will which is valid

under the law of the Colony, and such person leaves property in the Colony, such will may be proved in the Colony as if it had been made and such person had had his domicile therein.

SECTION IV.

LEGACIES.

§ 1. *Legacies in General.*

799. Testamentary dispositions of property constitute legacies, either universal, general, or particular.

800. The property of a deceased person which is not disposed of by will, or concerning which the dispositions of his will are wholly without effect, remains in his intestate succession, and passes to his lawful heirs.

801. When a legacy lapses from a cause dependent upon the legatee, and such legacy is charged with the payment of another legacy, the latter does not lapse in consequence, but is deemed to form a distinct disposition.

802. (Subst. 34-1956). The legatee may always repudiate the legacy so long as he has not accepted it. The repudiation may be made in an informal manner by conduct, by notarial deed, or by a declaration in a judicial proceeding. The right to accept a legacy, not previously repudiated, passes to the legal representatives of the legatee.

803. (Subst. 34-1956). Tutors and curators may, with the authority of the Court, repudiate legacies, on behalf of the minors or persons under their control.

804. When legacies are in favour of several persons jointly, the lapsed share of any one of the joint legatees accures to the others.

Legacies are held to be so made when they are created by one and the same disposition and the testator has not assigned the share of each co-legatee in the thing bequeathed.

Directions given to divide the thing jointly disposed of into equal aliquot shares, do not prevent accretion from taking place.

The legacy is also presumed to be made jointly when a thing which cannot be divided without deterioration is bequeathed by the same act to several persons separately.

The right to accretion as herein described in respect to legatees applies also to gifts *inter vivos* made in favour of several persons jointly, when some of the donees do not accept.

805. A testator may name legatees who shall be merely trustees for charitable or other lawful purposes within the limits permitted by law ; he may also deliver over his property for the same objects to his testamentary executors, or effect such purposes by means of charges imposed upon his heirs or legatees.

806. Payment made in good faith to the ostensible heir, or to a legatee who is in possession of the succession, is valid against the heirs or legatees who present themselves afterwards ; the latter however having recourse against him who has wrongfully received.

807. Fruits and interest arising from the thing bequeathed accrue to the benefit of the legatee from the time of the death of the testator, unless the will directs otherwise.

Life-rents or pensions, bequeathed by way of maintenance, also begin from the date of the testator's death.

808. The rules concerning legacies and the presumptions of the testator's intention, as well as the meaning ascribed to certain terms, give way to the formal or otherwise sufficient expression of such intention, given in another sense or with a view to different effects. The testator may disregard these rules in any manner that is not contrary to public order, to good morals, to any law containing a prohibition or some other applicable declaration of nullity, or that is not prejudicial to the rights of creditors and third persons.

§ 2. *Universal and General Legacies.*

809. Universal legacies are testamentary dispositions by which the testator gives to one or to several persons the whole of the property he leaves at his death.

Legacies are only general when the testator bequeaths an aliquot part of his property, or the whole of his movable or immovable property, or the whole of the private property excluded from the matrimonial community, or an aliquot part of any such whole.

All other legacies are particular.

The exception of particular things, whatever may be their number or value, does not destroy the character of universal or general legacies.

810. (Rep. 34-1956).

811. The liability of a universal, general or particular legatee for the debts and hypothecs, is explained in the Book respecting *Successions,* and, in certain respects, in the present section, and also in the Book respecting *Usufruct.*

812. The legatee of a usufruct bequeathed as a universal or general legacy, is personally liable towards the creditors for the debts of the succession, even for the principal, in proportion to what he receives. He is hypothecarily liable for whatever claims affect the immovables included in his share, as any other legatee by the same title, and with the same recourse. The amount is proportioned between him and the proprietor in the manner and according to the rules set forth in article 424.

813. A testator may change, among his heirs and legatees, the manner and proportions in which the law holds them liable for the payment of the debts and legacies, without prejudice to the personal or hypothecary action of the creditors against those who are legally subject to the right claimed, the latter, however, having recourse against those upon whom the testator imposed the obligation.

814. (Rep. 34-1956).

815. The creditors of a succession have a right to the separation of property against a legatee liable for a debt, in the same manner as against an heir, for the portion in which he is liable.

§ 3. *Particular Legacies.*

816. (Am. 34-1956). The debts of a testator must in all cases be paid in preference to his legacies.

Particular legacies are paid by the heirs, or universal or general legatees, each in the proportion for which he is liable, as in the case of debts, and the legatee has a right to demand the separation of property.

If the legacy be imposed upon one particular heir or legatee, the personal action of the particular legatee does not extend to the others.

The right to a legacy does not carry with it a hypothec upon the property of the succession, but the testator, whatever may be the form of the will, may secure it by a special hypothecation requiring, as regards the rights of third parties, that the will be registered.

817. (Am. 34-1956). The bequest of a thing which does not belong to the testator, whether he was aware or not of another's right to it, is void, even when the thing belongs to the heir or legatee charged with the payment of it.

The legacy is however valid, and is equivalent to the charge of procuring the thing or of paying its value, if such appear to have been the intention of the testator.

818. (Am. 34-1956). If the thing bequeathed belonged to the testator for a part only, he is presumed to have bequeathed only the part which belonged to him.

The same rule applies to the bequest made by one of the spouses of a thing belonging to the community; saving the right of the legatee to the whole of the thing bequeathed

under the circumstances enumerated in the title concerning marriage covenants, and generally in the case of the following article.

819. If the testator since the making of the will have become, wholly or in part, owner of the thing bequeathed, the legacy is valid as regards whatever remains in his succession, notwithstanding the provisions contained in the preceding article.

820. When a particular legacy comprises a universality of assets and liabilities, as for example a certain succession, the legatee of such universality is held personally and alone liable for the debts connected with it, without prejudice to the rights of the creditors against the heirs and universal or general legatees, who have their recourse against the particular legatee.

821. (Am. 34-1956). In the case of insufficiency of the property of the succession, the legacies entitled to preference are paid first, and the remainder is then divided rateably among the other legatees in proportion to the value of their respective legacies. Legatees of a certain and determinate object take it without being bound to contribute to the payment of the other legacies which have no preference over theirs.

822. To obtain the reduction of particular legacies, the creditors must first have exhausted their recourse against the heir or legatee who is personally bound, and have availed themselves in time of the right to separation of property.

The creditors exercise this reduction against each of the particular legatees for a share only, in proportion to the value of his legacy, but the particular legatees may free themselves by giving up the particular legacies or their value.

823. Creditors of the succession, in the case of reduction of particular legacies, have a preferential right to the thing bequeathed, over the creditors of the legatee, as in the case of separation of property.

A particular legatee suffering such reduction has his recourse against the heirs or legatees who are personally liable, and is substituted by law in all the rights of the creditor thus paid.

824. When an immovable bequeathed has been increased by further acquisitions of property, the property thus acquired, even if it be contiguous, is not deemed to form part of the legacy, unless from its destination and the circumstances it may be presumed that the testator intended it to form with the immovable bequeathed but one and the same property.

Buildings, embellishments and improvements are deemed to be adjuncts of the thing bequeathed.

825. If before or since the will, the immovable bequeathed have been hypothecated for a debt of the testator remaining still due, or even for the debt of a third person whether it was known or not to the testator, the heir, or the universal or general legatee, is not bound to discharge the hypothec, unless the will declares otherwise.

A usufruct of the property bequeathed is also at the charge of the particular legatee. The same rule applies to servitudes.

If however the hypothecary debt of a third person, of which the testator was ignorant, affect at the same time the particular legacy and the property remaining in the succession, the benefit of division may reciprocally be proclaimed.

826. A legacy made in favour of a creditor is not deemed to be in compensation of his claim, nor that in favour of a servant in compensation of his wages.

827. (Rep. 34-1956).

SECTION V.

THE REVOCATION AND LAPSE OF WILLS AND LEGACIES.

828. Wills and legacies cannot be revoked by the testator except :

1. By means of a subsequent will revoking them either expressly or by the nature of his dispositions ;

2. By means of a notarial or other written act, by which a change of intention is expressly stated ;

3. By means of the destruction, tearing or erasure of a holograph or English will, deliberately effected by the testator or by his order, with the intention of revoking it ; and in some cases by reason of the destruction or loss of the will by a fortuitous event which has become known to him, as explained in the Third Section of the present Chapter ;

4. By his alienation of the thing bequeathed.

829. (Am. 34-1956). A will is held to be revoked by the subsequent marriage of the testator, except in the case mentioned in article 112.

Revocation of a will or of a legacy may be demanded : 1. On the ground of the complicity of the legatee in the death of the testator ; or by reason of grievous injury done to his memory, in the same manner as in the case of legal succession, or, if the legatee hindered the revocation or modification of the will. 2. By reason of the resolutive condition :

Without prejudice to the causes for which the validity of the will or legacy may be impugned.

The subsequent birth of children to the testator does not effect a revocation.

Enmity springing up between him and the legatee does not establish a presumption of revocation.

830. A subsequent will or notarial act, which does not revoke the preceding one in an express manner, annuls only those dispositions which are at variance with it.

831. A revocation contained in a subsequent will retains its full effect, although such will should remain inoperative by reason of the incapacity of the legatee or of his refusal to accept.

A revocation contained in a will which is void by reason of informality, is also void.

832. In the absence of express dispositions, the circumstances and the indications of the intention of the testator determine whether upon the revocation of a will which revokes another will, the former will revives.

833. Every alienation by the testator of the right of ownership in the thing bequeathed, even in a case of necessity, or by forced means, or with right of redemption reserved, or by exchange, carries with it, unless he has otherwise provided, a revocation of the will or legacy for all that has been thus disposed of, even though, if it were voluntary, the alienation be void. But a will or legacy is held to affect property which, though alienated by the testator subsequently to the will, is owned by him and in his possession at his death.

834. A person cannot, otherwise than by the effect of gifts in contemplation of death made by contract of marriage, forego his right to dispose of his property by will or by gift in contemplation of death, or to revoke his testamentary dispositions. Nor can a person subject the validity of any future will to formalities, expressions or signs not required by law.

835. Heirs cannot be excluded from successions, unless the act excluding them is clothed with all the formalities of a will.

836. Every testamentary disposition lapses if the person in whose favour it is made, or his children, do not survive the testator.

837. Every testamentary disposition made under a condition which depends on an uncertain event, lapses if the legatee die before the fulfilment of the condition.

838. Conditions which are intended by the testator to suspend only the execution of a disposition, do not prevent

the legatee from having an acquired right transmissible to his heirs.

839. A legacy lapses if the thing bequeathed perish totally during the lifetime of the testator.

The loss of a thing bequeathed which happens after the death of the testator falls upon the legatee, except cases wherein the heir or other holder may be responsible according to the rules applicable generally to things which form the subject of obligations.

840. A testamentary disposition lapses when the legatee repudiates it or is incapable of receiving under it.

SECTION VI.

TESTAMENTARY EXECUTORS.

841. (Am. 34-1956). A testator may name one or more testamentary executors, or provide for the manner in which they shall be appointed. He may also provide for their successive replacement.

Heirs, legatees, and women may lawfully be appointed testamentary executors.

Creditors of the succession may be executors without forfeiting their claims.

The Court and Judges cannot appoint or replace testamentary executors, except in the cases specified in article 860.

842. (Subst. 34-1956). Married women no longer require the consent of their husbands to accept or continue the exercise of testamentary executorship. Their husbands are not, as such, liable for their administration. If they are married in community, their administration does not affect the property of the community.

843. (Am. 34-1956). Minors cannot act as testamentary executors, even with the authorisation of their tutors.

844. The incapacity of corporations to be executors is declared in the first part.

Persons who compose a corporation, or such persons and their successors, may be appointed to execute wills in their purely personal capacity, and may act in that behalf if such appear to have been the intention of the testator, although he may have designated them solely by the appellation which belongs to them in their corporate capacity.

The same rule applies to persons designated by the title which belongs to their office or position, and to their successors.

845. Subject to the preceding provisions, persons who cannot contract cannot be testamentary executors.

846. No person can be compelled to accept the office of testamentary executor.

Its duties are performed gratuitously, unless the testator has provided for their remuneration.

If a legacy made in favour of a testamentary executor have no other cause than such remuneration, and he do not accept the office, the legacy lapses by reason of the failure of the condition.

If he accept the legacy thus made, he is presumed to have accepted the executorship.

Testamentary executors are not bound to be sworn ; nor to give security, unless they have accepted with that condition. They may, however, be required by the Court to give security on the demand of any person interested.

847. A testamentary executor who has accepted the office cannot renounce it without the authorisation of the Court or Judge. Such authorisation may be granted for sufficient cause, the heirs, legatees and other executors, if there be any, being present, or having been duly summoned.

Difference of opinion between an executor and the majority of his co-executors, as to the performance of their duties, may constitute a sufficient cause.

848. If several testamentary executors have been appointed, and some of them only, or even one of them alone, have accepted, they or he may act alone, unless the testator has otherwise ordained.

In like manner, if several have accepted, but some or one only of them survive, or retain the office, they or he may act alone until the others are replaced, in the cases admitting of it, unless the testator has expressed himself to the contrary.

849. (Am. 34-1956). If probate have been granted to several joint testamentary executors, who have the same duties to perform, they have all equal powers and must act together, unless the testator has otherwise ordained.

Nevertheless if any of them be absent those who are in the place may perform alone acts of a conservatory nature and others requiring dispatch.

The executors may also act generally as attorneys for each other, unless the intention of the testator appears to the contrary, and subject to the responsibility of the one who grants the power. The executors cannot delegate their duties generally to others than their co-executors, but they may be represented by attorney for determinate acts.

Executors exercising these joint powers, are jointly and severally bound to render one and the same account, unless the testator has divided their functions and each of them has kept within the scope assigned to him.

They are responsible only each for his share for the property of which they took possession in their joint capacity, and for the payment of the balance due, saving the distinct liability of such as are authorised to act separately.

850. The expenses incurred by the testamentary executor in the fulfilment of his duties are borne by the succession.

851. A testamentary executor may, before the probate of the will, perform acts of a conservatory nature or which

require dispatch, provided he obtains such probate without delay, and furnishes proof of it when required.

852. The testator cannot limit the obligation incumbent upon the executor of making an inventory and rendering an account of his administration.

853. If, having accepted, a testamentary executor refuse or neglect to act, or dissipate or waste the property, or otherwise exercise his functions in such a manner as would justify the dismissal of a tutor, or if he have become incapable of fulfilling the duties of his office, he may be removed by the Court.

854. (Rep. 19-1949).

855. The testamentary executor must cause an inventory to be made after notifying the heirs, legatees, and other interested persons to be present. He may however perform immediately all acts of a conservatory nature or which require dispatch.

He attends to the obsequies of the deceased.

He procures the probate of the will and its registration when necessary.

If the validity of the will be contested he may become a party to support it.

He pays the debts and discharges the particular legacies, with the consent of the heir or of the legatee who receives the succession, or, after calling in such heir or legatee, with the authorisation of the Judge.

In the case of insufficiency of monies for the execution of the will, he may, with the same consent, or with the same authorisation, sell movable property of the succession to the amount required. The heir or legatee may however prevent such sale by tendering the amount required for the execution of the will.

The testamentary executor may receive the debts due and may sue for their recovery.

He may be sued for whatever falls within the scope of his duties, but has the right to make the heir or legatee a party to the suit.

856. The powers of a testamentary executor do not pass by mere operation of law to his heirs or other successors, who are however bound to render an account of his administration and of whatever they may themselves have actually administered.

857. (Am. 34-1956). The testator may, with the limitation specified in article 852, modify, restrict or extend the powers, the obligations, and the seizin of the testamentary executor, and the duration of his functions. He may constitute the testamentary executor an administrator of his property, in whole or in part, and may even give him the power to alienate it with or without the intervention of the heir or legatee, in the manner and for the purposes determined by himself.

858. (Rep. 34-1956).

859. The testator may provide for the replacing of testamentary executors and administrators, whether by directly naming and designating those who shall replace them himself, or by giving them power to appoint others in their place, or by indicating some other legal method of appointment.

860. (Am. 34-1956). If the testator desire that the appointment or the replacement should be made by the Court or Judge, the powers necessary for such purpose may be exercised judicially, the heirs and legatees interested being first duly notified.

CHAPTER FOURTH.

SUBSTITUTIONS.

SECTION I.

RULES CONCERNING THE NATURE AND FORM OF SUBSTITUTIONS.

861. There are two kinds of substitution :

Common substitution is that by which a person is nominated to take the benefit of a disposition in the event of its failure in respect of the person in whose favour it is first made.

Fiduciary substitution is that in which the person receiving the thing is charged to deliver it to another either at his death or at some other time.

Substitution takes its effect by operation of law at the time fixed upon, without the necessity of any actual delivery or other act on the part of the person charged to deliver.

862. Fiduciary substitutions include common substitutions without any expressions to that effect being necessary.

Whenever the common is expressly joined to the fiduciary, to meet particular cases, the substitution is called compendious.

When the term *substitution* is used alone, it applies to the fiduciary, with the common attached to it, unless the nature or terms of the disposition indicate the common alone.

863. The person charged to take in the first instance is called the institute, and the one who is entitled to take after him is called the substitute. When there are several degrees in the substitution, each one of the substitutes, except the last in order, becomes in turn an institute with regard to the substitute who comes next.

864. A substitution may exist although the term *usufruct* be used to express the right of the institute. In general the whole tenor of the act and the intention which it sufficiently expresses are considered, rather than the ordinary acceptation

of particular words, in order to determine whether there is substitution or not.

865. Substitutions may be created by gifts *inter vivos*, made in contracts of marriage or otherwise, by gifts in contemplation of death made in contracts of marriage, or by will.

The capacity of the persons is governed in each case by the nature of the act.

The disposition which creates the substitution may be conditional like any other gift or legacy.

Substitutions may be appended to dispositions that are either universal, general, or particular.

The substitute need not be present at the gift *inter vivos* which creates the substitution in his favour ; he need not even have been born nor conceived at the time of the act.

866. Substitutions made by contract of marriage are irrevocable, like gifts made in the same manner.

Substitutions made by other gifts *inter vivos* may be revoked by the donor, notwithstanding the acceptance by the institute for himself, so long as they have not come into operation ; unless, as in the case of gifts in general, they have been accepted by the substitute, or in his behalf, either formally or in an equivalent manner.

The acceptance made for themselves by institutes, even when they are not related to the donor, also renders irrevocable the substitution in favour of their children born or to be born.

The revocation of a substitution, when it is allowed, cannot prejudice the institute nor his heirs by depriving them of the possible benefit of the lapse of the substitution, or otherwise. On the contrary, and although the substitute might have received but for the revocation, such revocation goes to the profit of the institute, and not of the grantor, unless the creating the substitution.
latter has made a reservation to that effect in the act

Substitutions by will may be revoked like all other testamentary dispositions.

867. Movable as well as immovable property may be the subject of substitution. But corporeal movables, unless they are subjected to a different disposition, must be publicly sold and their price be invested for the purposes of the substitution.

Ready money must also be invested in the same manner.

The investment must in all cases be made in the name of the institute as such.

868. Substitutions created by will or by gifts *inter vivos* cannot extend to more than two degrees exclusive of the institute.

869. The rules concerning legacies in general also govern in matters of substitution, in so far as they are applicable, save in excepted cases.

Substitutions by gift *inter vivos*, like those created by will, are subject to the same rules as legacies, as to their coming into operation and after they are in operation. Whatever relates to the form of the act, and the acceptance and prehension of the property by the first donee, remains subject to the rules which belong to gifts *inter vivos*.

An acceptance by the first institute under the gift is sufficient for the substitutes, if they avail themselves of the disposition, and if it have not been validly revoked.

If the gift *inter vivos* lapse in consequence of repudiation or for want of acceptance on the part of the first donee, fiduciary substitution does not take place, nor does the common unless the donor has so provided.

870. The testator may impose a substitution either upon the donee or the legatee whom he benefits, or upon his heir on account of what he leaves him as such.

871. The donor in an act *inter vivos* cannot subsequently create a substitution of the property he has given, even in favour of the children of the donee.

Nor can he reserve the right of doing so, except it be in a contract of marriage. The grantor may however reserve to himself, in all cases, the right to determine the proportions in which the substitutes shall receive.

Nevertheless the donor or testator may, in a new gift *inter vivos* of other property to the same person, or in a will, create a substitution of the property given unconditionally in the first gift; such a substitution takes effect only by virtue of the acceptance of the subsequent disposition of which it forms a condition, and does not prejudice the rights acquired by third parties.

872. Children who are not called to the substitution, but are merely named in the condition without being charged to deliver over to others, are not deemed to be included in the disposition.

873. The rule respecting representation which applies to other legacies, applies also to substitutions created by will unless the testator has manifested an intention inconsistent with the rule.

SECTION II.

THE REGISTRATION OF SUBSTITUTIONS.

874. Besides the effect of registration or of the omission to register, as regards gifts and wills respectively as such, any of these acts containing fiduciary substitutions, either in respect of movable or of immovable property, must be registered in the interest of the substitutes and of third parties.

Substitutions in the direct line in contracts of marriage, and those in respect of corporeal movables accompanied with actual delivery to the first donee are not exempt from registration.

The failure to register substitutions operates in favour of third parties, to the prejudice of the substitutes, though the latter be minors, or interdicted, or not yet born, and even against married women, and they cannot be relieved from it; the sufferers however having recourse against those whose duty it was to procure the registration.

875. All parties interested who are not within some particular exception, may take advantage of the want of registration.

876. Neither the grantor, nor the institute, nor their heirs or universal legatees, can avail themselves of the want of registration, but their creditors may do so, and also *bona fide* purchasers who have acquired from them in good faith for valuable consideration.

877. The registration of acts containing substitutions takes the place of their inscription in the offices of the Court, and of their judicial publication, which formalities are abolished.

Such registration must be effected within six months from the date of the gift *inter vivos*, or from the death of the testator. The effect of the registration of gifts *inter vivos* within such delay, as regards third parties whose claims are registered, is explained in the Book respecting *Registration of real Rights*. As regards all other parties, and in cases of substitution by will, registration within the same delays has a retroactive effect to the time of the gift, or to that of the death. If it take place subsequently, its effect commences only from its date.

Nevertheless the special delays granted, as regards wills, for the cases where the testator dies beyond the Colony, or where the deed has been concealed, apply in such cases with equal retroactive effect to the substitution contained in the will.

878. (Am. 34-1956). The following persons are bound to register substitutions, when they are aware of their existence, namely :

1. The institute who accepts the gift or legacy ;

2. The substitute of full age, who is himself an institute with respect to another substitute ;

3. Tutors or curators of the institute or of the substitutes, and the curator to the substitution.

Those who are bound to effect the registration of the substitution, and their heirs and universal legatees, or legatees by general title, cannot avail themselves of the want of registration.

The institute who has neglected to register is moreover subject to lose the fruits, as in the case of neglect to have an inventory made.

879. The acts and declarations of investment of the monies belonging to the substitution must also be registered within six months from their date.

SECTION III.

SUBSTITUTIONS BEFORE THEY COME INTO OPERATION.

880. The institute holds the property as proprietor, subject to the obligation of delivering it when his quality as institute ceases, and without prejudice to the rights of the substitute.

881. If all the substitutes be not born, the institute is bound to obtain, in the manner provided as regards tutors, the judicial appointment of a curator to the substitution, to represent the substitutes yet unborn, and to attend to their interests in all inventories and partitions and other circumstances in which his intervention is requisite or proper.

The institute who neglects to fulfil this obligation may be adjudged to have forfeited in favour of the substitute the benefit of the disposition.

All persons who are competent to demand the appointment of a tutor to a minor of the same family may also demand the nomination of a curator to the substitution.

Substitutes who are born but incapable are represented as in ordinary cases.

882. The institute is bound to have made at his own expense, within three months, an inventory of the property comprised in the substitution, as well as a valuation of the movable effects, unless they have already been included as such and valued likewise in a general inventory made by other persons of the property of the succession. All persons interested must either be present or have been notified to that effect.

In default of the institute, the substitutes, their tutors or curators, and the curator to the substitution have the right, and except the substitutes when they are the last named in the substitution, are bound to cause such inventory to be made at the expense of the institute, after notifying him, and all others interested, to be present.

So long as the institute fails to have such inventory and valuation made he is deprived of the fruits.

883. The institute performs all the acts that are necessary for the preservation of the property.

He is liable on his own account for all rights, rents, charges and arrears falling due within his time.

He makes all payments, receives monies due and reimbursements, invests capital sums and exercises before the courts all the powers necessary for these purposes.

For the same purposes he makes the necessary advances for law expenses and other necessary disbursements of an extraordinary nature, the amount of which is refunded to him or his heirs, either in the whole or in part, according to what appears to be equitable.

If he have redeemed rents or paid the principal of debts due, without having been charged to do so, he and his heirs have a right to be paid back, at the same time, the monies so disbursed, without interest.

If such redemption or payment have been made in anticipation without sufficient reason, and would not have been demandable at the time that the substitution came into operation, the substitute need not, until the time when they would have become exigible, do more than pay the rents or interest.

884. The rules concerning undivided property set forth in the Book respecting *Successions*, apply equally to substitutions, except that a partition is merely provisional during the continuance of the interest of the partitioners.

In the case of forced sale of immovables, or any other lawful alienation of the property comprised in a substitution, and in the case of redemption of rents or capital sums, the institute, or the testamentary executors authorised to administer in his place, are bound to invest the price, in the interest of the substitutes, with the consent of all parties interested ; or upon the refusal of such parties, the investment is made under judicial authorisation, obtained after due notice to them being given.

885. The obligation of delivering the property of the substitution in an undiminished state, and the nullity of all his acts in contravention of the obligation, do not prevent the institute from hypothecating or alienating such property, without prejudice to the rights of the substitute, who takes it free from all hypothecs, charges, or servitudes, and even from the continuation of lease, unless his right has been prescribed according to the rules contained in the Book respecting *Prescription*, or unless a third party has a right to avail himself of the want of registration of the substitution.

886. The institute cannot compound as to the ownership of the property in such a manner as to bind the substitute, except in cases of necessity, when the interests of the latter are concerned, and after being judicially authorised in the manner required for the sale of property belonging to minors.

887. The grantor may indefinitely allow the alienation of the property of the substitution, which takes place, in such case, only when the alienation is not made.

888. The final alienation of the property of a substitution may moreover be validly effected while the substitution lasts :

1. By expropriation for public purposes or in virtue of some special law.;

2. By forced judicial sale for a debt due by the grantor or for hypothecary claims anterior to his possession ; the institute however being liable to the substitute for damages, if the sale has taken place in consequence of the failure of the institute to pay a debt which he was bound to pay ;

3. With the consent of all the substitutes, when they are in the exercise of their rights. If some of them only have consented, the alienation holds goods as regards them, without prejudicing the others ;

4. When the substitute as heir or legatee of the institute is answerable to the purchaser for the eviction ;

5. As regards movable things sold in conformity with the First Section of this Chapter.

889. A wife has no recourse for the securing of her dowry against the property of her husband held by him as an institute.

890. If the institute deteriorate, waste, or dissipate the property, he may be compelled to give security or to allow the substitute to be put in possession of it as a sequestrator.

891. The substitute may, while the substitution lasts, dispose by act *inter vivos* or by will, of his eventual right to the property of the substitution, subject to the contingency of its lapsing, and to its ulterior effects if it continue beyond him.

The substitute or his representatives may, before the substitution comes into operation, perform all acts of a

conservatory nature connected with his eventual right, whether against the institute or against third persons.

892. The substitute who dies before the substitution comes into operation in his favour, or whose right to it has otherwise lapsed, does not transmit such right to his heirs any more than in the case of any other unaccrued legacy, except in the case in which a right to a legacy descends to children.

893. As regards the repairs which the institute is bound to make, and the reimbursements he or his heirs may claim for the improvements he has made, the same rules apply as are laid down for the emphyteutic lessee in articles 527 and 528. But the institute has an absolute right of reimbursement for improvements authorised by the Court.

894. Judgments obtained by third parties against the institute cannot be impugned by the substitutes, on the ground of the substitution, if, in the same suits, they, or their tutors or curators, or the curator to the substitution, besides the executors and administrators of the will, if there were any in function, were made parties.

If the substitutes, or those who may be thus made parties in their place, have not been included in the suit, such judgments may be impugned, whether the institute has or has not contested the action brought against him.

895. The institute may, but without prejudice to his creditors, deliver over the property in anticipation of the appointed term, unless the delay is for the benefit of the substitute.

SECTION IV.

THE COMING INTO OPERATION OF SUBSTITUTIONS AND THE DELIVERY OF THE PROPERTY TO THE SUBSTITUTE.

896. When no period is assigned for the coming into operation of a substitution and the delivery of the property to the substitute, they take place at the death of the institute.

897. The substitute takes the property directly from the grantor and not from the institute.

The substitute, by the coming into operation of the substitution in his favour, becomes immediately seized of the property in the same manner as any other legatee ; he may dispose of it absolutely and transmit it in his succession, if he be not prohibited from doing so, or if the substitution do not continue beyond him.

898. If, by reason of a pending condition or some other disposition of the will, the coming into operation of the substitution do not take place immediately upon the death of the institute, his heirs and legatees continue, until the operation takes effect, to exercise his rights, and remain liable for his obligations.

899. The legatee who is charged as a mere trustee, to administer the property and to employ it or deliver it to the substitute in accordance with the will, even though the terms used appear really to give him the quality of a proprietor subject to deliver, rather than that of a mere executor or administrator, does not retain the property in the event of the lapse of the ulterior disposition, or of the impossibility of applying such property to the purposes intended, unless the testator has manifested his intention to that effect. The property in such cases passes to the heir or the legatee who receives the succession.

900. The institute or his heirs deliver the property together with its accessories. They render the fruits and interest accrued since the substitution came into operation, if they have received them, unless the substitute, when duly required to accept the legacy, refused to accept or has failed to do so either expressly or by implication.

901. If the institute were a debtor or a creditor of the grantor, and in consequence of his accepting as heir, as universal or general legatee, confusion take place so as to destroy his debt or his claim, such debt or claim, notwith-

standing such confusion which is deemed to be only temporary, revives between the substitute and the institute or his heirs, when the property comes to be delivered over ; except as to interest for the time during which the confusion existed.

The institute or his heirs are entitled to the separation of property in the prosecution of their claim, and may retain the property until they are paid.

902. Institutes under age, interdicted, or unborn, or under coverture, are not relievable from the non-fulfilment of the obligations imposed upon them, or upon their husbands, tutors, or curators for them, by this and the preceding section ; but have recourse, as in other cases, against those bound to act for them.

SECTION V.

THE PROHIBITION TO ALIENATE.

903. The prohibition to alienate contained in a deed may, in certain cases, be connected with a substitution, or may even constitute one.

It may also be made for other motives than that of substitution.

It may be stated in express terms, or may result from the conditions and circumstances of the act.

It includes the prohibition to hypothecate.

In gifts *inter vivos* the undertaking by the donee not to alienate has the same effects as the prohibition by the donor.

904. The cause or consideration of the prohibition to alienate, may be the interest either of the party disposing, or of the party receiving, or it may be that of the substitutes, or of third parties.

905. The prohibition to alienate things sold or conveyed by purely onerous title is void.

906. The prohibition to alienate may be simply confirmatory of a substitution.

It may constitute one, although express terms be not used, according to the rules hereinafter laid down.

907. Although the motive of the prohibition to alienate be not expressed, and it be not declared under pain of nullity or some other penalty, the intention of the party disposing suffices to give it effect, unless the expressions are evidently within the limits of mere advice.

When the prohibition is not made for another motive, it is interpreted as establishing in favour of the party disposing and his heirs a right to receive back the property.

908. If the prohibition to alienate be made in favour of persons who are designated, or who may be ascertained, and who are to receive the property after the donee, the heir, or the legatee, a substitution is created in favour of such persons, although it be not in express terms.

909. When the prohibition to alienate extends to several degrees, and is at the same time interpreted as implying a substitution, those to whom the prohibition successively applies after the first who receives, become substitutes in turn, as if they were the subject of express dispositions.

910. The prohibition to alienate may be confined to acts *inter vivos*, or to acts in contemplation of death, or may extend to both, or may be otherwise modified according to the will of the party disposing. Its extent is determined according to the object which the party disposing had in view, and the other attending circumstances.

If there be no limitation, the prohibition is deemed to cover acts of every description.

911. The simple prohibition to dispose of property by will, without other condition or indication, implies a substitution in favour of the natural heirs of the donee, or of the heir or

legatee, for so much of the property as may remain at the death of such donee, heir, or legatee.

912. The prohibition to alienate out of the family, either of the party disposing or of the party receiving, or out of any other family, does not, in the absence of expressions denoting continuance, extend to others than those to whom it is addressed. The persons belonging to the family who take after them are not subject to it.

If the prohibition be addressed to no person in particular, it is deemed, in the absence of such expressions, to apply only to the person first benefited.

Substitutions made in a family are in all cases interpreted according to the same rules.

913. The prohibition to alienate out of the family, when no dispositions require the following of the legitimate order of succession, or any other order, does not prevent the alienation, by gratuitous or onerous title, made in favour of the more distant members of the family.

914. The term *family*, when it is not limited, applies to all the relatives in the direct line, and all in the collateral line within the twelfth degree.

915. In the prohibition to alienate, as in substitutions, and in gifts and legacies in general, the terms *children* or *grandchildren*, made use of without qualification either in the disposition or in the condition, apply to all the descendants, with or without the effect of extending to more than one degree according to the terms of the act.

916. (Am. 34-1956). Prohibitions to alienate, although not accompanied by substitution, must be registered, even as regards movable property, in the same manner as substitutions themselves.

The person thus prohibited and his tutor or curator, are bound to effect such registration.

CHAPTER FIFTH.

(Ad. 34-1956).

TRUSTS.

916A. (1) All persons capable of disposing freely of their property, may convey property, movable or immovable, to trustees by act *inter vivos* or by will for the benefit of any persons in whose favour they can validly dispose of their property. They may also constitute themselves, either alone or jointly with others, trustees of their own property for the benefit of other persons.

(2) Implied, constructive and resulting trusts shall arise under the law of the Colony in the same circumstances as they arise under the law of England.

(3) Subject to the provisions of this Code or of any other statute the law of England for the time being in force governing the rights, powers and duties of trustees and beneficiaries under a trust shall extend to and apply in the Colony.

(4) Whenever by the law of England a beneficiary of a trust is entitled to a right in equity a beneficiary shall be entitled to a like right under this Code.

(5) Notwithstanding any other provisions of this Code as to the acceptance of gifts *inter vivos* the acceptance of a gift by a beneficiary shall not be necessary for the creation of a valid trust.

BOOK THIRD.

OBLIGATIONS.

GENERAL PROVISIONS.

917. Obligations arise from contracts, quasi-contracts, delicts and quasi-delicts, and also from other sources specified in Chapter Fourth of this Book.

He who is subject to the obligation is called the debtor, and he to whom it is due is called the creditor.

The meaning of the terms obligation, contract, quasi-contract, delict, and quasi-delict is explained in article 1.

917A. (Ad. 34-1956). (1) Subject to the provisions of this article, from and after the coming into operation of this article the law of England for the time being relating to contracts, quasi-contracts and torts shall *mutatis mutandis* extend to this Colony, and the provisions of articles 918 to 989 and 991 to 1132 of this Code shall as far as practicable be construed accordingly ; and the said articles shall cease to be construed in accordance with the law of Lower Canada or the " Coutume de Paris " :

Provided, however, as follows :—

(*a*) the English doctrine of consideration shall not apply to contracts governed by the law of the Colony and the term " consideration " shall have the meaning herein assigned to it ;

(*b*) the term " consideration " when used with respect to contracts shall continue as heretofore to mean the cause or reason of entering into a contract or of incurring an obligation ; and consideration may be either onerous or gratuitous ;

(*c*) third persons shall continue to have and exercise such rights with respect to contracts as they heretofore had and enjoyed under article 962 or any other statute.

(2) Paragraph (1) of this article shall not be construed as affecting the provisions of the Ninth Chapter of this Book (which relate to Proof of Obligations), or as affecting the provisions of the Fifth to Sixteenth Books of this Part or of any other statute relating to specific contracts save in so far as the general rules relating to contracts are applicable to such contracts.

(3) Where a conflict exists between the law of England and the express provisions of this Code or of any other statute, the provisions of the Code or of such statute shall prevail.

CHAPTER FIRST.

CONTRACTS.

SECTION I.

THE REQUISITES FOR THE VALIDITY OF CONTRACTS.

918. A contract to be valid must have a subject and a lawful cause or consideration. The parties to it must be legally capable and their consent legally given.

§ 1. *Legal Capacity to Contract.*

919. All persons are capable of contracting, except those whose incapacity is declared by law.

920. (Subst. 34-1956). (1) Those legally incapable of contracting are :—

(*a*) minors except in the special cases described in this Code ;

(*b*) persons of unsound mind to whom curators have been appointed ;

(*c*) those who, by special provisions of law, are prohibited from contracting by reason of their relation to each other or of the object of the contract.

(2) The contractual capacity of persons of unsound mind other than those to whom curators have been appointed, of persons of weak understanding or temporarily deranged whether from disease, accident, drunkenness or other cause is determined according to the law of England.

921. The incapacity of a minor and of an interdicted person may, when the contract is not by this Code declared to be void, be pleaded by or for him but not against him.

§ 2. *Consent.*

922. Consent is either express or implied. It is invalidated by the causes specified in the Second Section of this Chapter.

§ 3. *Cause or Consideration of Contracts.*

923. A contract without a consideration, or with an unlawful consideration is void ; but may be valid though the consideration be not expressed or be incorrectly expressed in the writing which is evidence of the contract.

924. The consideration is unlawful when it is prohibited by law, or is contrary to good morals or public order.

§ 4. *Subject of Contracts.*

See Chap. V. " Subject of Obligations. "

SECTION II.

CAUSES OF NULLITY IN CONTRACTS.

925. Error, fraud, violence, fear, or lesion is a cause of nullity in a contract ; in so far as to give right of action or exception, with a view to its rescission or modification.

§ 1. *Error.*

926. Error is a cause of nullity only when it occurs in the nature of the contract itself, or respecting that which is the subject of the contract, or the principal consideration for making it.

§ 2. *Fraud.*

927. Fraud is a cause of nullity when the artifice practised by one party or with his knowledge is such that without it the other party would not have contracted.

It is never presumed and must be proved.

§ 3. *Violence and Fear.*

928. Violence or fear is a cause of nullity, whether practised or produced by the party for whose benefit the contract is made or by any other person.

929. The fear whether produced by violence or otherwise must be a reasonable and present fear of serious injury. The age, sex, character and condition of the party are to be taken into consideration.

930. Fear suffered by a contracting party is a cause of nullity whether it is a fear of injury to himself, or to his wife, children or other near kindred, and sometimes when it is a fear of injury to strangers, according to the circumstances of the case.

931. Mere reverential fear of a father or mother, or other ascendant, without violence exercised or threats made, will not invalidate a contract.

932. If the violence be only a legal constraint, or the fear be only with reference to a party doing that which he has a right to do, it is not a ground of nullity ; but it is otherwise if the forms of law be used or threatened for an unjust and illegal cause to extort a consent.

933. A contract for the purpose of delivering the party making it, or the husband, wife or near kinsman of such party from violence or threats, is not invalidated by reason of such violence or threats ; provided the party in whose favour it is made be in good faith, and not in collusion with the offender.

§ 4. *Lesion.*

934. Lesion is a cause of nullity only in certain cases and with respect to certain persons, as explained in this section.

935. (Subst. 34-1956). Simple lesion is a cause of nullity in favour of an unmarried minor against every kind of act when not aided by his tutor, and in favour of a minor who is or has been married against all contracts which exceed his legal capacity; subject to the exceptions specially expressed in this Code.

936. The simple declaration made by a minor that he is of the age of majority forms no bar to his obtaining relief for cause of lesion.

937. A minor is not relievable for cause of lesion, when it results only from a casual and unforeseen event.

938. A minor who is a banker, trader or mechanic is not relievable for cause of lesion from contracts made for the purposes of his business or trade.

939. A minor is not relievable from the stipulations contained in his marriage contract, when they have been made with the consent and assistance of those whose consent is required for the validity of his marriage.

940. A person is not relievable from a contract made by him during minority, when he has ratified it since attaining the age of majority.

941. (Subst. 34-1956). Contracts by minors for the purchase, alienation or incumbrance of immovable property, if made without the intervention of their tutors, are null.

942. When all the formalities required with respect to minors or interdicted persons for the alienation of immovable property, or the partition of a succession, have been observed, such contracts, and acts have the same force and effect as if they had been executed by persons of the age of majority and free from interdiction.

943. (Subst. 34-1956). When minors or interdicted persons are admitted in these qualities to be relieved from their

contracts, the reimbursement of that which has been paid in consequence of these contracts during the minority or interdiction cannot be exacted unless it is proved that what has been so paid has turned to their profit.

944. Persons of the age of majority are not entitled to relief from their contracts for cause of lesion, except where relief would be granted by the law of England.

SECTION III.

THE INTERPRETATION OF CONTRACTS.

945. When the meaning of any part of a contract is doubtful, its interpretation is to be sought rather through the common intent of the parties than from a literal construction of the words.

946. When a clause is susceptible of two meanings, it must be interpreted as of that which would have effect, and not as of that which would have none.

947. Expressions susceptible of two meanings must be taken in the sense which agrees best with the context.

948. Whatever is doubtful must be determined according to the usage of the country where the contract is made.

949. The customary clauses must be supplied in contracts, although they be not expressed.

950. The clauses of a contract are interpreted each with the meaning derived from the whole.

951. In cases of doubt, the contract is interpreted against him who has stipulated, and in favour of him who has contracted the obligation.

952. General terms are held to refer only to things within the intent of the contract.

953. When special provision is made for a particular case in order to ensure its inclusion within the scope of a contract, the general terms of the contract are not on this account restricted to the single case specified.

SECTION IV.

THE EFFECT OF CONTRACTS.

954. Contracts produce obligations, and sometimes have the effect of discharging or modifying other contracts.

They have also the effect in some cases of transferring the right of property.

They can be set aside only by the mutual consent of the parties, or for causes established by law.

955. Contracts have effect only between the contracting parties; they cannot affect third persons, except in the cases mentioned in the articles of the Fifth Section of this Chapter.

956. The obligation of a contract extends not only to what is expressed in it, but also to all the consequences which, by equity, usage or law, are incident to the contract, according to its nature.

957. A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by the mere consent of the parties. Movables must be delivered in order to affect third parties, and in the case of immovables there must be a deed of sale, or memorandum in writing, stating the conditions of the sale.

958. If the thing to be delivered be uncertain or indeterminate, the purchaser does not become the owner until it is made certain and determinate, and he has been notified to that effect.

959. If a party contract successively with two persons separately to deliver to each a thing which is purely movable

property, that one is owner who has been put in actual possession, although his title be posterior in date ; provided, however, that his possession be in good faith.

960. Such of the rules of this section as are applicable to immovable property are subject to the provisions respecting registration as regards their effect upon third parties.

SECTION V.

THE EFFECT OF CONTRACTS WITH REGARD TO THIRD PERSONS.

961. A person cannot, by a contract in his own name, bind any one but himself and his heirs and legal representatives ; but he may contract in his own name that another shall perform an obligation, and in this case he is liable in damages if such obligation be not performed by the person indicated.

962. A party in like manner may stipulate for the benefit of a third person, when such benefit is the condition of a contract which he makes for himself, or of a gift which he makes to another ; and he who makes the stipulation cannot revoke it, if the third person have signified assent.

963. A person is deemed to have contracted for himself, his heirs, and legal representatives, unless the contrary is expressed, or result from the nature of the contract.

964. Creditors may exercise any rights which are not exclusively attached to the person of the debtor when they are prejudiced by his neglect or refusal to exercise them.

SECTION VI.

AVOIDANCE OF CONTRACTS AND PAYMENTS MADE IN FRAUD OF CREDITORS.

965. Creditors may impeach the fraudulent acts of their debtors, according to the rules provided in this section.

966. A contract cannot be avoided unless it is made by the debtor with intent to defraud, and will have the effect of injuring the creditor.

967. A gratuitous contract is deemed to be made with intent to defraud, if the debtor be insolvent at the time of making it.

968. An onerous contract made by an insolvent debtor with a person who knows him to be insolvent is deemed to be made with intent to defraud.

969. Every payment made by an insolvent debtor to a creditor knowing his insolvency, is deemed to be made with intent to defraud, and the creditor may be compelled to restore what he has received or the value thereof, for the benefit of the creditors according to their respective rights.

970. An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts is not voidable ; saving the special provisions applicable in cases of bankruptcy.

971. (Am. 34-1956). No contract or payment can be avoided under this section at the suit of a subsequent creditor, unless he is subrogated in the rights of an anterior creditor, except in the cases mentioned in the Commercial Code.

972. (Am. 34-1956). Further provisions concerning the presumption of fraud and nullity of acts in fraud of creditors are contained in the Commercial Code.

CHAPTER SECOND.

QUASI-CONTRACTS.

973. The act which constitutes a quasi-contract may be done by one incapable of contracting.

974. A person incapable of contracting may, through the quasi-contract constituted by the act of another, incur an obligation towards such other.

974A. (Ad. 34-1956). Without prejudice to the generality of the succeeding articles of this Chapter it is hereby declared that an action on a quasi-contract is maintainable in all cases where it would be maintainable by the law of England.

SECTION I.

THE QUASI-CONTRACT NEGOTIORUM GESTIO.

975. He who voluntarily undertakes to manage any affairs of another person with or without his knowledge, incurs an obligation to conduct them until they are concluded, or until such other is in a condition to relieve him. He is responsible for the attendant expenses, and is subject to all the obligations resulting from an express mandate.

976. He is obliged to continue his management although the person for whom he acts die before the conduct of the affairs is terminated, until such time as the heir or other legal representative is in a condition to relieve him.

977. He is bound to exercise all the care of a prudent administrator.

Nevertheless the Court may moderate the damages arising from his negligence or fault, according to the circumstances under which the conduct of the affairs has been assumed.

978. He whose affairs have been well managed is bound to fulfil the obligations his agent has contracted in his name, to indemnify him for all the personal liabilities which he has assumed, and to reimburse him all necessary or useful expenses.

SECTION II.

THE RECEPTION OF A THING NOT DUE.

979. He who receives what is not due to him, through error of law or of fact, is bound to restore it ; or if it cannot be restored in kind, to give the value of it.

If the receiver be in good faith, he is not obliged to restore the profits of the thing received.

980. He who pays a debt in the erroneous belief that he is the debtor, has a right of recovery against the creditor.

Nevertheless that right ceases when the obligation has in good faith been cancelled in consequence of the payment ; and the remedy is solely against the true debtor.

981. If the receiver be in bad faith, he is bound to restore what has been received, with the interest or profits which should have accrued from the reception or from the beginning of his bad faith.

982. If the thing unduly received be a thing certain, the receiver is bound to restore its value, if through his fault or his bad faith it have perished or deteriorated, or can no longer be delivered in kind.

If he have received the thing in bad faith, or if after having become conscious of error in the reception, he retain it in bad faith, he is answerable for its loss or deterioration by accident ; unless it would have equally perished or deteriorated in the possession of the owner.

983. If he who has unduly received the thing sell it, being in good faith, he is bound to restore only the price of sale.

984. He to whom the thing is restored, is bound to repay to the possessor, although he were in bad faith, the expenses which have been incurred for its preservation.

CHAPTER THIRD.

DELICTS AND QUASI-DELICTS.

985. Every person capable of discerning right from wrong is responsible for damage caused either by his act, imprudence, neglect or want of skill, and he is not relievable from obligations thus arising.

986. He is responsible for damage caused not only by himself, but by persons under his control and by things under his care.

The father, or, after his decease, the mother, is responsible for the damage caused by minor children.

Tutors are responsible in like manner for their pupils.

Curators or others having the legal custody of persons of unsound mind, for their wards.

Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care.

The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage.

Masters and employers are responsible for damage caused by their servants and workmen in the performance of the work for which they are employed.

987. The owner of an animal is responsible for the damage caused by it, whether it be under his own care or under that of his servants, or have strayed or escaped from it.

He who is using the animal is equally responsible while it is in his service.

The owner of a building is responsible for the damage caused by its ruin, through want of repairs or defect in construction.

988. (Subst. 34-1956). (1) For the purposes of this article,—

"parent" means father or mother, step-father or step-mother, adopted father or adopted mother, grandfather or grandmother ;

"child" means son or daughter, step-son or step-daughter, adopted son or adopted daughter under the provisions of the Adoption Ordinance, or a grandson or granddaughter.

(2) Where the death of a person is caused by a wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony.

(3) Every such action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused, but notwithstanding anything contained in this Code with regard to prescription, no such action shall be commenced at any time later than three years after the death of such deceased person.

(4) Every such action shall be brought by and in the name of the executor or administrator of the person deceased, but if in any case there is no executor or administrator of the person deceased, or if, there being such executor or administrator, no such action is, within six calendar months after the death of such deceased person, brought by and in the name of such executor or administrator, the action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit the action is hereby given :

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint.

(5) In every action such damages proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought may

be awarded, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the parties for whose benefit the action is brought in such shares as the Court may direct.

(6) In any such action the plaintiff shall state in the declaration full particulars of the person or persons for whom and on whose behalf such action is brought, and the nature of the claim in respect of which damages is sought to be recovered.

(7) If the defendant in any such action desires to pay money into Court, it shall be sufficient for him to pay it as a compensation in one sum to all persons entitled to recover in respect of his wrongful act, neglect or default, without specifying the shares into which the same is to be divided, and if the said sum is not accepted, and the plaintiff proceeds to trial as to its sufficiency, the defendant shall be entitled to judgment if the plaintiff is awarded no greater sum than is paid into Court.

(8) In assessing damages in any such action there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance, whether made before or after the passing of this article.

(9) For the purposes of this article, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately, and accordingly in deducing any relationship which under the provisions of this article is included within the meaning of the expressions "parent" and "child", any illegitimate person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father.

(10) For the purposes of an action brought under this article, damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

989. An action in respect of a delict or quasi-delict does not prejudice, and is not prejudiced by criminal proceedings in respect of the same subject matter.

(Arts. **989A — 989S** added by 34-1956).

989A. (1) The owner of a dog shall be liable in damages for injury done to any cattle or poultry by that dog.

(2) It shall not be necessary for the person seeking such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity, or that the injury was attributable to neglect on the part of the owner.

(3) Where any such injury has been done by a dog, the occupier of any house or premises where the dog was kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog, and shall be liable for the injury unless he proves that he was not the owner of the dog at that time :

Provided that where there are more occupiers than one in any house or premises let in separate apartments or lodgings, or otherwise, the occupier of that particular part of the house or premises in which the dog has been kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog.

(4) in this article :—

"cattle" includes horses, mules, asses, sheep, goats and swine ;

"poultry" includes domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons.

989B. (1) It shall not be a defence to an action against a defendant for damage in respect of personal injuries caused by the wrongful act, neglect or default of a person employed by the defendant, that that person was at the time of the occurrence which caused the injuries in common employment with the plaintiff.

(2) Every provision in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this article) is void in so far as it has the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the wrongful act, neglect or default of any person in common employment with him.

(3) In this article, "personal injuries" includes any disease and any impairment of a person's physical or mental condition.

(4) This article binds the Crown.

989C. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not) —

(*a*) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage ;

(*b*) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the succession, or of the wife, husband, parent or child, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise), the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given, and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the Court is of opinion that there was reasonable ground for bringing the action ;

(*c*) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-

feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this article from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this article the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage, and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this article —

(*a*) the expression "parent" and "child" have the meanings given to them in article 988 of this Code;

(*b*) the reference in this article to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this article shall —

(*a*) affect any criminal proceedings against any person in respect of any wrongful act; or

(*b*) render enforceable any agreement for indemnity which would not have been enforceable if this article had not been enacted.

989D. (1) In this article, —

"court" means, in relation to any claim the Court or arbitrator by or before whom the claim falls to be determined;

"employer" and "workman" have the same meaning as in the Workmen's Compensation Ordinance;

"fault" means negligence, breach of statutory duty or other duty or other act or omission which gives rise

to a liability in tort or would, apart from this article, give rise to the defence of contributory negligence.

(2) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

Provided that —

(*a*) this paragraph shall not operate to defeat any defences arising under a contract ;

(*b*) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this paragraph shall not exceed the maximum limits so applicable.

(3) Where damages are recoverable by any person by virtue of the foregoing paragraph subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(4) Article 989C (which relates to proceedings against, and contribution between, joint and several tort-feasors) shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of paragraph (1) of this article in respect of the damages suffered by any person.

(5) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the succession under article 609, the damages recoverable would be reduced under paragraph (2) of this article, any damages recoverable in an action brought for the benefit of the wife or husband, parent and child of the person

under paragraphs (2) and (3) of article 988 shall be reduced to a proportionate extent.

(6) Where, in any case to which paragraph (2) of this article applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading prescription under this Code, or any other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said paragraph.

(7) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932, (22 & 23, Geo. 5, c. 36), (which empowers a Court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person), shall have effect subject to the provisions of this article.

989E. Article 989D shall not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if this article had not been passed.

989F. For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

989G. Words spoken and published which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable :

Provided that in any action for words spoken and made actionable by this article, a plaintiff shall not recover more costs than damages, unless the Judge certifies that there was reasonable ground for bringing the action.

989H. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege

or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

989I. (1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage —

(*a*) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form ; or

(*b*) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Article 989F shall apply for the purposes of this article as it applies for the purposes of the law of libel and slander.

989J. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this article ; and in any such case —

(*a*) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication) ;

(*b*) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this article, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff

and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this article must be expressed to be made for the purposes of this article, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved ; and for the purposes of a defence under subparagraph (*b*) of paragraph (1) of this article no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this article shall be understood to mean an offer —

(*a*) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words ;

(*b*) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this article is accepted by the party aggrieved —

(*a*) any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the Supreme Court, whose decision thereon shall be final ;

(*b*) the power of the Court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the

publication in question, or in proceedings in respect of the offer under subparagraph (*a*) of this paragraph, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question ;

and if no such proceedings as aforesaid are taken, the Supreme Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this article words shall be treated as published by one person (in this paragraph referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say —

(*a*) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him ; or

(*b*) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case that the publisher exercised all reasonable care in relation to the publication ; and any reference in this paragraph to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Subparagraph (*b*) of paragraph (1) of this article shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

989K. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that

the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

989L. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

989M. A fair and accurate report in any newspaper of proceedings publicly heard before any Court exercising judicial authority in the Colony shall, if published contemporaneously with such proceedings, be privileged :

Provided that nothing in this article shall authorise the publication of any blasphemous or indecent matter.

989N. (1) Subject to the provisions of this article, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Chapter shall be privileged unless the publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Chapter, the provisions of this article shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this article shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this article shall be construed as limiting or abridging any privilege subsisting immediately before the commencement of this article.

(5) In this article the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the Colony either periodically or in parts or numbers at intervals not exceeding thirty-six days.

989O. A defamatory statement published by or on behalf of a candidate in any election to a local government authority or to the Legislature shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

989P. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

989Q. (1) It shall be competent for a Judge or the Court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together, and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(2) In a consolidated action under this article the Court shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against

each defendant in the same way as if the actions consolidated had been tried separately, and if the Court finds a verdict against the defendant or defendants in more than one of the actions so consolidated, it shall proceed to apportion the amount of damages which it so finds between and against the said last-mentioned defendants, and the Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he deems just for the apportionment of such costs between and against such defendants.

989R. In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

989S. Article 989Q shall apply to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to actions for libel; and references in that article to the same, or substantially the same, libel shall be construed accordingly.

Article 989N.

SCHEDULE.

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE.

PART I.

STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION.

1. A fair and accurate report of any proceeding in public of the legislature of any part of Her Majesty's dominions outside Great Britain.

2. A fair and accurate report of any proceedings in public of an international organisation of which the United Kingdom or Her Majesty's Government in the United Kingdom is a member, or of any international conference to which that government sends a representative.

3. A fair and accurate report of any proceedings in public of an international court.

4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside the United Kingdom, or of any proceedings before a court-martial held outside the United Kingdom under the Naval Discipline Act, the Army Act or the Air Force Act.

5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the government or legislature of any part of Her Majesty's dominions outside the United Kingdom.

6. A fair and accurate copy of or extract from any register kept in pursuance of any statute which is open to inspection by the public, or of any other document which is required by the law of any part of the Colony to be open to inspection by the public.

7. A notice or advertisement published by or on the authority of any Court within the Colony or any Judge or officer of such a Court.

PART II.

STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION.

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or governing body thereof, that is to say—

(*a*) an association formed in the Colony for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication;

(*b*) an association formed in the Colony for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(*c*) an association formed in the Colony for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

9. A fair and accurate report of the proceedings at any public meeting held in the Colony, that is to say, a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

10. A fair and accurate report of the proceedings at any meeting or sitting in any part of the Colony of —

(*a*) any local authority or committee of a local authority or local authorities ;

(*b*) any justice or justices of the peace acting otherwise than as a court exercising judicial authority ;

(*c*) any commission, tribunal, committee or person appointed for the purposes of any inquiry by statute, by the Governor or by a Minister ;

(*d*) any person appointed by a local authority to hold a local inquiry in pursuance of any statute ;

(*e*) any other tribunal, board, committee or body constituted by or under, and exercising functions under, a statute,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any statute or incorporated by Royal Charter, not being a private company within the meaning of the Commercial Code.

12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of state, local authority or chief officer of police.

PART III.

INTERPRETATION.

13. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say :—

"international court" means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States ;

"legislature" in relation to any territory comprised in Her Majesty's dominions which is subject to a central and a local legislature, means either of those legislatures;

"local authority" means the Castries Town Council or any authority or body to which the Local Authorities Ordinance applies;

"part of Her Majesty's dominions" means the whole of any territory within those dominions which is subject to a separate legislature.

CHAPTER FOURTH

OBLIGATIONS WHICH ARISE FROM OTHER CAUSES THAN THOSE HITHERTO SPECIFIED.

990. Besides the obligations arising as hitherto described (that is, from contracts, quasi-contracts, delicts and quasi-delicts) there are others which have their origin in special enactments, or in the relation existing between one person and another independently of the act or will of either, or in both of these causes combined.

Such are obligations attaching to the position or condition —

Of Public officers;

Of Traders;

Of Parents;

Of Children, as (*e.g.*), that of a child to furnish the necessaries of life to an indigent parent;

Of tutors and other administrators who are compelled to act as such, and of owners of adjoining properties; and the obligations consequent upon fortuitous events.

CHAPTER FIFTH.

SUBJECT OF OBLIGATIONS.

991. Every obligation must have for its subject something to be given, to be done, or not to be done.

992. An obligation must have for its subject something determinate at least as to its kind.

The quantity may be uncertain, provided it be capable of being ascertained.

993. Future things may be the subject of an obligation.

But a person cannot, except in a marriage contract, renounce a succession not yet devolved, nor make any stipulation with regard to it, even with the consent of him whose succession is in question.

994. The subject of an obligation must be something possible and not forbidden by law or good morals.

CHAPTER SIXTH.

EFFECT OF OBLIGATIONS.

SECTION I.

GENERAL PROVISIONS.

995. An obligation to give involves the obligation to deliver the thing and to keep it safe until delivery. The obligation to keep the thing safely obliges the person charged therewith to keep it with all the care of a prudent administrator.

996. Every obligation renders the debtor liable in damages for breach or non-fulfilment of it.

997. The creditor may without prejudice to his claim for damages, demand specific performance or fulfilment in a case which admits of it, or that he may be authorised to execute the obligation at the debtor's expense, or that the contract that gives rise to the obligation be set aside, subject to the special provisions of this Code.

998. The creditor may without prejudice to his claim for damages, obtain the undoing at the debtor's expense of what

has been done in a breach of the obligation, if the nature of the case permit.

SECTION II.

DEFAULTS.

999. The debtor is placed in default either by the terms of the contract, through the lapse of the time specified for its performance; or by the mere operation of law; or by the commencement of a suit, or by a demand which must be in writing except in the case of a verbal contract.

1000. The debtor is also in default, when the thing which he has bound himself to give or to do could only have been given or done within a time which he has allowed to expire.

SECTION III.

DAMAGES FOR NON-FULFILMENT OF OBLIGATIONS.

1001. Damages are not due for non-fulfilment of an obligation until there has been default under some one of the provisions of the preceding section. But he who does what he is bound not to do incurs by the mere doing liability to damages, and is thus deemed to be in default.

1002. The debtor, though in good faith, is liable to damages in all cases in which he fails to establish that the non-fulfilment of an obligation proceeds from a cause which cannot be imputed to him.

1003. The debtor is not liable to damages when the non-fulfilment of an obligation is caused by a fortuitous event or by irresistible force, without any fault on his part, unless, by the special terms of the contract, he is liable, notwithstanding the occurrence of these contingencies.

1004. The damages due to the creditor are in general the amount of the loss that he has sustained and of the profit of which he has been deprived; subject to the exceptions and modifications contained in the following articles of this section.

1005. The debtor is liable only for the damages which have been foreseen or might have been foreseen at the time of contracting the obligation, when his non-fulfilment of it is not accompanied by fraud.

1006. Even in the case in which the non-fulfilment of an obligation results from the fraud of the debtor, the damages are measured only by the immediate and direct consequence of the non-fulfilment.

1007. When it is stipulated that a certain sum shall be paid for damages for the non-fulfilment of an obligation, the Court, in its discretion, may reduce the amount in case of partial fulfilment or where the full amount is wholly disproportionate to the injury.

1008. The damages resulting from delay in the payment of money, to which the debtor is liable, consist only of interest at the rate legally agreed upon by the parties, or, in the absence of such agreement, at the rate fixed by law.

These damages are due without the creditor being obliged to prove any loss. They are due from the day of the default only, except where, from the nature of the obligation, the law otherwise provides.

This article does not affect the special rules applicable to bills of exchange and contracts of suretyship.

1009. Interest accrued from capital sums also bears interest :

1. When there is a special agreement to that effect ;

2. When in any action brought such interest is specially demanded ;

3. When a tutor has received or ought to have received interest upon the monies of his pupil and has failed to invest it within the term prescribed by law.

1009A. (Ad. 34-1956). In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment :

Provided that nothing in this article —

(*a*) shall authorise the giving of interest upon interest, except in the cases mentioned in article 1009 ; or

(*b*) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise ; or

(*c*) shall affect the damages recoverable for the dishonour of a bill of exchange.

CHAPTER SEVENTH.

DIFFERENT KINDS OF OBLIGATIONS.

SECTION I.

CONDITIONAL OBLIGATIONS.

1010. An obligation is conditional when it is made to depend upon an event future and uncertain, so as to be either in suspense or dissolved by the occurrence or non-occurrence of the event.

When an obligation depends upon an event which has actually happened, but is unknown to the parties, it is not conditional. It takes effect or is void from the time of contract.

1011. Every condition contrary to law or inconsistent with good morals is void, and renders void the obligation which depends upon it.

An obligation is also void which is made to depend upon the doing or happening of an impossibility.

1012. An obligation is void which is conditional on the mere will of the debtor ; but it is otherwise if the condition consist in the doing or not doing of a certain act, although such act be dependent on his will.

1013. If there be no time fixed for the fulfilment of a condition, it may always be fulfilled ; and it is not deemed to have failed until it has become certain that it will not be fulfilled.

1014. When an obligation is contracted under the condition that an event will not happen within a fixed time, such condition is fulfilled by the expiration of the time without the event having occurred. It is equally so if before the time has expired it become certain that the event will not happen. If there be no time fixed, the condition is not deemed fulfilled until it is certain that the event will not happen.

1015. A conditional obligation becomes absolute when the party bound under the condition prevents its fulfilment.

1016 The fulfilment of the condition has a retroactive effect from the day on which the obligation has been contracted. If the creditor be dead before the fulfilment of the condition, his rights pass to his heirs or legal representatives.

1017. The creditor, before the fulfilment of the condition, or the debtor, before the discharge of the obligation, may do all acts for preserving his rights.

1018. When an obligation to deliver has been contracted under a suspensive condition, the debtor is bound to deliver upon the fulfilment of the condition.

If, without the fault of the debtor, the article to be delivered have altogether perished or can no longer be delivered, no obligation exists.

If it be deteriorated without the fault of the debtor, the creditor must receive it in the state in which it is without diminution of price.

If it be deteriorated by the fault of the debtor, the creditor may either exact the thing in the state in which it is, or demand the dissolution of the contract, with damages in either case.

1019. The dissolution of the contract that takes place through a resolutive condition, obliges each party to restore what he has received, and replaces things in the same state as if the contract had not existed; subject nevertheless to the rules of the last preceding article with respect to things which have perished or become deteriorated.

SECTION II.

OBLIGATIONS WITH A TERM.

1020. A term differs from a suspensive condition inasmuch as it does not suspend the obligation, but only delays its fulfilment.

1021. That which is due with a term of payment cannot be exacted before the expiration of the term; but that which has been paid in advance voluntarily and without error or fraud cannot be recovered.

1022. The term is presumed to be stipulated in favour of the debtor, unless, from the stipulation or the circumstances, it appears that it has been agreed upon in favour of the creditor also.

1023. The debtor cannot claim the benefit of the term when he has become bankrupt or insolvent, or has by his own act diminished the security given to his creditor by the contract.

SECTION III.

ALTERNATIVE OBLIGATIONS.

1024. When an obligation is alternative the debtor is discharged by giving or doing one of the two things to which the obligation refers; but he cannot compel the creditor to accept a part of one and a part of the other.

1025. The option belongs to the debtor unless it has been expressly granted to the creditor.

1026. An obligation is simple although contracted in an alternative form, if one of the two things promised could not be the object of the obligation.

1027. If one of the things promised in an alternative obligation should perish, or can no longer be delivered, whether or not owing to the fault of the debtor, its value cannot be offered instead, and the obligation becomes applicable solely to the other.

If both things have perished or can no longer be delivered, and the debtor be in fault with respect to one of them, he must pay the value of that which remained last.

1028. If the choice of alternatives rests with the creditor, when one of the two things cannot be delivered, and there is no fault on the part of the debtor, the creditor must take the other; but when the debtor is in fault, the creditor may demand that which remains or the value of the other.

When neither thing can be delivered and the debtor is in fault in respect of either or both, the creditor may demand the value of either.

1029. If both things have perished, the obligation is extinguished in the cases and subject to the conditions provided in article 1130.

1030. The rules contained in the articles of this section apply to cases where the alternative obligation comprises more than two things, or has for its object to do or not to do some thing.

SECTION IV.

JOINT AND SEVERAL OBLIGATIONS.

§ 1. *Joint and Several Interest among Creditors.*

1031. A joint and several interest among creditors gives to to each of them singly the right of exacting the fulfilment of the whole obligation and of discharging the debtor.

1032. The debtor has the option of paying to either of the joint and several creditors, so long as he is not prevented by a suit instituted by one of them.

Nevertheless, if one of the creditors grant a release from the obligation, without its actual fulfilment, the debtor is discharged for the part only of such creditor. The same rule applies to all cases in which the debt is extinguished otherwise than by actual payment. But this rule is subject to those concerning commercial partnerships.

1033. The rules concerning the interruption of prescription in relation to joint and several creditors are contained in the Book respecting *Prescription.*

§ 2. *Debtors Jointly and Severally Bound.*

1034. There is a joint and several obligation on the part of the co-debtors when they are all bound, so that each of them singly may be compelled to the fulfilment of the whole obligation, and that the fulfilment of one discharges the others.

1035. An obligation may be joint and several although one of the co-debtors be bound differently from the others; for example, if one be bound conditionally while the

obligation of the other is unconditional, or if one be allowed a term which is not granted to the other.

1036. An obligation on the part of two or more debtors is presumed to be joint and several, unless declared to be otherwise.

1037. The obligation arising from the common delict or quasi-delict of two or more persons is joint and several.

1038. The creditor of a joint and several obligation may apply for payment to any one of the debtors and such debtor cannot claim division of liability.

1039. Legal proceedings taken against one of the co-debtors do not prevent the creditor from taking similar proceedings against the others.

1040. If the thing due have perished or can no longer be delivered, through the fault of one or more of the joint and several debtors, or after he or they have become in default, the other co-debtors are bound to pay the price of the thing, but are not liable for damages.

The creditor can recover damages only from the co-debtors through whose fault the thing has perished or can no longer be delivered, and those in default.

1041. The rules concerning the interruption of prescription in relation to joint and several debtors are contained in the Book respecting *Prescription.*

1042. A demand of interest made against one of the co-debtors causes interest to run against all.

1043. A joint and several debtor sued by the creditor may plead all the exceptions which are personal to himself as well as are common to all the co-debtors.

He cannot plead such exceptions as are purely personal to one or more of the others.

1044. When one of the co-debtors becomes heir or legal representative of the creditor, or when the creditor becomes heir or legal representative of one of the co-debtors, the confusion extinguishes the joint and several debt only for the part and portion of such co-debtor.

1045. The creditor who consents to the division of the debt with regard to one of the co-debtors, preserves his joint and several right against the others for the whole debt.

1046. A creditor who receives separately the share of one of his co-debtors, so specified in the receipt and without reserve of his rights, renounces the joint and several obligation with regard only to such co-debtor.

The creditor is not deemed to discharge the debtor from his joint and several obligation when he receives from him a sum equal to the share for which he is bound, unless the receipt specifies that it is for his share.

The rule is the same with regard to a demand made against one of the co-debtors for his share, if the latter have not acquiesced in the demand, or if a judgment of condemnation have not intervened.

1047. The creditor who receives separately and without reserve the share of one of the co-debtors in the arrears or interest of the debt, loses his joint and several right only for the arrears and interests accrued and not for those which may in future accrue, nor for the capital, unless the separate payment has been continued during ten consecutive years.

1048. The obligation contracted jointly and severally toward the creditor is divided of right among the co-debtors, who as between themselves are bound each for his own share only.

1049. The co-debtor of a joint and several debt who has paid it in full, can only recover from the others the share and portion of each, even though he be specially subrogated in the rights of the creditor.

If one of the co-debtors be found insolvent, the loss occasioned by his insolvency is apportioned among all the others, including him who has made the payment.

1050. If the creditor have renounced his joint and several action against one of the debtors, and one or more of the remaining co-debtors become insolvent, the shares of the insolvents are made up by contribution from all the other co-debtors, except the one discharged, whose part is borne by the creditor.

1051. If a debt has been jointly and severally incurred for the benefit of only one of the co-debtors, he is liable for the whole toward his co-debtors, who, in relation to him, are considered only as his sureties.

SECTION V.

DIVISIBLE AND INDIVISIBLE OBLIGATIONS.

1052. An obligation is divisible when its fulfilment is susceptible of division either material or intellectual.

1053. A divisible obligation must be performed between the creditor and the debtor, as if indivisible. The divisibility takes effect only with their heirs or legal representatives, who, on the one hand, cannot enforce the obligation, and, on the other, are not liable for the fulfilment except in the proportions in which they respectively represent the creditor or the debtor.

1054. The rule of the last preceding article is subject to exception with respect to the heirs and legal representatives of the debtor, and the obligation must be performed as if it were indivisible in the three following cases :

1. When the subject of the obligation is a certain specific thing of which one of them is in possession ;

2. When one of them alone is charged by the title with the performance of the obligation ;

3. When the intention of the contracting parties that the obligation should not be performed in parts operates, either from the nature or object of the contract or from the end proposed by it.

In the first case he who possesses the thing due, in the second case he who is alone charged, and in the third case each of the coheirs or legal representatives, may be sued alone in respect of the whole obligation. But he who discharges the obligation may nevertheless have recourse against the others.

1055. An obligation is indivisible :

1. When its subject is by its nature insusceptible of division, either material or intellectual ;

2. When the subject, although divisible by its nature, yet from the character given to it by the contract, becomes insusceptible not only of fulfilment in parts but also of division.

1056. The stipulation of joint and several liability does not give to an obligation the character of indivisibility.

1057. Each one of those who have contracted an indivisible obligation is liable in respect of the whole although the obligation have not been contracted jointly and severally ; but the fulfilment by one discharges all as regards the creditor.

1058. The heirs and legal representatives of him who has contracted an indivisible obligation are liable jointly and severally for its fulfilment.

1059. The obligation to pay damages resulting from the non-fulfilment of an indivisible obligation is divisible.

But if the non-fulfilment have been caused by the fault of one of the co-debtors, or of one of the coheirs or legal representatives, the whole amount of damages may be demanded of such co-debtor, heir or legal representative.

1060. Each coheir or legal representative of the creditor may exact in full the fulfilment of an indivisible obligation.

He cannot alone release the whole of the debt, or receive the value instead of the thing itself ; if one of the coheirs or legal representatives have alone released the debt or received the value of the thing, the others cannot demand the indivisible thing without making allowance for the portion of him who has made the release or who has received the value.

1061. The heir or legal representative of the debtor sued for the whole of an indivisible obligation may demand delay to make the coheirs or other legal representatives parties to the suit, unless the debt is of such a nature that it can be discharged only by the one so sued, who may in such case be condemned alone ; having however recourse against the others.

SECTION VI.

OBLIGATIONS WITH A PENAL CLAUSE.

1062. A penal clause is a secondary obligation by which a person binds himself to pay a penalty in case of his non-performance of the primary one.

1063. The nullity of the primary obligation carries with it that of the penal clause. The nullity of the latter does not carry with it that of the primary obligation.

1064. The creditor may enforce the performance of the primary obligation, if he so elect instead of demanding the penalty ;

But he cannot demand both, unless the penalty has been stipulated for a mere delay in the performance of the primary obligation.

1065. The penalty is not incurred until the debtor is in default of fulfilling the primary obligation, or has done what he has bound himself not to do.

1066. The amount of penalty may be reduced by the Court in case of partial fulfilment, or where the full amount would be wholly disproportionate to the injury.

1067. When the primary obligation contracted with a penal clause is indivisible, the penalty is incurred upon the contravention of it by any one of the heirs or other legal representatives of the debtor ; and it may be demanded in full against him who has contravened it, or against each one of them for his share and portion, and hypothecarily for the whole ; saving their recourse against him who has caused the penalty to be so incurred.

1068. When the primary obligation contracted with a penalty is divisible, the penalty is incurred only by that one of the heirs or other legal representatives of the debtor who contravenes the obligation, and for the part only of the primary obligation which applies to him, there being no action against those who have fulfilled their part.

But when the penal clause has been added with the intention that the payment should not be made in parts, and one of the coheirs or other legal representatives has prevented the fulfilment of the obligation for the whole ; in this case he is liable for the entire penalty. The others are liable for their respective shares only, but have their recourse against him.

CHAPTER EIGHTH.

THE EXTINCTION OF OBLIGATIONS.

SECTION I.

GENERAL PROVISIONS.

1069. An obligation becomes extinct :

By payment ;

By novation ;

By release ;

By set-off ;

By confusion ;

When its performance becomes impossible ;

By judgment of nullification or rescission ;

By the effect of the resolutive condition, which has been explained in the preceding and introductory Chapter ;

By prescription ;

By the expiration of the time prescribed by law or by the parties for its duration ;

By the death of the debtor or creditor in certain cases ;

By special causes applicable to particular contracts which are explained under their respective heads.

SECTION II.

PAYMENT.

§ 1. *General Provisions.*

1070. The term payment does not necessarily refer to money, but means any fulfilment of obligation.

1071. Every payment presupposes a debt ; what has been paid where there is no debt may be recovered.

What has been paid in voluntary discharge of a natural obligation is deemed as payment of a debt.

1072. Payment may be made by any person, although he be a stranger to the obligation, and the creditor may be put in default by the offer of a stranger to fulfil the obligation without the debtor's knowledge, but the offer must be for the advantage of the debtor, and not merely for having the effect of changing the creditor.

1073. If the obligation be to do something which the creditor has an interest in having done by the debtor himself, the obligation cannot be fulfilled by a stranger to it without the consent of the creditor.

1074. Payment to be valid must be made by one having a legal right in the thing paid which entitles him to give it in payment.

Nevertheless if a sum of money or other thing of a nature to be consumed by use be given in payment, it cannot be reclaimed from the creditor who has consumed it in good faith, although the payment have been made by one who was not the owner nor capable of alienating it.

1075. Payment must be made to the creditor or to some one having his authority, or authorised by a court of justice or by law to receive it for him.

Payment made to a person who has no authority to receive it is valid, if the creditor have ratified the payment or profited by it.

1076. Payment made in good faith to the ostensible creditor is valid, although it be afterwards established that he is not the rightful creditor.

1077. Payment is not valid if made to a creditor who is incapable by law of receiving it, unless the debtor proves that the creditor has benefited by it.

1078. Payment made by a debtor to his creditor to the prejudice of a seizure or attachment is not valid against the seizing or attaching creditors. They may, according to their rights, constrain the debtor to pay a second time ; in which case he has his remedy against the creditor so paid.

1079. A creditor can be compelled to receive only that which is due to him, although that which is offered be of greater value.

1080. A debtor cannot compel his creditor to receive payment of his debt in parts, even if the debt be divisible.

1081. The debtor of a certain specific thing is discharged by the delivery of the thing in the condition in which it is

at the time of delivery, provided that the deterioration in the thing has not been caused by any act or fault for which he is responsible, and that he was not in default before the deterioration.

1082. Where a thing to be delivered is specified in kind only, without mention of quality, the debtor cannot be required to give the best quality, nor can he offer the worst.

The thing must be of a merchantable quality.

1083. (Am. 34-1956). Payment must be made in the place expressly or impliedly indicated in the obligation.

If no place be so indicated, the payment, when it is of a certain specific thing, must be made at the place where the thing was at the time of contract.

In other cases payment must be made at the domicile of the creditor; subject, nevertheless, to the rules provided respecting particular contracts.

1084. The debtor is liable for the expenses attending payment.

§ 2. *Payment with Subrogation.*

1085. Subrogation in the rights of a creditor in favour of a third person who pays him, is either conventional or legal.

1086. Subrogation is conventional :

1. When the creditor, on receiving payment from a third person, subrogates him in all his rights against the debtor. This subrogation must be express and made at the same time as the payment.

2. When the debtor borrows a sum for the purpose of paying his debt, and of subrogating the lender in the rights of the creditor. It is necessary to the validity of the subrogation in this case, that the act of loan and the acquittance be notarial, or be executed before two subscribing witnesses ; that in the act of loan it be declared that the sum has been

borrowed for the purpose of paying the debt, and that in the acquittance it be declared that the payment has been made with the monies furnished by the new creditor for that purpose. This subrogation takes effect without the consent of the creditor.

If the act of loan and the acquittance be executed before witnesses, the subrogation takes effect against third persons only from the date of registration, which is to be made in the manner and according to the rules provided by law for the registration of hypothecs.

1087. (Am. 34-1956). Subrogation takes place by the mere operation of law :

1. In favour of a creditor who pays a privileged creditor.

2. In favour of the purchaser of immovable property who pays a creditor to whom the property is hypothecated ;

3. In favour of one who pays a debt for which he is liable with others or for others, and has an interest in paying it ;

4. When a rent or debt due by one spouse alone has been redeemed or paid with the monies of the community. In this case the other spouse is subrogated in the rights of the creditor according to the share of such spouse in the community.

1088. The subrogation mentioned in the preceding articles takes effect as well against sureties as against principal debtors. It cannot prejudice the rights of the creditor when he has been paid in part only ; in such case he may enforce his rights for whatever remains due, in preference to him from whom he has received payment in part.

§ 3. *The Application of Payments.*

1089. A debtor of several debts has the right of declaring, when he pays, what debt he means to discharge.

1090. A debtor of a debt which bears interest or produces rent, cannot require the application of a payment to the

discharge of capital in preference to the arrears of interest or rent. Any payment which is not in full satisfaction of the capital and interest due is applied first to the interest.

1091. When a debtor of several debts has accepted a receipt by which the creditor has applied a payment to one of the debts, the debtor cannot afterwards require its application to a different debt, except upon grounds for which contracts may be avoided.

1092. When the receipt mentions no special application, the payment must be applied to the debt which the debtor has the greater interest in paying at the time. If of several debts one alone be payable, the payment must be applied to it although it be less burdensome than those which are not yet payable.

If the debts be of like nature and equally burdensome, the application is made on the oldest.

All things being equal, it is made proportionally on each.

§ 4. *Tender and Deposit.*

1093. When a creditor refuses to receive payment, the debtor may make an actual tender of what is due ; and in any action afterwards brought for its recovery he may plead and renew the tender, and if that which is due be a sum of money, may deposit the amount in Court ; and such tender, or such tender and deposit, if that which is due be a sum of money, are equivalent with respect to the debtor to a payment made at the date of the first tender ; provided that from the date of the first tender the debtor continue always ready and willing to make the payment.

1094. A tender to be valid must :—

1. Be made to a creditor legally capable of receiving payment or to some one having authority to receive for him ;

2. Be made on the part of a person legally capable of paying ;

3. Be of the whole sum of money or other thing due, and of all arrears of rent and interest, and all liquidated costs, with a sum for costs not liquidated, saving the right to make up any deficiency in the same ;

4. If of money, be made in coin that is legal tender ;

5. Be made after the term of payment has expired if stipulated in favour of the creditor ;

6. And after the fulfilment of the condition under which the debt has been contracted ;

7. And at the place where, according to the terms of the obligation or by law, payment should be made.

1095. If, by the terms of the obligation or by law, payment is to be made at the domicile of the debtor, a notification in writing by him to the creditor that he is ready to make payment, has the same effect as an actual tender, provided that in any action afterwards brought the debtor prove his power and readiness to pay what was due at the time when and the place where it was payable.

When a creditor is absent from the Colony and the debtor has no notice of the appointment of an attorney to receive the debt, the notification may be made in the *Gazette*.

1096. If a certain specific thing be deliverable on the spot where it is, the debtor must by his tender require the creditor to come and take it there.

If the thing be not so deliverable and be from its nature difficult of transportation, the debtor must indicate by his tender the place where it is and the day and hour when he is ready to deliver it at the place where payment ought to be made.

If the creditor fail in the former case to take the thing away, or in the latter to signify his willingness to accept, the debtor may, if he think fit, remove the thing to any other place for safe-keeping at the risk of the creditor.

1097. So long as the tender and deposit have not been accepted by the creditor, the debtor may withdraw them by leave of the Court, in the manner provided in the Code of Civil Procedure, and if he do so his co-debtors or sureties are not discharged.

1098. When the tender and deposit have been declared valid by the Court, the debtor cannot, even with the consent of the creditor, withdraw them to the prejudice of his co-debtors or sureties or other third persons.

1099. The mode in which tenders and deposits must be made is provided in the Code of Civil Procedure.

SECTION III.

NOVATION.

1100. Novation is effected :

1. When the debtor contracts toward his creditor a new debt which is substituted for a prior one, and the latter is extinguished ;

2. When a debtor is substituted for one who is discharged by the creditor ;

3. When by the effect of a new contract, a new creditor is substituted for one toward whom the debtor is discharged.

1101. Novation can be effected only between persons capable of contracting.

1102. Novation is not presumed. The intention to effect it must be evident.

1103. Novation by the substitution of a new debtor may be effected without the concurrence of the former one.

1104. The delegation by which the debtor gives to his creditor a new debtor does not effect novation, unless it is

evident that the creditor intends to discharge the debtor who makes the delegation.

1105. The simple indication by the debtor of a person who is to pay in his place, or the simple indication by the creditor of a person who is to receive in his place, or the transfer of a debt with or without the acceptance of the debtor, does not effect novation.

1106. A creditor who has discharged his debtor by whom delegation has been made, has no remedy, unless it be specially reserved, against such debtor, if the person delegated become insolvent.

1107. The privileges and hypothecs which attach to a prior debt do not pass to the one which is substituted for it, unless the creditor has made express reservation.

1108. When novation is effected by the substitution of a new debtor, the original privileges and hypothecs cannot be transferred to the property of the new debtor, nor can they, without the concurrence of the former debtor, be reserved upon the property of the latter.

1109. When novation is effected between the creditor and one of joint and several debtors, the privilege which attaches to the prior debt is reserved only with respect to the property of the co-debtor who contracts the new debt.

1110. Joint and several debtors are discharged by novation effected between the creditor and one of the co-debtors.

Novation effected with respect to the principal debtor discharges his sureties.

Nevertheless, if the creditor have stipulated in the first case, for the consent of the co-debtors, and in the second, for that of the sureties, the prior debt subsists if the co-debtors or the sureties refuse consent.

1111. The debtor consenting to be delegated cannot use against his new creditor the exceptions which he might have set up against the delegator, although at the time of the delegation he were ignorant of such exceptions.

The foregoing rule does not apply if at the time of the delegation nothing be due to the new creditor, and is without prejudice to the recourse of the delegated against the delegator.

SECTION IV.

RELEASE.

1112. The release of an obligation may be made either expressly or tacitly by persons legally capable of alienating.

It is made tacitly unless there is proof of a contrary intention, when the creditor voluntarily surrenders to his debtor what would be primary evidence of the obligation.

1113. The surrender of a pledge does not create a presumption of the release of the debt.

1114. The surrender to one of joint and several debtors of what would be primary evidence of an obligation, is available in favour of his co-debtors.

1115. An express release granted in favour of one of joint and several debtors without fulfilment of the obligation does not discharge the others ; but the creditor must deduct from the debt the share of him whom he has released.

1116. An express release granted to the principal debtor discharges his sureties.

If granted to the surety, it does not discharge the principal debtor.

If granted to one of several sureties it does not discharge the others, except in cases in which the latter would have a recourse upon the one released and to the extent of such recourse.

SECTION V.

SET-OFF.

1117. When two persons are mutually debtor and creditor of each other, both debts are extinguished by set-off in the cases and manner hereinafter mentioned.

1118. Set-off takes place by the mere operation of law between debts which are due and liquidated and are each in respect of a sum of money or a certain quantity of indeterminate things of the same kind and quality.

So soon as the debts exist simultaneously they are extinguished in so far as their respective amounts correspond.

1119. Set-off is not prevented by a term granted by indulgence for the payment of one of the debts.

1120. Set-off takes place whatever be the cause or consideration of the debts or of either of them, except in the following cases :

1. The demand for restitution of a thing of which the owner has been unjustly deprived ;

2. The demand for restitution of a deposit ;

3. A debt in respect of an alimentary provision not liable to seizure.

1121. The surety may avail himself of the set-off which takes place when the creditor owes the principal debtor.

But the principal debtor cannot plead set-off in respect of the debt of the creditor to the surety.

A joint and several debtor cannot plead set-off in respect of what the creditor owes to his co-debtor, except as to the share of the latter in the joint and several debt.

1122. A debtor who accepts an assignment made by the creditor to a third person, cannot afterwards plead against

the assignee the set-off which before the acceptance he might have pleaded against the assignor.

An assignment not accepted by the debtor, but of which due notification has been given to him, prevents set-off only in respect of the debts due by the assignor posterior to such notification.

1123. When the two debts are payable at different places, set-off cannot be pleaded without allowance for the expense of remittance.

1124. When set-off by the mere operation of law is prevented by any of the causes mentioned in this section, or by others of a like nature, the party in whose favour the cause of objection exists may alone demand the set-off by exception ; and in such case the set-off takes place only from the time of pleading the exception.

1125. When there are several debts subject to set-off due by the same person, the set-off is governed by the rules provided for the application of payments.

1126. Set-off does not take place to the prejudice of the right of a third person.

1127. He who pays a debt which is of right extinguished by set-off, cannot afterwards in enforcing the debt in respect of which he has failed to plead set-off, avail himself, to the prejudice of a third person, of the privilege attached to such debt, unless there were just grounds for his ignorance of its existence at the time of payment.

1127A. (Ad. 34-1956). In addition to the cases in which set-off may be pleaded under the foregoing articles, set-off may be pleaded in all cases in which it may be pleaded by the law of England.

SECTION VI.

CONFUSION.

1128. When the characters of creditor and debtor are united in the same person, there arises a confusion which extinguishes the obligation. Nevertheless in certain cases when confusion ceases to exist, its effects cease also.

1129. The confusion which takes place by the concurrence of the characters of creditor and principal debtor in the same person, avails the sureties.

That which takes place by the concurrence of the characters of surety and creditor or of surety and principal debtor does not extinguish the principal obligation.

SECTION VII.

IMPOSSIBILITY OF PERFORMANCE.

1130. An obligation is extinguished when either the specific thing which is its subject perishes, or delivery of the thing becomes, from any other cause, impossible through no fault of the debtor and before he is in default, and also when, notwithstanding such fault or default, the thing would have equally perished or its delivery would have equally become impossible, if in the possession of the creditor, unless in either case the debtor has bound himself to take the risk of fortuitous events.

The debtor must prove the fortuitous event which he alleges.

The destruction of a thing stolen or the impossibility of delivering it does not discharge him who stole the thing, or him who knowingly received it, from the obligation to pay its value.

1131. When the performance of an obligation has become impossible through no fault of the debtor, he is bound to assign to the creditor such rights of indemnity as he may possess relating to the obligation.

1132. When the performance of an obligation to do has become impossible through no fault of the debtor and before he is in default, the obligation is extinguished and both parties are liberated; but if the obligation be performed in part, the creditor is bound to the extent of the benefit actually received.

1132A. (Ad. 34-1956). (1) Where a contract governed by the law of this Colony or by English law has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this article shall, subject to the provisions of article 1132B, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this and the following article referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which the last foregoing paragraph applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of

the said benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular, —

(*a*) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under the last foregoing paragraph, and

(*b*) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the foregoing provisions of this article, the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of the said provisions, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this article by any party to the contract, the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of paragraph (3) of this article any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

1132B. (1) Articles 1132A and 1132B shall apply to contracts to which the Crown is a party in like manner as to contracts between subjects.

(2) Where any contract to which the said articles apply contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the Court shall give effect to the said provision and shall only give effect to the foregoing article to such extent, if any, as appears to the Court to be consistent with the said provision.

(3) Where it appears to the Court that a part of any contract to which these articles apply can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat the foregoing article as only applicable to the remainder of that contract.

(4) Articles 1132A and 1132B shall not apply —

(*a*) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea ; or

(*b*) to any contract of insurance, save as is provided by paragraph (5) of the foregoing article ; or

(*c*) to any contract to which article 278 of the Commercial Code (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

CHAPTER NINTH.

PROOF.

SECTION I.

GENERAL PROVISIONS.

1133. The party who claims the fulfilment of an obligation must prove it.

On the other hand he who alleges facts in avoidance or extinction of an obligation must prove them; subject nevertheless to the special rules of this Chapter.

1134. The evidence produced must be the best of which the case in its nature is susceptible. This is called primary evidence.

Secondary evidence is inadmissible unless it is shown that the primary cannot be produced.

1135. Evidence is afforded by writing, by testimony, by presumptions, or by the confession of a party, or according to the rules of this Chapter and in the manner provided in the Code of Civil Procedure.

1136. The rules of this Chapter, where such intention may be inferred, apply in commercial affairs as well as others.

1137. (Subst. 34-1956). Any question relating to evidence, which is not covered by any provision of this Code or of any other statute, must be decided by the rules of evidence as established by the law of England.

SECTION II.

PROOF BY WRITING.

§ 1. *Authentic Writing.*

1138. (Am. 23-1916). The following writings executed or attested with the requisite formalities by a public officer having authority to execute or attest the same in the place

where he acts, are authentic and prove their contents without any evidence of the signature or seal upon them, or of the official character of such officer, that is to say :

Copies purporting to be printed by the duly authorised printer, of the acts of the Imperial Parliament, of the Orders in Council of the reigning or any former Sovereign, and any copies so printed of the ordinances of the Colony.

Letters-patent, commissions, proclamations, and other instruments issued by the reigning or any former Sovereign or by the Governor.

Official announcements in the London *Gazette* or official *Gazette* of the Colony.

The records, registers, journals and public documents of the several departments of the executive government and of the legislative council.

The records and registers of courts of justice and of judicial proceedings in the Colony.

All books and registers of a public character required by law to be kept by official persons.

The books, registers, by-laws, records and other documents and papers of corporations of a public character in the Colony.

Official copies and extracts of and from the books and writings above mentioned, certificates, and all other writings executed or attested in the Colony, which are included within the legal intendment of this article although not enumerated.

A notarial act or instrument done by or executed before a British diplomatic or consular officer exercising his functions in any place outside the Colony.

Official copies and extracts of and from such acts or instruments certified to be true by the officer having the legal custody of the original.

1139. (Am. 34-1956). A notarial instrument other than a will is authentic if signed by all the parties, though executed before only one notary.

If the parties or any of them be unable to sign, it is necessary to the authenticity of the instrument that it be executed by one notary, in the actual presence of another subscribing notary, or of a subscribing witness. No notary employed shall be related to either party within the degree of cousin-german.

The witnesses must be not less than twenty-one years of age, of sound mind, not related to either of the parties within the degree of cousin-german, without interest in the instrument, and not deemed infamous by law. Aliens may act as such witnesses.

This article is subject to the provisions contained in the next following article and to those relating to wills.

1140. Notifications, protests and services may be made by one notary, at the request of a party, and with or without his presence or signature.

Such instruments are authentic until impugned.

But nothing inserted in any such instrument as the answer of the party upon whom it is served is proof against him, unless signed by him.

1141. An authentic writing is complete proof between the parties to it and their heirs and legal representatives :

1. Of the obligation expresed in it ;

2. Of what is expressed in it by way of recital, if the recital have a direct reference to the obligation or to the subject of the instrument. If the recital be foreign to such obligation and to the subject of the instrument, it can serve only as a commencement of proof.

1142. An authentic writing may be impugned and set aside as false in whole or in part, upon an improbation in the manner provided in the Code of Civil Procedure and in no other manner.

1143. A counter-letter with respect to any writing has effect only between the parties to it. It is not evidence against third persons.

1144. An act of recognition is not evidence of the primordial title, unless the substance of the title is specially set forth in it.

Whatever the recognition contains over and above the primordial title, or different from it, is not evidence against it and does not qualify it.

1145. The ratification of an obligation which is voidable is not evidence of the obligation unless it expresses the substance of the obligation, the cause of its being voidable, and the intention to waive the nullity.

1146. The Judge has a discretion as to the manner of proof of laws other than those of the Imperial Parliament and of the Colony.

§ 2. *Copies of Authentic Writings.*

1147. Copies of notarial instruments, certified to be true copies of the original, by the notary or other public officer, who has the legal custody of the original, are authentic and prove the contents of the original.

1148. An extract duly certified and delivered by a notary or by the Registrar, from the original of an authentic instrument lawfully in his custody is authentic, and proves the contents of the original ; provided such extract contains the date, place of execution, and nature of the instrument, the names and description of the parties to it, the name of the notary before whom it was executed, the clauses or parts of clauses extracted at full length, and that mention be made on the paper containing the extract of the noting upon the original, the fact of the extract having been made, and the date on which it was made.

1149. When the original of any notarial instrument has been lost by unforeseen accident, a copy of an authentic copy thereof proves the contents of the original, provided that such copy be attested by the notary or other public officer with whom the authentic copy has been deposited by judicial authority for the purpose of granting copies thereof, as provided in the Code of Civil Procedure.

1150. Copies of notarial instruments and of extracts therefrom, of all authentic documents, whether judicial or not, of papers of record, and of all documents and instruments in writing, even those under private signature, or executed before witnesses, lawfully registered at full length, when such copies bear the certificate of the Registrar, prove the contents of such documents, if the originals have been destroyed by fire or other accident, or otherwise lost.

1151. The copy certified as in the preceding article also proves its contents, if the original document cannot be produced from being in the possession of an adverse party or of a third party, without collusion on the part of the person who relies upon it.

§ 3. *Certain Writings Executed out of the Colony.*

1152. (Am. 23-1916). The certificate of any British or foreign executive government, and the original documents and copies of documents hereinafter enumerated, executed out of the Colony, are *prima facie* evidence of the contents thereof, without any proof of the seal or signature upon them, or of the authority of the officer granting the same, namely:

1. A copy of any judgment or other judicial proceeding of any Court out of the Colony, under the seal of such Court, or under the signature of the officer having the legal custody of the record of such judgment or other judicial proceeding;

2. A copy certified by the Registrar of the Supreme Court of any will, probate, letters of administration, or like instrument, executed outside the Colony and recorded in his office;

3. A copy certified by the public officer, in whose custody the original is kept of any instrument, executed out of the Colony in any part of the world where by law the original remains in the custody of a public officer ;

4. A certificate of marriage, baptism, birth, or burial of a person married, baptised, born, or buried out of the Colony, under the hand of the clergyman or public officer who officiated, and extracts from a register of any such marriage, baptism, birth, or burial, certified by the clergyman or public officer having the legal custody of the register ;

5. Notarial copies of any power of attorney executed out of the Colony, in the presence of one or more witnesses, and authenticated before the mayor of the place or other public officer of the country where it bears date, the original whereof is deposited with the notary public in the Colony granting the copy ;

6. The copy taken by the Registrar of any power of attorney executed out of the Colony in the presence of one or more witnesses and authenticated before a mayor or any other public officer of the country where it bears date, such copy being taken in a cause wherein the original is produced by a witness who refuses to part with it, and being certified and deposited in the same cause ;

7. Notarial copies of any power of attorney, executed out of the Colony, in the presence of and authenticated by the mayor of the place or other public officer of the country where it bears date, the original whereof is deposited with the notary in the Colony granting the copy.

In this article " officer " or " public officer " includes a Judge or Registrar of a Court of record, a Magistrate, a notary public, a British diplomatic or consular officer, or any other officer exercising his functions in any place outside the Colony whose authentication the Judge or Registrar considers sufficient.

Where, however, the execution of any instrument mentioned in this article is in a place outside the British Dominions, if the public officer authenticating it is not a British diploma-

tic or consular officer, exercising his functions in such place, the signature of such public officer must be authenticated, by the official seal of the Court to which he is attached, or by the official seal of the Supreme Court of the country where the instrument was executed, or by the certificate of a British diplomatic or consular officer.

The copies, probates, certificates, or extracts, and the original powers of attorney mentioned in this article, are held to be genuine unless impugned, and the onus of proof lies upon the party impugning them. The manner of impugning these documents is set forth in the Code of Civil Procedure.

1152A. (Ad. 11-1936). For the purpose of this article unless the context otherwise requires, —

"British court in a foreign country" means any British court having jurisdiction out of Her Majesty's dominions in pursuance of an Order in Council, whether made under any Act or otherwise ;

"Court of probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate ;

"Her Majesty's dominions" includes any British protectorate or protected state and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Majesty ;

"Probate" and "Letters of Administration" include confirmation in Scotland, and any instrument having in any other part of Her Majesty's dominions the same effect which under English law or the law of the Colony of Saint Lucia is given to probate and letters of administration respectively, and any similar instrument having the same effect granted by a foreign court or other competent authority in any place not within Her Majesty's dominions ;

"Probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted.

Where a Court of Probate, in any part of Her Majesty's dominions, or a British Court in a foreign country, has, either before or after the passing of this article, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the Registrar of the Supreme Court, be sealed with the seal of that Court, and on being registered in the Registry of Deeds shall thereupon be of like force and effect, and have the same operation in the Colony as if granted by the Supreme Court.

For the purpose of this article the duplicate of any probate, letters of administration or other similar instrument, sealed with the seal of the Court or other competent authority granting the same, or a copy thereof certified as correct by or under the authority of the Court or other competent authority granting the same, shall have the same effect as the original.

In the case of probates, letters of administration or other similar instruments granted by a foreign Court or other competent authority in any place not within Her Majesty's dominions, a similar procedure may be followed and with the like effect. But in such case the due and proper authentication of any such probate or other instrument must in addition be proved by the certificate under the seal of a British diplomatic or consular officer exercising his functions in such place.

If any probate, letters or other like instrument mentioned in this article, or any will or other instrument thereto annexed, is not in the English or French language, a certified translation thereof into the English language authenticated by a person or authority competent under the provisions of this article to authenticate the instrument translated, or such other translation as the Judge or Registrar may consider sufficient and satisfactory, must also be produced and deposited in the Supreme Court.

An instrument authenticated in accordance with the provisions of this article is admissible as presumptive proof of the death of the deceased, and may before sealing in the Colony be used for succession duty purposes.

The Court shall, before sealing a probate or letters of administration granted by a Court of probate in any part of Her Majesty's dominions, or by a British Court in a foreign country, or a probate, or letters of administration or other similar instruments granted by a foreign Court or other competent authority in any place not within Her Majesty's dominions, be satisfied :

(*a*) that probate duty if leviable by any law for the time being in force has been paid or provided for in respect of so much, if any, of the estate as is liable to probate duty in the Colony ; and

(*b*) that the requirements of the Succession Duty Ordinance, in respect of any property within the Colony passing on the death of the deceased, have been complied with.

The Court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the Colony.

1152B. (Ad. 23-1916). Want of a seal is not of itself to invalidate any instrument mentioned in articles 1152 and 1152A, if the authenticating person or authority certifies that such person or authority has no seal, or if the Judge or Registrar is satisfied as to its authentication otherwise.

§ 4. *Private Writings.*

1153. A writing which is not authentic by reason of any defect of form, or of the incompetency of the officer, has effect as a private writing, if it have been signed by all the parties ; except in the case mentioned in article 831.

1154. Private writings acknowledged by the party against whom they are set up, or legally held to be acknowledged or proved, have the same effect as evidence between the parties thereto, and between their heirs and legal representatives, as authentic writings.

1155. If the party against whom a private writing is set up do not formally deny his writing or signature in the manner provided in the Code of Civil Procedure, it is held to be acknowledged. His heirs or legal representatives are only obliged to declare that they do not know his writing or signature.

1156. In the case of formal denial by a party of his writing or signature, or in the case of a declaration by his heirs or legal representatives that they do not know it, proof must be made in the manner provided in the Code of Civil Procedure.

1157. Private writings have no date against third persons but from the time of their registration in the book kept for that purpose by the Registrar, or from the death of one of the subscribing parties or witnesses, or from the day that the substance of the writing has been set forth in an authentic instrument.

The date may nevertheless be proved.

1158. The rule of the last preceding article does not apply to writings of a commercial nature. Such writings, in the absence of proof to the contrary, are presumed to have been made on the day of their date.

1159. Family registers and papers are not evidence in favour of him by whom they are written. They are evidence against him :—

1. In all cases in which they formally declare a payment received ;

2. When they purport expressly to be made to supply a defect of title to a person in whose favour an obligation is declared to exist.

1160. What is written by the creditor on the back or upon any other part of the title which has always remained in his possession, though the writing be neither signed nor dated,

is proof against him when it tends to establish the discharge of the debtor.

In like manner what is written by the creditor on the back or upon any other part of the duplicate of a title or of a receipt is proof, provided such duplicate be in the hands of of the debtor.

SECTION III.

ORAL TESTIMONY.

1161. The testimony of one witness is sufficient in all cases in which proof by testimony is admitted.

1162. All persons, except those of unsound mind, are competent witnesses. But the evidence of the following may, in the discretion of the Court or Judge, require the corroboration either of other evidence or of attendant circumstances :

1. Persons deficient in understanding, whether from immaturity of age, or other cause ;

2. Those insensible to the religious obligation of an oath ;

3. Those declared infamous by law ;

4. Husband and wife, for or against each other ;

5. A party to a suit when his evidence is in his own favour ;

6. Persons interested in a suit, or related to the parties within the degree of cousin-german.

1163. Proof may be by testimony :

1. Of all facts concerning commercial affairs ;

2. In a matter in which the principal sum of money or value in question does not exceed forty-eight dollars ;

3. In a case in which real property is held by permission of the proprietor without lease, as provided in the Book respecting *Lease and Hire* ;

4. In case of deposit or bailment under pressing necessity or deposit made by a traveller in an inn, and in other cases of a like nature ;

5. In the case of an obligation arising from a quasi-contract, delict, or quasi-delict, and in all other cases in which proof in writing cannot be procured ;

6. In any case in which the proof in writing has been lost by unforeseen accident, or is in the possession of the adverse party or of a third person without collusion of the claimant, and cannot be produced ;

7. In any case in which there is a commencement of proof in writing.

In all other matters proof must be by writing or by the oath of the adverse party.

The whole, nevertheless, being subject to the exceptions and limitations specially declared in this section, and to the provisions contained in article 1590.

1164. Testimony cannot in any case, be received to contradict or vary the terms of a valid written instrument.

1165. (Am. 34-1956). Even in commercial matters, in the absence of a writing signed by the debtor, no action or exception can be maintained when the sum involved exceeds forty-eight dollars, upon an obligation arising :—

1. From a promise or acknowledgment whereby a debt is taken out of the operation of the law respecting the limitation of actions ;

2. From a ratification made by a person of the age of majority, of any obligation contracted during his minority ;

3. From a representation, or assurance with the object of obtaining credit, money or goods for another.

1166. In any action for the recovery of a sum which does not exceed forty-eight dollars proof by testimony cannot be

received if such sum forms part of a debt under a contract which cannot be proved by testimony.

The creditor may, nevertheless, prove by testimony a promise made by the debtor to pay such balance, when it does not exceed seventy-two dollars.

1167. If in the same action several sums be demanded which united form a sum exceeding forty-eight dollars, proof by testimony may be received if the debts have arisen from different causes or have been contracted at different times, and each were originally for a sum less than forty-eight dollars.

SECTION IV.

PRESUMPTIONS.

1168. A presumption is an inference drawn from a known fact as to the existence of an unknown fact, which inference the law, in some cases, requires to be drawn and in others permits to be drawn, in the discretion of the Court or Judge. The former class are called legal presumptions.

1169. Legal presumptions obviate the necessity of further proof ; but certain of them may be contradicted by other proof. Others cannot be contradicted.

1170. No proof is admitted to contradict a legal presumption, when, on the ground of such presumption, the law annuls certain instruments or disallows a suit, unless the law has reserved the right of giving such proof, and saving what is provided with respect to the oaths or judicial admissions of a party.

1171. The authority of a final judgment (*res judicata*) supplies a presumption incapable of contradiction in respect of that which has been the object of the judgment, when the demand is founded on the same cause, is between the same parties acting in the same qualities, and is for the same thing as in the action adjudged upon.

SECTION V

ADMISSIONS.

1172. An admission is extra-judicial or judicial. It cannot be divided against the party making it.

1173. An extra-judicial admission must be proved by writing or the oath of the party against whom it is set up, except in the cases in which according to the rules of this Chapter, proof by oral testimony is admissible.

1174. A judicial admission is complete proof against the party making it.

It cannot be revoked unless made through an error of fact.

SECTION VI.

THE OATHS OF PARTIES.

1175. A party may be examined under oath in like manner as a witness, or upon interrogatories.

1176. The Court may of its own motion at any time before judgment examine either party or any person as a witness, or order the production of any document.

BOOK FOURTH.

MARRIAGE COVENANTS AND THE EFFECT OF MARRIAGE UPON THE PROPERTY OF SPOUSES.

CHAPTER FIRST.

GENERAL PROVISIONS.

1177. All kinds of agreements may be lawfully made in contracts of marriage, even those which, in any other act *inter vivos*, would be void; such as the renunciation of successions which have not yet devolved, the gift of future property, the appointment of an heir, and other dispositions in contemplation of death.

1178. All convenants contrary to public order or to good morals, or forbidden by any law, are, however, excepted from the above rule.

1179. (Am. 34-1956). Thus the spouses cannot derogate from the rights incident to the authority of the husband over the persons of the wife and the children, or belonging to the husband as the head of the conjugal association, nor from the rights conferred upon the spouses by the articles of this Code respecting *Parental Authority, Minority and Tutorship.*

1180. (Am. 34-1956). If no covenants have been made, or if the contrary have not been stipulated, the spouses are presumed to have intended to subject themselves to the general laws and customs of the country, and particularly to the legal community of property.

From the moment of the celebration of marriage, these presumed agreements become irrevocably the law between the parties, and can no longer be revoked or altered :

Provided, however, that where the marriage takes place outside the Colony and the husband is at the time of the marriage domiciled in the Colony, and no covenants were made before the marriage, the spouses may within six months from the date of the husband's first return to the Colony make a declaration in notarial form to the effect that they are married in separation of property, and such declaration shall have the effect of a contract of marriage stipulating for the exclusion of community and the separation of property and shall take effect as from the date of the marriage.

1181. (Am. 34-1956). In the case of the preceding article, the community is established and governed in accordance with the rules of the Second Chapter.

1182. (Am. 34-1956). Conventional community is hereby abolished and the spouses may no longer alter or modify community of property by their contract of marriage. They must either accept legal community or exclude community of property. Any stipulations to the contrary are null and void.

1183. (Subst. 34-1956). (1) Dower, both legal and conventional, is hereby abolished. All stipulations in a contract of marriage made after the coming into operation of this article, purporting to create dower, are null and void.

(2) The preceding article and this article shall not operate to affect the rights of spouses under contracts of marriage entered into before the coming into operation of these articles.

1184. (Am. 34-1956). A marriage covenant must be made in notarial form, and before the solemnization of marriage, upon which it is conditional.

Provisions with respect to the registration of marriage covenants are contained in the Eighteenth Book of this Part.

1185. (Subst. 34-1956). (1) After marriage, the marriage convenants contained in the contract cannot be altered.

(2) Subject to the foregoing prohibition, husband and wife may contract with each other and confer benefits on each other *inter vivos* as if they were unmarried. But contracts between husband and wife are null and void in so far as they affect the property of the community or alter the marriage covenants contained in the contract.

1186. Alterations in a marriage covenant, before the celebration of the marriage, must, on pain of nullity, be made in notarial form, in the presence, and with the consent of all parties to the first contract that are interested in them.

1187. A minor capable of contracting marriage may validly make, in favour of his future spouse or children, all such agreements or gifts as the contract admits of, provided he is assisted by his parent or tutor, and by the other persons whose consent is necessary to the validity of the marriage. The benefits which are conferred in such contracts upon third parties are subject to the rules which apply to minors in general.

CHAPTER SECOND.

COMMUNITY OF PROPERTY.

SECTION I.

LEGAL COMMUNITY.

1188. (Subst. 34-1956). With respect to marriages taking place after the coming into operation of this article there shall be only one kind of community of property, namely: legal community, the rules governing which are contained in this Chapter.

1189. (Am. 34-1956). Community commences from the day the marriage is solemnized; the parties cannot stipulate that it shall commence at any other period.

1190. Legal community is that which the law, in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property.

1191. Legal community may be established by the simple declaration which the parties make in the contract of their intention that it shall exist. It also takes place when no mention is made of it, when it is not expressly nor impliedly excluded, and also when there is no marriage contract. In all cases it is governed by the rules set forth in the following articles.

§ 1. *The Assets and Liabilities of the Community.*

1192. (Subst. 34-1956). (1) The property of persons married in community is divided into separate property and the property of the community.

(2) Separate property comprises —

(*a*) the property, movable and immovable, which the spouses possess on the day when the marriage is solemnized;

(*b*) the income and earnings of either spouse, investments in the name of one spouse, and insurance policies taken out on the life and in the name of one spouse ;

(*c*) property, movable and immovable, acquired by succession, or by donation or legacy made to either spouse particularly ;

(*d*) compensation payable to either spouse for damages resulting from delicts and quasi-delicts, and the property purchased with all funds thus derived ; and

(*e*) fruits, revenues, and interest, of whatever nature they be, derived from separate property, the proceeds of separate property, and property acquired with separate funds or in exchange for separate property.

(3) Property which is acquired by the husband and wife during marriage in any manner different from that above declared is the property of the community.

1193. (Subst. 34-1956). (1) Property is deemed to be the joint acquisition of the community unless it is admitted or proved to have belonged to, or to have been in the legal possession of one of the spouses previously to the marriage, or, if acquired after marriage, is admitted or proved to have been acquired in one of the ways set out in article 1192, or to otherwise belong to one of the spouses only.

Provided, however, that where property is acquired by one of the spouses while they are living separate and apart from each other by virtue of a separation deed, such property is presumed to be the separate property of such spouse unless it is admitted or proved to be community property.

(2) Where spouses purchase property in their joint names such property falls into the community unless it is expressly stated at the time of purchase that they are purchasing with their separate funds.

1194. (Subst. 34-1956). Income and earnings are the separate property of that spouse from whose separate property

or by whose sole labour they come, without prejudice, nevertheless, to the liability of the spouses to contribute towards the education and the support of the children and the expenses of marriage.

In case of disagreement the judge determines the contribution, if any, to be made by either spouse in accordance with the duties, liabilities, means and circumstances of the spouses.

1195. (Subst. 34-1956). (1) A deposit in a bank in the name of one spouse is presumed to be his or her separate property, and the bank is not concerned to ascertain whether it is separate or community property.

(2) Money payable to the wife by or through a bank or from funds in court in her name only is presumed to be her separate property.

1196. (Subst. 34-1956). (1) Gifts and legacies made to one of the spouses do not fall into the community unless there is an express declaration to the contrary.

(2) Gifts and legacies made to the spouses jointly, if made by an ascendant of one of the spouses, are deemed to be the separate property of such spouse as being acquired under a title equivalent to succession, and do not fall into the community unless there is an express declaration to the contrary.

(3) Gifts and legacies made to the spouses jointly, if made by others than ascendants, come under the contrary rule, and fall into the community, unless they have been expressly excluded.

1197. Immovables abandoned or ceded to one of the spouses by the father, mother, or any other ascendant of the spouse, either in satisfaction of debts due to the spouse by the donor, or subject to the payment of the debts due by the donor to strangers, do not fall into the community. But where, in consequence of such gift or legacy, a payment has been made from the community, compensation must be made.

1198. (Subst. 34-1956). Property acquired during marriage with separate funds or in exchange for separate property is separate property.

1199. A purchase made during marriage of a portion of an immovable, in which one of the spouses owned an undivided share, does not constitute a joint acquest. But the community must be indemnified for the amount withdrawn from it to make such purchase.

Where the husband, alone and in his own name, purchases at private or judicial sale part or the whole of an immovable, in which the wife owned an undivided share, she has the option, at the dissolution of the community, either of abandoning the immovable to the community, which then becomes her debtor for her share in the price, or of taking back the immovable and refunding to the community the price of the purchase.

1200. (Am. 34-1956). The liabilities of the community consist :

1. Of the debts, whether of capital sums, arrears, or interest, contracted by the husband as head of the community or by the wife, with the consent of the husband or with judicial authorisation, on behalf of the community ; saving compensation in cases where it is due ;

2. Of the maintenance of the spouses, of the education and support of the children, and of all the other charges resulting from the marriage.

1201 — 1207. (Rep. 34-1956).

1208. (Subst. 34-1956). Debts attached to a gift which falls into the community are chargeable to the community.

1209 — 1210. (Rep. 34-1956).

§ 2. *The Administration of the Community and the effect of the acts of either Spouse in relation to the Conjugal Association.*

1211. (Subst. 14-1930). A husband alone administers the property of the community.

But neither spouse can alone encumber or dispose of the community property by gift or otherwise *inter vivos* without the consent of the other unless it is goods of trifling value.

And no lease, conveyance, hypothec, encumbrance, sale, gift or instrument of disposal *inter vivos*, by the husband alone or by the wife alone of any immovable property land or building (whether deemed to be movable or immovable) belonging to the community shall be valid unless the other spouse consents and joins in it and signs the conveyance or instrument.

The Judge may, however, in his discretion for good cause authorise a spouse to lease, hypothecate, encumber or dispose of community property in case of the absence or of the incapacity of the other spouse or refusal of the other spouse to consent thereto and in exercising such authority the Judge may make such order, if any, or give such directions, or impose such conditions, if any, as he may consider necessary or just and proper in the circumstances.

The provisions of this article shall apply to all community property whenever acquired and to all spouses married in community whether before or after the coming into force of this article.

1212. One spouse cannot, to the prejudice of the other, bequeath more than the share of such spouse in the community.

The bequest of an object belonging to the community is subject to the rules which apply to the bequest of a thing of which the testator is only part owner.

If the thing have fallen into the share of the testator and be found in his succession the legatee has a right to the whole of it.

1213. (Subst. 34-1956). Pecuniary penalties for criminal offences or misdemeanors incurred by either of the spouses cannot be recovered out of the property of the community.

1214. (Subst. 34-1956). Acts done by the wife, otherwise than as the agent of her husband in his capacity of head of the community, or when she is judicially authorised, do not affect the property of the community beyond the amount of the benefit it derives from them.

1215. (Rep. 34-1956).

1216. (Subst. 34-1956). (1) The separate property of a married woman is no longer subject to the right of administration of her husband which is wholly abolished.

(2) Marital consent or authorisation is no longer necessary for any act or contract by a married woman respecting her separate property.

1217 — 1219. (Rep. 34-1956).

1220. (Subst. 34-1956). (1) Husband and wife may contract obligations for the individual affairs of each other, and may bind themselves and their separate property with or for each other, as though they were unmarried.

(2) Save as in the preceding paragraph stated, the separate property of a spouse shall be liable for the obligations contractual, delictual or otherwise of such spouse and not for the obligations of the other spouse.

1221. (Subst. 34-1956). If the separate property of one of the spouses be sold, and the price of it be paid into the community and be not invested in replacement, or if the community receive any other thing which is the separate property of one of the spouses, such spouse has a right to compensation for the value of the thing which has thus fallen into the community.

1222. If, on the contrary, monies have been withdrawn from the community and have been used to improve or to free from incumbrance an immovable belonging to one of the spouses, or have been applied to the payment of the individual debts, or for the exclusive benefit of such spouse, the other spouse has a right to compensation, out of the property of the community.

1223. The replacement is perfect, as regards the husband, when, in making a purchase he declares that the payment for it is with monies arising from the alienation of an immovable which belonged to himself alone, or for the purpose of replacing such immovable.

1224. The declaration of the husband, that the purchase is made with monies arising from an immovable sold by his wife and for the purpose of replacing it, is not sufficient, if such replacement have not been formally accepted by the wife, either by the deed of purchase itself, or by some other subsequent act made before the dissolution of the community.

1225. The compensation for the price of an immovable belonging to the husband can be claimed only out of the mass of the community ; that for the price of an immovable belonging to the wife, may be claimed out of the private property of the husband, if the property of the community prove insufficient.

In all cases, such compensation consists in the price brought by the sale and not in the real or conventional value of the immovable sold.

1226. If the spouses have jointly benefited their common child, without mentioning the proportion in which they each intended to contribute, they are deemed to have intended to contribute equally, whether such benefit has been furnished or promised out of the effects of the community, or out of the private property of one of the spouses ; in the latter case, such spouse has a right to be indemnified out of the property of the other, for one-half of what has been so furnished,

regard being had to the value which the object given had at the time of the gift.

1227. (Subst. 34-1956). It is a question of fact dependent upon the circumstances of each case whether a benefit conferred by the husband alone upon a common child is chargeable to the community or affects the separate property of the husband.

§ 3. *The Dissolution of the Community.*

1228. The community is dissolved: 1. By dissolution of the marriage; 2. By separation from bed and board; 3. By separation of property; 4. By the absence of one of the spouses, in the cases and within the restrictions set forth in articles 75 and 76.

1229. Separation of property can only be obtained judicially, and when the interests of the wife are imperiled or the disordered state of the husband's affairs gives reason to fear that his property will not be sufficient to satisfy what the wife has a right to receive from it.

All voluntary separations are null.

1230. Separation of property, although judicially ordered, has no effect, so long as it has not been carried into execution, either by the actual payment, established by an authentic act, of what the wife has a right to receive, or at least by proceedings instituted for the purpose of obtaining such payment.

1231. Every judgment ordering separation of property must be inscribed, without delay, by the Registrar upon a list kept for that purpose and posted in his office; and such inscription and the date thereof must be mentioned at the end of such judgment, in the register in which it is recorded.

The separation affects third parties, from the day only when these formalities have been complied with.

1231A. (Ad. 34-1956). The wife who sues for separation may accept or renounce the community, according to circumstances, and if the husband fails to make an inventory, she may, upon being authorised, have one made, if she has not renounced.

1231B. (Ad. 34-1956). The wife's renunciation of the community must be registered by depositing it in the registry of the Supreme Court at the time when the action is brought.

1231C. (Ad. 34-1956). If the amount at which the rights of the wife have been determined is not voluntarily paid, execution may be enforced as in ordinary cases.

Nevertheless, the husband may compel the wife to receive immovables in payment, at a valuation by experts, provided such immovables are available and do not prejudice her interest.

1232. The judgment which declares the separation of property has effect as though delivered on the day of the institution of the action.

1233. The separation can be demanded only by the wife herself ; her creditors cannot demand it, even with her consent.

Nevertheless, in the case of insolvency of the husband, they may exercise the rights of their debtor, to the extent of the amounts due to them.

1234. The creditors of the husband may intervene in a suit for separation of property, or may take proceedings to set aside a separation that has been decreed or even executed in fraud of their rights.

1235. The wife who has obtained a separation of property must contribute in proportion to her means and to those of her husband, to the expenses of the household as well as to those of the education of their common children. She must bear these expenses alone if nothing remain to the husband.

1236. (Subst. 34-1956). The wife separated either from bed and board or as to property only, regains full civil capacity to act and contract as though she were married in separation of property.

1237. (Rep. 34-1956).

1238. (Subst. 34-1956). Community dissolved by separation from bed and board, or by separation of property only, cannot be re-established. The parties remain separate as to property, even if they reunite.

1239. (Rep. 34-1956).

1240. The dissolution of the community effected by separation, either from bed and board or as to property only, does not give rise to the rights of survivorship of the wife, unless the contrary has been expressly stipulated in the contract of marriage.

1241 — 1255. (Rep. 34-1956).

§ 4. *The Acceptance and the Renunciation of the Community.*

1256. After the dissolution of the community, the wife or her heirs or legal representatives, have a right either to accept or renounce it. Any agreement to the contrary is void.

1257. (Am. 34-1956). A wife of full age cannot renounce the community if she have intermeddled with its property, except in the way of mere administration or by acts of a conservatory nature ; unless there be fraud on the part of the heirs of the husband.

1258. (Subst. 34-1956). If the wife be under age, she cannot renounce or accept the community without the authorisation of the Judge. When made with this authorisation, the acceptance is irrevocable, and has the same effect as if the wife had been of age.

1259. (Am. 34-1956). The wife surviving her husband must, within three months from his death, cause a faithful and correct inventory of all the property of the community to be made in the presence of the heirs of the husband, or after having duly summoned them.

1260. The wife may however renounce the community, without making an inventory, in the following cases ; when the dissolution takes place during the lifetime of the husband ; when the heirs of the latter are in possession of all the property ; when an inventory has been made at their instance ; when a general seizure and sale of the property of the community have been recently made, or when it has been established by a judicial return that none existed.

1261. Besides the three months allowed the wife to make the inventory, she has, in order to deliberate upon her acceptance or repudiation, a delay of forty days, which commence to run from the expiration of the three months, or from the closing of the inventory, if it have been completed within the three months.

1262. Within these delays of three months and forty days, the wife must make her renunciation, by means of an act in notarial form, or of a judicial declaration, which the Court orders to be recorded.

1263. The wife who is sued as being in community, may nevertheless, according to circumstances, obtain from the Court an extension of the time allowed for inventory and deliberation and by the foregoing articles.

1264. The wife who has neither made an inventory nor renounced within the period above prescribed, is not therefore precluded from so doing ; she is allowed to do so, so long as she has not dealt with the property of the community other than as excepted in article 1259. But she can be sued as being in community so long as she has not renounced, and she is liable for the costs of the action up to the time of renunciation.

1265. The widow who has abstracted or concealed any of the effects of the community is declared to be in community, notwithstanding her renunciation. The same rule applies to her heirs.

1266. If the widow die before the expiration of the three months, without having made or completed the inventory, her heirs are allowed for its completion a further period of three months from her death, and, after the closing of the inventory, a period of forty days for deliberation.

1267. If the widow die after completing the inventory, her heirs have, in order to deliberate, a fresh delay of forty days from her death.

They may, moreover, in all cases renounce the community, according to the forms established with regard to the wife, and articles 1263 and 1264 are applicable to them.

1268. The creditors of the wife may impugn the renunciation which she or her heirs may have made in fraud of their claims, and may accept the community in their own right.

In such case the renunciation is annulled only in favour of the creditors and to the extent of the amount of their claims. It is not annulled in favour of the wife or of her heirs who have renounced.

1269. The widow, whether she accepts or renounces, has a right, during the periods which are allowed her for making the inventory and for deliberation, to sustain herself and her domestics upon the provisions then existing, and in default of these by means of loans obtained on account of the community, subject to the condition of making a moderate use thereof.

She owes no rent for her occupation during these periods of the house in which she remains after the death of her husband, whether such house belongs to the community or

to the heirs of the husband, or is held under lease ; in the last case the rent is at the cost of the community.

1270. When the community is dissolved by the previous death of the wife, her heirs may renounce it within the periods allowed and according to the forms prescribed with regard to the surviving wife, but they are not obliged to make an inventory.

§ 5. *The Partition of the Community.*

1271. After the acceptance of the community by the wife or her heirs, the assets are divided and the liabilities borne in the manner hereinafter determined.

I. *The Partition of the Assets.*

1272. The spouses or their heirs return into the community all that they owe it by way of compensation, according to the rules above prescribed in the second paragraph of this section.

1273. The spouses or their heirs return likewise the sums drawn or the value of the property taken from the community by the spouses respectively, either to endow the child of another marriage or their common child.

1274. Out of the property of the community is pretaken on behalf of the wife or her heirs :

(1) Her separate property, if it exist in kind, or if it do not so exist, the property which has been acquired to replace it.

(2) The price of her immovables that have been alienated during the community and not replaced.

(3) The indemnities due to her from the community.

The husband or his heirs pretakes in the same manner ; but the pretakings on the part of the wife have precedence.

1275. Pretakings are effected in respect of such property as no longer exists in kind ; first upon the ready money, next upon other movable property, and finally upon the immovables of the community, the choice as regards the latter being left to the wife or her heirs.

1276. The husband pretakes only from the property of the community.

The wife and her heirs, in case the community proves insufficient, may have recourse to the private property of the husband.

1277. The compensation due by the community to the spouses, and by them to the community, bears interest from the day of the dissolution.

1278. After the pretakings have been effected and the debts have been paid out of the community, the remainder is divided equally between the spouses or their representatives.

1279. If the heirs of the wife be divided, so that some have accepted and other have renounced the community, those who have accepted cannot take out of the property falling to the wife's share any more than they would have received if all had accepted.

The residue remains with the husband, who is liable toward the heirs who have renounced for such rights as the wife might have exercised in case of renunciation, but only to the extent of the hereditary share of each heir who has thus renounced.

1280. The partition of the community, in all that regards its forms, the licitation of immovables when there is occasion for it, the effects of the partition, the warranty which results from it, and the payment of differences, is subject to all the rules established for the partition among co-heirs in the Book respecting *Successions.*

1281. The spouse who has abstracted or concealed effects belonging to the community, forfeits his or her share of such effects.

1282. After the partition has been effected, if one of the spouses be the personal creditor of the other, as when the price of a property of the former has been applied to the payment of a personal debt of the other, or from any other cause, the creditor has recourse against the share of the community allotted to the debtor, or against the personal property of the debtor. The personal claims which the spouses may have to enforce against each other, bear interest according to the ordinary rules.

1283. Gifts made by one spouse to the other are not taken out of the community, but only from the share therein, or from the private property of the donor.

1284. The mourning of the wife is chargeable to the heirs of her deceased husband, even when she renounces the community.

The cost of such mourning must preserve a due proportion to the fortune of the husband.

II. *The Liabilities of the Community and the Contribution to the Debts.*

1285. The debts of the community are chargeable one-half to each of the spouses.

The expenses of seals, inventories, sales of movable property, liquidation, licitation and partition, are included in such debts.

1286. The wife, even though she accepts the community, is not liable for its debts, either toward her husband or toward creditors, beyond the amount of the benefit she derives from it; provided she has made a correct and faithful inventory and has rendered an account both of what is contained in the inventory and of what has fallen to her in the partition.

1287. The husband is liable toward the creditors for the whole of the debts of the community which were contracted by himself ; but has recourse against his wife or her heirs if they accept, for the half of such debts, or for such amount being less than half as is equivalent to the benefit which she or they have derived from the community.

1288. (Rep. 34-1956).

1289. The wife may be sued for the whole of the debts for which the community has become liable through her ; but has recourse against the husband or his heirs for half of such debts, if she accept, and for the whole if she renounce.

1290. The wife who, during the community, binds herself for or together with her husband, even jointly and severally, is held to have done so only in respect of the community. If she accept she is personally liable for her half only of the debt thus contracted, and she is not at all liable if she renounce.

1291. The wife who has paid more than her half of a debt of the community, cannot get back what she has overpaid, unless the receipt erroneously expresses that what she paid was for her half.

But she has recourse against her husband.

1292. The spouse who, by reason of the enforcing of an hypothec upon the immovable which has fallen to his share, is sued for the whole of a debt of the community, has his legal recourse for one-half of such debt against the other spouse.

1293. Notwithstanding the foregoing provisions, either of the co-partitioners may, by the deed of partition, be charged with more or less than half of the debts and even with the whole.

1294. All that has been provided above in respect of the husband or of the wife applies to the heirs of either, and

such heirs have the same rights and liabilities as the spouse whom they represent.

§ 6. *Renunciation of the Community and its Effects.*

1295. The wife who renounces cannot claim any share in the property of the community.

1296. She may, however, retain her wedding presents and the wearing apparel and linen in use for her own person.

1297. (Am. 34-1956). The wife who renounces has a right to take back :

1. The price of her immovables which have been alienated, and the replacement of which has not been made and accepted as mentioned above in article 1224.

2. The indemnities which may be due to her from the community.

1298. The wife who renounces is freed from all contribution to the debts of the community, both as regards her husband and as regards creditors, even those towards whom she bound herself jointly and severally with her husband.

She remains liable for debts which have become a charge upon the community through her, but has in such case her recourse against her husband.

1299. She may exercise all the rights hereinabove enumerated, as well against the property of the community as against the private property of her husband.

Her heirs may do the same, except as regards the pretaking of wedding presents, linen and wearing apparel, and as regards lodging and maintenance during the periods allowed for the inventory and for deliberation.

SECTION II.

(Subst. 34-1956).

COVENANTS EXCLUDING COMMUNITY.

1300. When the spouses stipulate that there shall be no community, or that they shall be separate as to property the effects of such stipulations are as follows :—

(1) Subject to the provisions of article 1303 (which relate to actions in respect of delicts and quasi-delicts between husband and wife) the wife —

(*a*) is capable of acquiring, holding and disposing of, any property ; and

(*b*) is capable of rendering herself, and being rendered, liable in respect of any delict, quasi-delict, contract, debt, or obligation ; and

(*c*) is capable of suing and being sued, either in respect of a delict or quasi-delict or in contract or otherwise ;

(*d*) is subject to the law relating to bankruptcy and to the enforcement of judgments and orders, in all respects as if she were unmarried.

(2) The spouses are, for all purposes of acquisition of any interest in property, to be treated as two persons : Provided that nothing in this paragraph prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or with right of survivorship between them, or from rendering themselves, or being rendered jointly liable in respect of any delict or quasi-delict, contract, debt or obligation, and of suing or being sued either in respect of a delict or quasi-delict or any contract or otherwise, in like manner as if they were not married.

1301. All property which —

(*a*) immediately before the commencement of this article was held by a woman married in separation of property as her separate property ; or

(*b*) belongs at the time of her marriage to a woman married after the commencement of this article who by her contract of marriage excludes community of property or declares that she is to be married in separation of property ; or

(*c*) after the commencement of this article is acquired by or devolves upon a married woman who by her contract of marriage has excluded community or declared that she is to be married in separation of property, shall belong to her in all respects as if she were an unmarried woman and may be disposed of accordingly.

SECTION III.

SUPPLEMENTAL PROVISIONS AS TO MARRIED PERSONS AND THEIR PROPERTY.

(Subst. 34-1956).

1302. The husband of a married woman shall not, by reason only of his being her husband, be liable —

(*a*) in respect of any delict or quasi-delict committed by her whether before or after the marriage or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage ; or

(*b*) to be sued, or made a party to any legal proceeding brought, in respect of any such delict, quasi-delict, contract, debt, or obligation :

Provided, however, that this article shall not exempt the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a delict or quasi-delict) incurred by her after the marriage in respect of which he would have been liable as head of the community or otherwise if this article had not been passed.

1303. Every married woman, whether married before or after the coming into operation of this article shall have in her own name against all persons whomsoever, including her husband, the same civil remedies, for the protection and

security of her own property as if she were an unmarried woman, but, except as aforesaid, no husband or wife shall be entitled to sue the other in respect of a delict or quasi-delict.

1304. (1) A married woman is able to acquire as well from her husband, as from any other person, and hold, any interest in property movable or immovable either solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were an unmarried woman ; and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.

(2) A married woman is able, without her husband, to dispose of, or to join in disposing of, any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative, in like manner as if she were an unmarried woman.

(3) This article does not prejudicially affect any beneficial interest of the husband of any such woman.

1305. A married woman, her husband, or any interested person may petition the Judge for the determination of any question affecting the rights, interests, obligations or liabilities of such married woman and the Judge may make such order, if any, or give such directions, if any, as he may consider just and proper in the circumstances.

1306. Whenever a husband or wife is legally incapable through minority or otherwise, he or she must be represented or authorised in the manner required by the law for the time being in force relating to minority or to such other incapacity as the case may be.

1307. Save as otherwise herein expressly provided, the provisions of this Book shall apply as the case may be to a married woman whether married before or after the first day of January One thousand nine hundred and thirty-one.

1308 — 1381 (Rep. 34-1956).

BOOK FIFTH.

SALE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1382. Sale is a contract by which one party transfers property to the other, for a price in money which that other undertakes to pay, either expressly or by implication.

It is effected by the consent alone of the parties, although the thing sold be not then delivered ; subject nevertheless as regards third parties to the provisions contained in articles 957 and 959, and to the special rules concerning transfer of registered vessels.

1383. The contract of sale is subject to the general rules relating to contracts and to the effects and extinction of obligations declared in the Book respecting *Obligations*, except in cases coming under special provisions of this Code.

1384. When things movable are sold by weight, number or measure, the sale is not perfect until they have been weighed, counted or measured ; but the buyer may demand the delivery of them or damages according to circumstances.

1385. The sale of a thing upon trial is presumed to be made under a suspensive condition, when the intention of the parties to the contrary is not apparent.

1386. A simple promise of sale is not equivalent to a sale, but the creditor may demand that the debtor shall complete the sale according to the terms of the promise, and, in default of his so doing, that the judgment shall be equivalent to such complete sale and have all its legal effects ; or he may recover damages according to the rules contained in the Book respecting *Obligations.*

1387. If a promise of sale be accompanied by the giving of earnest, each of the contracting parties may recede from it; he who has given the earnest, by forfeiting it, and he who received it, by returning double the amount.

1388. A promise of sale with delivery and actual possession is equivalent to sale.

1389. The expense of the title deed and other accessories to a sale is borne by the buyer, unless it is otherwise stipulated.

1390. The articles of this Book, in so far as they affect the rights of third persons are subject to the special modifications and restrictions contained in the Book respecting *Registration of Real Rights.*

1391. Persons selling intoxicating liquors to be drunk on the spot, have no action for the recovery of the price.

1391A. (Ad. 34-1956). (1) The provisions of this Book, in so far as they relate to the sale of goods, are to be read and construed subject to the provisions of the Commercial Code; and where there is any conflict between the provisions of this Book and those of the Commercial Code the provisions of the Commercial Code shall prevail.

(2) In this article the term "goods" means and includes all corporeal movables except money.

CHAPTER SECOND.

THE CAPACITY TO BUY OR SELL.

1392. The capacity to buy or sell is governed by the general rules, relating to the capacity to contract, contained in Chapter First, of the Book respecting *Obligations.*

1393. (Rep. 34-1956).

1394. The following persons cannot either in their own name or through third parties, except at judicial sales, become buyers of property entrusted to them in their respective capacities :—

Tutors, curators, agents for sale, whether public officers or private persons, executors, administrators, trustees or fiduciary institutes.

The incapacity established in this article cannot be set up by the buyer ; but only by the owner and others having an interest in the thing sold.

1395. Judges, advocates, attorneys, clerks, sheriffs, and other officers connected with courts of justice, cannot, either in their own name or through third parties, buy litigious rights which fall under the jurisdiction of the Court in which they exercise their functions.

CHAPTER THIRD

THINGS WHICH MAY BE SOLD.

1396. Everything may be sold which is not excluded from being an object of commerce by its nature or destination or by special provision of law.

1397. The sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles. The buyer may recover damages from the seller, if he were ignorant that the thing sold did not belong to the seller.

1398. The sale is valid if it be a commercial matter, or if the seller afterwards become owner of the thing.

1399. If a thing lost or stolen be bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, the owner cannot reclaim it, without reimbursing to the purchaser the price he has paid.

1400. If the thing lost or stolen be sold under the authority of law, it cannot be reclaimed.

CHAPTER FOURTH

THE OBLIGATIONS OF THE SELLER.

SECTION I.

GENERAL PROVISIONS.

1401. The principal obligations of the seller are :

1. The delivery, and, 2. The warranty of the thing sold.

SECTION II.

DELIVERY.

1402. Delivery is the transfer of a thing sold into the power and possession of the buyer.

1403. The obligation of the seller to deliver is satisfied when he puts the buyer in actual possession, or consents to such possession being taken by him, all hindrances being removed.

1404. The delivery of incorporeal things is made by the delivery of the titles or by the use which the buyer makes of such things with the consent of the seller.

1405. The expenses of delivery are at the charge of the seller, and those of removing at that of the buyer, unless it is otherwise stipulated.

1406. The seller is not obliged to deliver the thing if the buyer do not pay the price, unless a term has been granted for payment.

1407. Neither is the seller obliged to deliver the thing, when a delay for payment has been granted, if the buyer

since the sale have become insolvent, so that the seller is in imminent danger of losing the price, unless the buyer gives security to the satisfaction of the seller, for payment at the expiration of the delay.

1408. The thing must be delivered in the state in which it was at the time of sale, subject to the rules relating to deterioration contained in the Book respecting *Obligations.*

From the time of sale all the profits of the thing belong to the buyer.

1409. The obligation to deliver the thing comprises its accessories and all things in existence which are necessary for its perpetual use.

1410. The seller is obliged to deliver the full quantity sold as it is specified in the contract, subject to modifications hereinafter specified.

1411. If an immovable be sold with a statement, in whatever terms expressed, of its superficial contents, either at a certain rate by measurement, or at a single price for the whole, the seller is obliged to deliver the whole quantity specified in the contract ; if such delivery be not possible, the buyer may obtain a diminution of the price according to the value of the quantity not delivered.

If the superficial contents exceed the quantity specified, the buyer must pay for such excess of quantity, or he may at his option give it back to the seller.

1412. In either of the cases stated in the last preceding article, if the deficiency or excess of quantity be so great, in comparison with the quantity specified, that it may be presumed the buyer would not have bought if he had known it, he may abandon the sale and recover from the seller the price, if paid, and the expenses of the contract, without prejudice in any case to his claim for damages.

1413. The rules contained in the last two preceding articles do not apply, when it clearly appears from the description of the immovable and the terms of the contract that the sale is of a certain determinate thing, without regard to its quantity by measurement, whether such quantity is mentioned or not.

1414. The action for supplement of price on the part of the seller, or for diminution of price, or for annulling the contract, on the part of the buyer, is subject to the general rules of prescription.

1415. If two immovable properties be sold by the same contract, at a single price for the whole, with a declaration of the contents of each, and in one the quantity be less than stated and in the other greater, the deficiency of the one is compensated by the excess of the other so far as it goes, and the action of the buyer or seller is modified accordingly.

SECTION III.

WARRANTY.

GENERAL PROVISIONS.

1416. The warranty by the seller in favour of the buyer is either legal or conventional. It is intended to provide against the latent defects of the thing sold, and against eviction of the purchaser from the whole or any part of it.

1417. Legal warranty is implied by law in the contract of sale without stipulation. Nevertheless the parties may, by special agreement, add to the obligations of legal warranty, or diminish or exclude them.

§ 1. *Warranty against Eviction.*

1418. The seller is obliged by law to warrant the buyer against eviction from the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale.

1419. Although it be stipulated that the seller gives no warranty, this exemption does not cover his personal acts. Any agreement to the contrary is null.

1420. In like manner, when there is a stipulation excluding warranty, the seller in case of eviction is obliged to return the price of the thing sold, unless the buyer knew at the time of the sale the danger of eviction or had bought at his own risk.

1421. Whether the warranty be legal or conventional, the buyer, in case of eviction, has a right to claim from the seller :

1. Restitution of the price ;

2. Restitution of the fruits in case he is obliged to pay them to the party who evicts him ;

3. The expenses incurred, as well in his action of warranty against the seller as in the original action ;

4. Damages, interest and all expenses of the contract ;

Subject nevertheless to the provision contained in the article next following.

1422. If in the case of warranty the causes of eviction were known to the buyer at the time of the sale, and there be no special agreement, the buyer has a right to recover only the price of the thing sold.

1423. The seller is obliged to make restitution of the whole price of the thing sold, although, at the time of eviction, it be found to be diminished in value, or deteriorated, either by the neglect of the buyer, or by a fortuitous event ; unless the buyer has derived a profit from the deterioration caused by him, in which case the seller may deduct from the price a sum equal to such profit.

1424. If the thing sold be found, at the time of eviction, to have increased in value, either by or without the act of the buyer, the seller is obliged to pay him such increased value over and above the price at which the sale was made.

1425. The seller is obliged to indemnify the buyer, or to cause him to be indemnified, for all repairs and useful expenditure made by him upon the property sold, according to their value.

1426. If the seller have sold the property of another, in bad faith, he is obliged to reimburse the buyer for all expenditures laid out by him upon it.

1427. If the buyer suffer eviction from a part only of the thing, or of two or more things sold as a whole, which part is nevertheless of such importance in relation to the whole that he would not have bought without it, he may repudiate the purchase.

1428. If in the case of eviction from a part of the thing or things sold as a whole, the purchase be not repudiated, the buyer has a right to claim from the seller the value of such part, to be estimated proportionally upon the whole price, and also damages to be estimated according to the increased value of the thing at the time of eviction.

1429. If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought if he had been informed of it, he may vacate the sale or claim indemnity at his option, and in either case may bring his action so soon as he is informed of the existence of the servitude.

1430. Warranty against eviction ceases in case the buyer fails to make the seller a party to the action in warranty within the delay prescribed in this Code of Civil Procedure, if the seller prove that previous to the expiration of such delay there existed sufficient ground of defence to the action of eviction.

1431. The buyer may enforce the obligation of warranty when, without the intervention of a judgment, he abandons the thing sold or admits the incumbrance upon it, if he prove that such abandonment or admission is made by reason of a right which existed at the time of sale.

§ 2. *Warranty against Latent Defects.*

1432. The seller is bound to warrant the buyer against such latent defects in the thing sold, and its accessories, as render it unfit for the use for which it was intended, or so diminish its usefulness that the buyer would not have bought it, or would not have given so large a price, if he had known them.

1433. The seller is not liable in respect of defects which are apparent and with which the buyer might have made himself acquainted.

1434. The seller is responsible for latent defects even when they were not known to him unless otherwise stipulated.

1435. When several principal things are sold together as a whole, so that the buyer would not have bought one of them without the other, the latent defect in one entitles him to repudiate the purchase of the whole.

1436. The buyer has the option of returning the thing and recovering the price, or of keeping the thing and recovering a part of the price according to an estimation of its value.

1437. If the seller knew the defect, he is obliged not only to restore the price of it, but to pay all damages suffered by the buyer.

He is obliged in like manner in all cases in which he is legally presumed to know the defects.

1438. If the seller did not know the defects, or is not legally presumed to have known them, he is obliged to restore the price and to reimburse to the buyer the expenses caused by the sale.

1439. If the thing perish by reason of any latent defect which it had at the time of the sale, the loss falls upon the seller, who is obliged to restore the price of it to the buyer,

and otherwise to indemnify him, as provided in the two last preceding articles.

If it perish by the fault of the buyer or by a fortuitous event, the value of the thing in the condition in which it was, at the time of the loss, must be deducted from his claim against the seller.

1440. The redhibitory action, resulting from the obligation of warranty against latent defects, must be brought with reasonable diligence, according to the nature of the defect and the usage of the Colony.

1441. In judicial sales there is no warranty against latent defects.

CHAPTER FIFTH.

THE OBLIGATIONS OF THE BUYER.

1442. The principal obligation of the buyer is to pay the price of the thing sold.

1443. If the time and place of payment be not fixed by agreement, the buyer must pay at the time and place of delivery.

1444. The buyer is obliged to pay interest on the price in the cases following :

1. In case of a special agreement, from the time fixed by such agreement ;

2. In case the thing sold be of a nature to produce fruits or other revenues, from the time of taking possession. But if a term be granted for the payment of the price, the interest is due only from the expiration of such term ;

3 In case the thing be not of a nature to produce fruits or revenues, from the time when the buyer is required to pay the price.

1445. If the buyer be disturbed in his possession or have just cause to fear that he will be disturbed by any action, hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease or gives security, unless there is a stipulation to the contrary.

1446. The seller of an immovable cannot demand the avoidance of the sale by reason of the failure of the buyer to pay the price, unless there is a special stipulation to that effect.

1447. The stipulation and right of avoiding the sale of an immovable, by reason of non-payment of the price, are subject to the rules relating to the right of redemption contained in articles 1457, 1458, 1461, 1462.

The right can in no case be exercised after the expiration of ten years from the time of sale.

1448. The judgment for avoidance by reason of non-payment of the price, cannot grant a delay for a longer period than eight days.

1449. The seller cannot have possession of the thing sold, upon the avoidance of the sale by reason of non-payment of the price, until he has repaid to the buyer such part of the price as he has received, with the costs of all necessary repairs, and of such improvements as have increased the value of the purchase, to the amount of such increased value. If these improvements be of a nature to be removed, he has the option of permitting the buyer to remove them.

1450. The buyer is obliged to restore the thing and also either the fruits and profits received by him, or such portion thereof as corresponds with the part of the price that he has failed to pay.

He is also answerable to the seller for the deterioration of the property which has been caused by his fault.

1451. The seller is held to have abandoned his right to recover the price when, in consequence of its non-payment, he has brought an action for the avoidance of the sale.

1452. A demand of the price by action or other legal proceeding does not deprive the seller of his right to obtain the avoidance of the sale for non-payment.

1453. In the sale of movables the right of avoidance for non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer ; but this rule is without prejudice to the seller's right of revendication as provided in the Book respecting *Privileges and Hypothecs.*

1454. In the sale of movables the buyer is bound to take them away at the time and place at which they are deliverable. If the price have not been paid, the sale may be avoided by the seller without the intervention of a suit, after the expiration of the delay agreed upon for taking them away, or if there be no such agreement, after the buyer has been placed in default in the manner provided in the Book respecting *Obligations* ; without prejudice to the seller's claim for damages.

CHAPTER SIXTH.

THE AVOIDANCE OF THE CONTRACT OF SALE.

1455. Besides the causes of repudiation and avoidance already declared in this Book, and those which are common to contracts, the contract of sale may be avoided by the exercise of the right of redemption.

SECTION I.

THE RIGHT OF REDEMPTION.

1456. (Am. 34-1956). The right of redemption stipulated by the seller entitles him to take back the thing sold upon restoring the price of it, and reimbursing to the buyer the expenses of the sale and the costs of all necessary repairs,

and also the costs of such improvements as have increased the value of the thing, to the amount of such increased value.

The seller cannot have possession of the thing until he has fulfilled all these obligations or the part of such obligations as fixed by article 1460B.

1457. When the seller takes back the property under his right of redemption, he receives it free from all incumbrances with which the buyer may have charged it.

1458. The right of redemption cannot be stipulated for a term exceeding ten years.

If it be stipulated for a longer term, it is reduced to the term of ten years.

1459. (Subst. 34-1956). The stipulated term cannot be extended by the Court.

1460. (Subst. 34-1956). If the seller fail to exercise his right of redemption within the stipulated term the buyer remains absolute owner of the thing sold, if, at least sixty days prior to the expiration of the stipulated term, he has put the seller in default to exercise his right of redemption; otherwise, such right subsists until the expiration of the sixty days following that on which the buyer has put the seller in default to exercise such right.

The seller cannot renounce such putting in default.

1460A. (Ad. 34-1956). If, in the sixty days from the putting in default, the seller satisfies the obligations of article 1456, he takes the thing back and, in the case of an immovable or an immovable right, the buyer shall be bound to grant him a deed of retrocession.

1460B. (Ad. 34-1956). If the thing sold is an immovable and if, within the delay of article 1460A, the seller satisfies, to the extent of seventy-five per cent. or more, the obligations mentioned in article 1456, he likewise takes back the thing,

but burdened, from the date of the sale with right of redemption, with a hypothec in favour of the buyer guaranteeing the payment of the balance of such obligation, which is converted into a claim of the buyer against the seller.

1460C. (Ad. 34-1956). (1) The buyer is bound to give the seller who has satisfied the obligations of article 1460B a deed of retrocession of the thing.

(2) The seller, on his part, is obliged to give the buyer a deed granting a hypothecary obligation on the thing for the balance of such obligations.

(3) This deed of obligation or the judgment which takes its place shall be registered within thirty days from its date.

1461. The term runs against all persons, including minors and those otherwise incapable in law, the latter, however, having such recourse as they may be entitled to.

1462. The seller of immovable property may exercise his right of redemption against a second buyer, although the right be not declared in the second sale.

1463. The buyer of property, subject to a right of redemption, holds all the rights which the seller had in it. He has right of prescription against the true proprietor and against those who have claims and hypothecs upon it.

1464. He may claim discussion against the creditors of the seller.

1465. If several persons sell conjointly, and by one contract, an immovable which is their common property, with a right of redemption, each of them can exercise his right for the part only which belonged to him.

1466. The rule declared in the last preceding article applies also if one seller of an immovable have left several

heirs ; each of the coheirs can exercise the right of redemption for the part only which he has in the succession of the seller.

1467. When under either of the two last preceding articles, the buyer is sued for the redemption of part of the property, he may require the plaintiff to take back the whole of the property. If there be refusal or failure to take it back, the suit is dismissed.

1468. If the sale of an immovable belonging to several owners be made not conjointly but by each of them of his part only, each may exercise the right of redemption for the portion which belonged to him, and the buyer cannot compel him to take back the whole.

1469. If an immovable have been sold to several buyers, or to one buyer who leaves several heirs, the right of redemption can be exercised against each of the buyers or coheirs for his part only ; but if there have been a partition of the property among the coheirs, the right may be exercised for the whole property against any one of them to whom it has fallen.

SECTION II.

THE AVOIDANCE OF SALE FOR CAUSE OF LESION.

1470. The rules relating to the avoidance of contracts for cause of lesion are declared in the Book respecting *Obligations*.

SECTION III.

RETRAIT LIGNAGER.

1471. The right of retrait lignager is abolished.

CHAPTER SEVENTH.

SALE BY LICITATION.

1472. If a thing, either movable or immovable, held in common by several proprietors cannot be partitioned conveniently and without loss, or if in a voluntary partition of

a property held in common there be a part which none of the coproprietors is able or willing to take, a judicial sale of it is made to the highest bidder, and the price is divided among them.

Strangers are admitted to bid at such sale.

1473. The formalities of proceeding in sales by licitation are specified in the Code of Civil Procedure.

CHAPTER EIGHTH.

SALE BY AUCTION.

1474. (Am. 34-1956). Sales by auction are either forced or voluntary.

The rules relating to forced sales are declared in the Seventh and Eleventh Chapters of this Book, and in the Code of Civil Procedure.

The rules relating to voluntary sales by auction are declared in the Commercial Code.

1475 — 1476. (Rep. 34-1956).

CHAPTER NINTH.

THE SALE OF REGISTERED VESSELS.

1477. (Subst. 34-1956). The sale of registered British ships is governed by the Act of Parliament entitled *The Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), and the Acts amending the same, or any other statute relating thereto.

CHAPTER TENTH.

THE SALE OF DEBTS AND OTHER INCORPOREAL PROPERTY.

SECTION I.

THE SALE OF DEBTS AND RIGHTS OF ACTION.

1478. The sale of debts and of rights of action against third persons, is perfected between the seller and buyer by the

completion of the title, if it be notarial, or by the delivery of the title if under private signature.

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1479. (Subst. 34-1956). (1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to rights having priority over the right of the assignee) to pass and transfer from the date of such notice —

(*a*) the right to such debt or thing in action ;

(*b*) all remedies for the same ; and

(*c*) the power to give a good discharge for the same without the concurrence of the assignor :

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice —

(*a*) that the assignment is disputed by the assignor or any person claiming under him ; or

(*b*) of any other opposing or conflicting claims to such debt or thing in action ;

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into Court under the provisions of the Fourth Part of this Code relating to Trustees.

(2) This article does not affect the provisions of the Commercial Code relating to Policies of Assurance.

(3) In this article the expression " thing in action " has the same meaning as it has by the law of England.

1480. If before the transfer is so made known to the debtor he have paid to the seller, he is discharged.

1481. The two last preceding articles do not apply to bills, notes or bank checks payable to order or to bearer ; nor to

debentures for the payment of money, nor to transfers of shares in the capital stock of incorporated companies.

Notes for the payment of money, or delivery of articles, to order or to bearer, may be transferred by endorsement or delivery, without notice, whether they are payable absolutely or subject to a condition.

1482. The sale of a debt or other right includes its accessories, such as securities, privileges and hypothecs.

1483. Arrears of interest accrued before the sale are not included in it as an accessory of the debt.

1484. The sale of a debt or other right implies a warranty that it exists and is due, or belongs to the seller, although the sale be without warranty; this rule, however, being subject to the exception declared in article 1420.

1485. When the seller by a simple clause of warranty assures the solvency of the debtor, the warranty applies only to his solvency at the time of sale, and is limited in amount to the price paid by the buyer.

1486. The preceding articles of this Chapter apply equally to transfers of debts and rights of action against third persons by contracts other than sales, except that article 1484 does not apply to gifts.

SECTION II.

THE SALE OF SUCCESSIONS.

1487. He who sells a right of succession without specifying in detail the property of which it consists is considered to sell only his right as heir.

1488. If the seller of a succession, in the absence of special reservation, have received any fruits or revenues, or the

amount of any debt belonging to it, or have sold any property forming part of it, he is bound to make compensation to the buyer.

1489. The buyer, besides being subject to the obligations attaching to other contracts of sale, is bound to make compensation for all debts and expenses of the succession paid by the seller, to pay him the debts which the succession may owe him, and to discharge all debts and obligations of the succession for which he is liable, unless there is a stipulation to the contrary.

SECTION III.

THE SALE OF LITIGIOUS RIGHTS.

1490. When a litigious right is sold, he against whom it is claimed is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer has paid it.

1491. A right is held to be litigious when it is uncertain, and disputed or disputable by the debtor, whether an action for its recovery is actually pending or is likely to become necessary.

1492. The provisions contained in article 1490 do not apply :

1. When the sale has been made to a coheir or co-proprietor of the right sold ;

2. When it has been made to a creditor in payment of what is due to him ;

3. When it has been made to the possessor of a property subject to the litigious right ;

4. When the judgment of a Court has been rendered affirming the right, or when it has been made clear by evidence and is ready for judgment.

CHAPTER ELEVENTH.

FORCED SALES AND TRANSFERS RESEMBLING SALE.

SECTION I.

FORCED SALES.

1493. The creditor who has a judgment against his debtor may take in execution and cause to be sold, in satisfaction of such judgment, the property of his debtor, movable and immovable, except only the articles specially exempted by law ; subject to the rules and formalities provided in the Code of Civil Procedure.

1494. In judicial sales, the buyer, in case of eviction, may recover from the debtor the price paid with interest and the incidental expenses connected with the conveyance, or he may recover the price and interest from the creditors who received it, with deduction however of the profits accrued since the sale. But the latter have a right of discussion of the debtor's property.

1495. The provision of the last preceding article does not prejudice the buyer's recourse against the prosecuting creditor for informalities in the proceedings, or for the seizure of property not ostensibly belonging to the debtor.

1496. The general rules concerning the effect of judicial sales in the extinction of hypothecs and of other rights and incumbrances, are stated in the Book respecting Privileges and Hypothecs, and in the Code of Civil Procedure.

1497. In cases in which immovable property is required for purposes of public utility, the owner may be forced to sell it or be expropriated by the authority of law in the manner and according to the rules prescribed by special laws.

1498. In the case of sales and expropriations for purposes of public utility, the party acquiring the property cannot be evicted. The hypothecs and other charges are extinguished,

the creditors having their recourse in the manner specially provided by law.

1499. The rules concerning the formalities and proceedings in judicial and other forced sales and expropriations are contained in the Code of Civil Procedure. Such sales and expropriations are subject to the rules generally applicable to the contract of sale, when these are not inconsistent with special laws or any article of this Code.

SECTION II.

THE GIVING IN PAYMENT.

1500. The giving of a thing in payment is equivalent to a sale of it, and makes the giver liable to the same warranty.

The giving in payment, nevertheless, is perfected only by actual delivery. It is subject to the provisions relating to the avoidance of contracts and payments contained in the Book respecting *Obligations*.

SECTION III.

ALIENATION FOR RENT.

1501. The alienation in perpetuity of immovable property for an annual rent, is equivalent to a sale. It is subject to the same rules as the contract of sale in so far as they can be made to apply.

1502. The rent may be payable either in money or in kind. Its nature and the rules to which it is subject are stated in the articles relating to rents contained in the Second Chapter of the First Book of the Second Part.

1503. The obligation to pay the rent is a personal liability ; the purchaser is not discharged from it by abandonment of the property, nor is he discharged by reason of the destruction of the property by a fortuitous event.

BOOK SIXTH.

EXCHANGE.

1504. Exchange is a contract by which each party gives to the other one thing for another.

It is effected in the same manner as sale.

1505. If one of the parties to the exchange, even after having received the thing given to him, prove that the other party was not owner of it, he cannot be compelled to deliver that which he has promised, but only to return that which he has received.

1506. The party who is evicted from what he has received in exchange has the option of demanding damages or of recovering what he has given.

1507. The rules contained in the Book respecting *Sale* apply equally to exchange, when not inconsistent with any article of this title.

BOOK SEVENTH.

LEASE AND HIRE.

CHAPTER FIRST.

GENERAL PROVISIONS.

1508. The contract of lease or hire relates to property or work, or both combined.

1509. The lease or hire of property is a contract by which one of the parties, called the lessor, grants to the other, called the lessee, the enjoyment of property, during a certain time, for a rent or price which the latter binds himself to pay, either expressly or by implication.

1510. The lease or hire of work is a contract by which one of the parties, called the lessor, obliges himself to do certain work for the other, called the lessee, for a price which the latter binds himself to pay, either expressly or by implication.

1511. The capacity to enter into a contract of lease or hire is governed by the general rules relating to the capacity to contract, contained in Chapter One of the Book respecting *Obligations.*

CHAPTER SECOND.

THE LEASE OR HIRE OF THINGS.

SECTION I.

GENERAL PROVISIONS.

1512. All corporeal things may be leased or hired, except such as are excluded by the special object of their existence, and those which are necessarily consumed by the use made of them.

1513. Incorporeal things may also be leased or hired, except such as are inseparably attached to the person. If attached to a corporeal thing, as a right of servitude, they can only be leased with such thing.

1514. The lease or hire of houses and the lease or hire of farms and rural estates are subject to the rules common to contracts of lease or hire, and also to particular rules applicable only to the one or the other.

1515. (Am. 34-1956). Persons holding real property by sufferance of the owner, without lease, are held to be lessees, and bound to pay the annual value of the property.

Such holding is regarded as an annual lease or hire terminating on the first day of May of each year.

It is subject to tacit renewal and to all the rules of law applicable to leases.

Persons so holding are liable to ejectment for non-payment of rent for a period exceeding three months, and for any other causes for which a lease may be rescinded.

1516. If the lessee remain in possession more than eight days after the expiration of the lease, without any opposition or notice on the part of the lessor, a tacit renewal of the lease takes place for another year, or the term for which such lease was made, if less than a year, and the lessee cannot thereafter leave the premises, or be ejected from them, unless due notice has been given as required by law.

1517. When notice has been given the lessee cannot claim the tacit renewal, although he has continued in possession.

1518. The surety given for the lease does not extend to the obligations arising from the prolongation of it by tacit renewal.

SECTION II.

THE OBLIGATIONS AND RIGHTS OF THE LESSOR.

1519. The lessor is bound by the nature of the contract :

1. To deliver to the lessee the property leased ;

2. To maintain the property in a fit condition for the use for which it has been leased ;

3. To give peaceable enjoyment of the property during the continuance of the lease.

1520. Unless it be otherwise stipulated, the property must be delivered in a good state of repair in all respects, and the lessor is obliged, during the lease, to make all necessary repairs, except those which the tenant is bound to make, as hereinafter specified.

1521. The lease implies a warranty against all defects and faults which prevent or diminish the use of the property leased, whether they be known to the lessor or not.

1522. The lessor cannot, during the lease, change the form of the property leased.

1523. The lessor is not bound to warrant the lessee against disturbance by the mere trespass of a third party not pretending to have any right upon the thing leased, the lessee having a right of damages against the trespasser. But if the right of action for damages against the trespasser be ineffectual, by reason of his insolvency or of his being unknown, the rights of the lessee against the lessor are in accordance with the provisions of article 1563.

1524. If the disturbance be in consequence of a claim concerning the right of ownership, or other right connected with the property leased, the lessor is bound to suffer a reduction in the rent proportional to the diminution of the enjoyment, and to pay damages according to circumstances, provided the lessor be duly notified of the disturbance by the lessee ; and upon any action brought by reason of such claim, the lessee is entitled to be dismissed from the cause, upon declaring to the plaintiff the name of the lessor.

1525. The lessor has, for the payment of his rent and for the fulfilment of the other obligations of the lease, a privileged right upon the movable effects which are found upon the property leased.

1526. In the lease of houses the privileged right covers the furniture and movable effects of the lessee, and, if the lease be of a warehouse, shop, or manufactory, the merchandise contained in it. In the lease of farms and rural estates the privileged right covers every thing which serves for the labour of the estate or farm, the furniture and movable effects in the house and other parts of the property, and the fruits produced during the lease.

1527. The right covers also the effects of the under tenant, in so far as he is indebted to the lessee.

1528. It includes also movable effects belonging to third persons, and being on the premises by their consent, express or implied, but not if such movable effects be only transiently or accidentally on the premises, as the baggage of a traveller in an inn, or articles sent to a workman to be repaired, to an auctioneer to be sold, or to a warehouse to be stored.

1529. In the exercise of the privileged right the lessor may seize the property which is subject to it, upon the premises, or elsewhere within eight days after it is taken away. If the property consist of merchandise, it can be seized only while it continues to belong to the lessee.

1530. The lessor has a right of action in the ordinary course of law, or by summary proceeding, as prescribed in the Code of Civil Procedure :

1. To rescind the lease : First, When the lessee fails to furnish the premises leased, if a house, with sufficient furniture or movable effects, and, if a farm or estate, with sufficient stock to secure the rent as required by law, — unless other security be given ; Secondly, When the lessee commits waste upon the premises leased ; Thirdly, When the lessee uses the premises leased for illegal purposes, or contrary to the evident intent for which they are leased ;

2. To recover possession of the premises leased in all cases where there is a cause for rescission, and where the lessee continues in possession, against the will of the lessor, more than three days after the expiration of the lease, or without paying the rent according to the stipulations of the lease, if there be one, or according to article 1515, when there is no lease ;

3. To recover damages for non-fulfilment of the obligations arising from the lease or from the relation of lessor and lessee.

He has also a right to join with any action for the purposes above specified a demand for rent, with or without attachment, and attachment in recaption when necessary.

1531. The judgment rescinding the lease by reason of the non-payment of the rent takes effect at once without any delay being granted by it for the payment. Nevertheless the lessee may pay the rent with interest and costs of suit, and thereby avoid the rescission at any time before the expiration of the forty-eight hours immediately following the pronunciation of the judgment.

SECTION III.

THE OBLIGATIONS AND RIGHTS OF THE LESSEE.

1532. The principal obligations of the lessee are :

1. To use the property leased as a prudent administrator, for the purposes only for which it is designed and according to the terms and intention of the lease ;

2. To pay the rent or hire of the thing leased.

1533. The lessee is responsible for injuries and loss which happen to the property leased during his enjoyment of it, unless he proves that he is not in fault.

1534. He is answerable also for the injuries and losses which happen from the acts of persons of his family or of his sub-tenants.

1535. When loss by fire occurs in the premises leased, there is no presumption in favour of the lessor, that it was caused by the fault of the lessee or of the persons for whom he is responsible.

1536. If a statement have been made between the lessor and lessee, of the condition of the premises, the lessee is obliged to restore them in the condition in which the statement shows them to have been ; with the exception of the changes caused by age or fortuitous events.

1537. If no such statement as is mentioned in the preceding article have been made, the lessee is presumed, in

the absence of proof to the contrary, to have received the premises in good condition, and is obliged to restore them in the same condition.

1538. If during the lease the property leased be in urgent want of repairs, which cannot be deferred, the lessee must suffer them to be made, whatever inconvenience they may cause him, and although he may be deprived, during the making of them, of the enjoyment of a part of the property.

If such repairs became necessary before the making of the lease he is entitled to a diminution of the rent according to the time and circumstances; and in any case, if more than forty days be spent in making such repairs, the rent must be diminished in proportion to the time, and the part of the property of which he has been deprived.

If the repairs be of a nature to render the premises uninhabitable by the lessee and his family, he may demand the rescission of the lease.

1539. The tenant is obliged to make certain lesser repairs which become necessary in the house or the outhouses connected with it during his occupancy. These repairs, if not specified in the lease, are regulated by the usage of the place. The following, among others, are deemed to be tenant's repairs, namely, repairs:

To hearths, chimney-backs, chimney-casings, and grates;

To the plastering of interior walls and ceilings;

To floors, when partially broken, but not when in a state of decay;

To window-glass, unless it is broken by inevitable accident, caused by no fault of the lessee or his household;

To doors, windows, shutters, blinds, partitions, hinges, locks, hasps, and other fastenings.

1540. The tenant is not obliged to make the repairs deemed tenant's repairs, when they are rendered necessary by age or by irresistible force.

1541. In case of ejectment or rescission of the lease for the fault of the lessee, he is bound to pay the rent up to the time of vacating the premises, and also damages as well for loss of rent during the time necessary for reletting, as for any other loss resulting from the wrongful act of the lessee.

1542. (Am. 34-1956). The lessee has a right to sublet, or to assign his lease, unless there be a stipulation to the contrary.

If there be such a stipulation, it may apply to the whole or a part only of the premises leased, and in either case it is to be strictly observed, subject to the provisions of the Commercial Code relating to *Bankruptcy*.

1543. The under-tenant is, with respect to the principal lessor, liable only for the amount of the rent which he may owe at the time of seizure.

He cannot plead payments made in advance, except such as are in accordance with usage.

1544. The lessee has a right to remove, before the expiration of the lease, improvements and additions which he has made, provided he leaves the property in the state in which he received it ; nevertheless, if the improvements or additions be incorporated with the thing leased, with nails, lime, or cement, the lessor may retain them on paying the value.

1545. The lessee has a right of action in the ordinary course of law, or by summary proceeding, as provided by the Code of Civil Procedure :

1. To compel the lessor to make the repairs and improvements stipulated in the lease, or which the law requires him to make ; or to obtain authority to make the same at the expense of the lessor ; or, if the lessee so choose, to obtain the rescission of the lease in default of such repairs or improvements being made ;

2. To rescind the lease for failure on the part of the lessor to perform any other of the obligations arising from the lease, or devolving upon him by law ;

3. To recover damages for non-fulfilment of the obligations arising from the lease, or from the relation of lessor and lessee.

SECTION IV.

RULES PARTICULAR TO THE LEASE OR HIRE OF HOUSES.

1546. (Am. 34-1956). The lease or hire of a house or part of a house, when no time is specified for its duration, is held to be annual, terminating on the first day of May of each year, when the rent is at a rate for a year ;

For a month, when at a rate for a month ;

For a day, when at a rate for a day.

If the rate of the rent for a certain time be not shown, the duration of the lease is regulated by usage.

1547. The lease of movables for furnishing a house or apartments, when no time is indicated for its duration, is governed by the rules contained in the last preceding article, and when these do not apply, is deemed to be made for the usual duration of leases of houses or apartments, according to usage.

1548. The cleansing of wells and of privies is at the charge of the lessor, if there be no stipulation to the contrary.

1549. The rules contained in this Chapter, relating to houses, extend also to warehouses, shops, and manufactories, and to all immovable property other than farms and rural estates, in so far as they can be made to apply.

SECTION V.

RULES PARTICULAR TO THE LEASE AND HIRE OF FARMS AND ESTATES.

1550. He who cultivates land on condition of sharing the produce with the lessor can neither sublet nor assign his lease, unless the right to do so has been expressly stipulated.

If he sublet or assign, without such stipulation, the lessor may eject him, and recover damages resulting from the violation of the lease.

1551. The lessee of a plantation or farm is bound to furnish it with sufficient stock and the implements necessary for its cultivation, and to cultivate it with reasonable care and skill.

1552. If the plantation or farm be found to contain a greater or less quantity of land than that specified in the lease, the rights of the parties to an increase or diminution of rent are governed by the rules on that subject contained in the Book respecting *Sale*.

1553. The lessee of a farm or rural estate is bound to give notice to the lessor, with reasonable diligence, of any encroachment made upon it ; and in default of so doing he is liable for all damages and expense.

1554. If the lease be for one year only, and, during the year, the crop be wholly or in great part lost by a fortuitous event, the lessee is discharged from his obligation for the rent in proportion to such loss. But if the lease be for a term of two or more years, the lessee is not entitled to claim any reduction.

1555. When the loss happens after the crop is separated from the land, the lessee is not entitled to any reduction of the rent payable in money. If the rent consist of a share in the harvest, the lessor must bear his proportion of the loss, unless the loss is caused by the fault of the lessee, or his rent be in arrear.

1556. (Am. 34-1956). The lease of a plantation or farm, when no term is specified, is presumed to be an annual lease, terminating on the first day of May each year, subject to notice as hereinafter provided.

1557. The lessee of a plantation or farm must leave, at the termination of his lease, the manure, and the straw and other substances intended for manure, if he have received them on taking possession ; if he have not so received them, the owner may nevertheless retain them on paying their value.

SECTION VI.

THE TERMINATION OF THE LEASE OR HIRE OF THINGS.

1558. The contract of lease or hire of things is terminated in the manner common to other obligations, as set forth in the Eighth Chapter of the Book respecting *Obligations,* in so far as the rules therein contained can be applied, such rules however being qualified by the special rules contained in this Book.

1559. It is also terminated by rescission in the manner and for the causes declared in articles 1530 and 1545.

1560. When the term of a lease is uncertain, or the lease is verbal, or presumed as provided in article 1515, neither of the parties can terminate it without giving notice to the other, with a delay of three months, if the rent be payable at terms of three months or more ; if the rent be payable at terms of less than three months, the delay is determined according to article 1546.

The whole nevertheless subject to that article and to articles 1515 and 1556.

1561. The lease, if written, terminates of course, and without notice, at the expiration of the term agreed upon.

1562. The contract of lease or hire is terminated by the loss of the property leased.

1563. If, during the lease, the thing be wholly destroyed by a fortuitous event, or taken for purposes of public utility, the lease is dissolved of course. If the property be destroyed or taken in part only, the lessee may, according to circumstances, obtain a reduction of the rent or the rescission of the lease ; but in neither case has he any claim for damages against the lessor.

1564. The contract of lease or hire is not terminated by the death of the lessor or lessee.

1565. The lessor cannot put an end to the lease, for the purpose of occupying himself the premises leased, unless the right to do so has been expressly stipulated, and in such case the lessor must give notice to the lessee according to the rules contained in article 1560 and the articles therein referred to ; unless there is a stipulation to the contrary.

1566. The lessee cannot, by reason of the alienation of the property leased, be expelled before the expiration of the lease, by a person who becomes owner of the property under a title derived from the lessor ; unless the lease contains a special stipulation to that effect and be registered.

In such case, and in the absence of stipulation to the contrary, notice must be given to the lessee according to the rules contained in article 1560 and the articles therein referred to.

1567. When property sold subject to the right of redemption is taken back by the seller in the exercise of such right, the lease made by the buyer is terminated and the lessee has recourse for damages against the buyer only.

CHAPTER THIRD.

THE LEASE AND HIRE OF WORK.

SECTION I.

GENERAL PROVISIONS.

1568. The principal kinds of work which may be leased or hired are :

1. The personal services of workmen, servants and others ;

2. The work of carriers, by land and by water, who undertake the conveyance of persons or things ;

3. That of builders and others, who undertake works by estimate or contract.

SECTION II.

THE LEASE AND HIRE OF THE PERSONAL SERVICE OF WORKMEN, SERVANTS, AND OTHERS.

1569. The contract of lease or hire of personal service can only be for a limited term, or for a determinate undertaking.

It may be prolonged by tacit renewal.

1570. It is terminated by the death of the party hired or his becoming, without fault on his part, unable to perform the services agreed upon.

It is also terminated by the death of the party hiring, in some cases, according to circumstances.

1571. The rights and obligations arising from the lease or hire of personal service are subject to the rules common to other contracts. They are also regulated in certain respects by Ordinance.

1572. The hiring of seamen is subject to certain special rules provided in the " Merchant Shipping Acts. "

SECTION III.

CARRIERS.

1573. Carriers by land or by water are subject, with respect to the safe keeping of things entrusted to them, to the obligations and duties to which innkeepers are subject, as specified in the Book respecting *Deposit.*

1574. They are obliged to receive and convey, at the times fixed by public notice, all persons applying for passage, if the conveyance of passengers be a part of their accustomed business, and all goods offered for transportation; unless, in either case, there is a reasonable and sufficient cause of refusal.

1575. They are liable, not only for what has been received in the vehicle or vessel, but also for what has been delivered to them for carriage at the port or place of deposit.

1576. They are liable for the loss or damage of anything entrusted to them, unless they can prove that such loss or damage was caused by a fortuitous event, or has arisen from a defect in the thing itself.

1577. Notice by carriers, of special conditions limiting their liability, affects only persons to whom it is made known; and notwithstanding such notice and the knowledge of it, carriers are liable whenever it is proved that the damage is caused by their fault or the fault of those for whom they are responsible.

1578. They are not liable for sums of money for bills or other securities, or for gold, or silver, or precious stones, or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared that the package contains such money or other articles.

The foregoing rule nevertheless does not apply to the personal baggage of travellers when the money or the value of the articles lost is only of moderate amount and suitable to the circumstances of the traveller.

1579. If by reason of a fortuitous event, the transportation and delivery of the property carried be not made within the stipulated term, the carrier is not liable in damages for the delay.

1580. The carrier has a right to retain the property carried until he is paid for the carriage or freight.

1581. The reception of property carried and payment of the carriage or freight, without protest, extinguish all right of action against the carrier; unless the loss or damage is such that it could not then be known, in which case the claim must be made without delay after the loss or damage becomes known to the claimant.

1582. (Rep. 34-1956).

SECTION IV.

WORK BY ESTIMATE AND CONTRACT.

1583. When a party undertakes the construction of a building or other work by estimate and contract, it may be agreed either that he shall furnish labour and skill only, or that he shall also furnish materials.

1584. If the workman furnish the materials, and the work is to be perfected and delivered as a whole, at a fixed price, the loss of the property, in any manner whatsoever, before delivery, falls upon himself, unless the loss is caused by the fault of the owner or the owner has failed to receive the property in due time.

1585. If the workman furnish only labour and skill, the loss of the property before delivery does not fall upon him, unless it is caused by his fault.

1586. In the case of the last preceding article, if the work is to be perfected and delivered as a whole, and the property perish before the work has been received, and before the owner was bound to receive it, the workman, even if not in fault, cannot claim his wages; unless the property has perished by reason of defect in the materials, or by the fault of the owner.

1587. If the work be composed of several parts, or done at a certain rate by measurement, it may be received in parts. It is presumed to have been so received, for all the parts paid

for, if the owner pays the workman in proportion to the work done.

1588. If a building perish in whole or in part within ten years, from a defect in construction, or even from the unfavourable nature of the ground, the architect superintending the work, and the builder are jointly and severally liable for the loss.

1589. If, in the case stated in the last preceding article, the architect do not superintend the work, he is liable for the loss only which is occasioned by defect or error in the plan furnished by him.

1590. When an architect or builder undertakes the construction of a building or other works by contract, upon a plan and specifications, at a fixed price, he cannot claim any additional sum upon the ground of a change from the plan and specifications, or of an increase in the labour and materials, unless such change or increase is authorised in writing, or admitted by the proprietor. If in either of the above cases, the additional sum has not been fixed by agreement, it shall be determined by proof of value.

1591. The owner may cancel the contract for the construction of a building or other works at a fixed price, although the work have been begun, on indemnifying the workman for all his actual expenses and labour, and paying damages according to the circumstances of the case.

1592. The contract of lease or hire of work by estimate and contract is not terminated by the death of the workman ; his legal representatives are bound to perform it.

But in cases wherein the skill and ability of the workman were an inducement for making the contract, it may be cancelled at his death by the party hiring him.

1593. In the latter case stated in the last preceding article the owner is bound to pay to the legal representatives of the

workman, in proportion to the price agreed upon in the contract, the value of the work done and materials furnished, in case such work and materials are useful to him.

1594. The contract is not terminated by the death of the party hiring the work, unless the performance of it becomes thereby impossible.

1595. Architects, builders and other workmen, have a privilege upon the buildings, or other works constructed by them, for the payment of their work and materials, subject to the rules contained in the Book respecting *Privileges and Hypothecs,* and *Registration of Real Rights.*

1596. Masons, carpenters, and other workmen, who undertake work by contract, for a fixed price, are subject to the rules prescribed in this section. They are regarded as contractors with respect to such work.

1597. The workmen who are employed by the contractor in the construction of a building or other works have no direct action against the owner.

CHAPTER FOURTH.

THE LEASE OF CATTLE ON SHARES.

1598. The letting out of cattle on shares is a contract by which one of the parties delivers to the other a stock of cattle to keep, feed, and take care of, upon fixed conditions as to the division of profits between them.

1599. Every kind of animal which is susceptible of increase or profit, in agriculture or commerce, may be the subject of this contract.

1600. If there be no special agreement the contract is regulated by usage.

BOOK EIGHTH.

(Am. 34-1956).

AGENCY.

CHAPTER FIRST.

GENERAL PROVISIONS.

1601. Agency is a contract by which a person, called the principal, commits a lawful business to the management of another, called the agent, who by his acceptance binds himself to perform it.

The acceptance may be implied from the acts of the agent, and in some cases from his silence.

1602. Agency is gratuitous unless there is an agreement or an established usage to the contrary.

1603. The agency may be either special, for a particular business, or general, for all the affairs of the principal.

When general it includes only acts of administration.

For the purpose of alienation and hypothecation, and for all acts of ownership other than acts of administration, the agency must be express.

1604. The agent can do nothing beyond the authority given or implied by the agency. He may do all acts which are incidental to such authority and necessary for the execution of the agency.

1605. Powers granted to persons of a certain profession or calling to do anything in the ordinary course of the business which they follow, need not be specified ; they are inferred from the nature of such profession or calling.

1606. (Am. 34-1956). An agent employed to buy or sell a thing cannot be the buyer or seller of it on his own account without full disclosure of the circumstances ; and the onus of proving that there has been full disclosure is upon the agent.

1607. (Subst. 34-1956). A minor may act as an agent, but he does not incur any contractual obligation in that capacity.

1608. (Subst. 34-1956). A married woman may act as an agent in the same manner and with the same effects as if she were unmarried.

1608A. (Ad. 34-1956). Subject to the provisions of this Code or of any other statute the law of England for the time being relating to the contract of agency shall extend to and apply in the Colony, and articles 1601 to 1661 shall as far as practicable be construed accordingly.

CHAPTER SECOND.

THE OBLIGATIONS OF THE AGENT.

SECTION I.

THE OBLIGATIONS OF THE AGENT TOWARD THE PRINCIPAL.

1609. The agent is obliged to execute the agency which he has accepted, and he is liable for damages resulting from his non-execution of it while his authority continues.

He is obliged, after the extinction of the agency, to do whatever is a necessary consequence of acts done before, and if the extinction be by the death of the principal, he is obliged to complete business which is urgent and cannot be delayed without risk of loss or injury.

1610. The agent is bound to exercise, in the execution of the agency, reasonable skill and all the care of a prudent administrator.

Nevertheless, if the agency be gratuitous, the Court may moderate the liability arising from his negligence or fault, according to the circumstances.

1611. The agent is answerable for the person whom he substitutes in the execution of the agency, when he has no

power of substitution ; and if the agent be injured by reason of the substitution he may repudiate the acts of the substitute.

The agent is answerable in like manner when he is empowered to substitute, without designation of the person to be substituted, and he appoints one who is notoriously unfit.

In all these cases the principal has a direct action against the person substituted by the agent.

1612. When several agents are appointed together for the same business, they are jointly and severally liable for each other's acts of administration, unless it is otherwise stipulated.

1613. The agent is bound to render an account of his administration, and to deliver and pay over all that he has received under the authority of the agency, even if it were not due ; but he may deduct therefrom the amount of his disbursements and charges in the execution of the agency.

If he have received a determinate thing he is entitled to retain it until such disbursements and charges are paid.

1614. He is bound to pay interest upon the money of the principal which he employs for his own use, from the day of so employing it, and upon any remainder due to the principal, from the time of being placed in default.

SECTION II.

THE OBLIGATIONS OF THE AGENT TOWARD THIRD PERSONS.

1615. (Am. 34-1956). The agent acting in the name of the principal and within the bounds of the agency is not personally liable to third persons with whom he contracts.

1616. An agent who acts in his own name is liable to the third party with whom he contracts, without prejudice to the rights of the latter against the principal also.

1617. He is liable in like manner when he exceeds his powers under the agency, unless he has given the party with whom he contracts sufficient communication of such powers.

1618. He is not held to have exceeded his powers when he executes the agency in a manner more advantageous to the principal than that specified.

1619. He is held to have exceeded his powers, when he does alone anything which, by the agency, he is charged with doing conjointly with another.

CHAPTER THIRD.

THE OBLIGATIONS OF THE PRINCIPAL.

SECTION I.

THE OBLIGATIONS OF THE PRINCIPAL TOWARD THE AGENT.

1620. The principal is bound to indemnify the agent for all obligations contracted by him toward third persons, within the limit of his powers; and for acts exceeding such powers, whenever they have been expressly or tacitly ratified.

1621. The principal or his legal representative is bound to indemnify the agent for all acts done by him within the limit of his powers, after the extinction of the agency by death or other cause, while the principal has been ignorant of such extinction.

1622. The principal is bound to reimburse the expenses and charges which the agent has incurred in the execution of the agency, and to pay him the salary or other compensation to which he may be entitled.

When there is no fault imputable to the agent, the principal is not released from such reimbursement and payment, although the business has not been successfully accomplished; nor can he reduce the amount of the reimbursement upon the ground that the expenses and charges might have been made less by himself.

1623. The agent has a lien for the payment of the expenses and charges mentioned in the last preceding article, upon the property placed in his charge and upon the proceeds of its sale or disposal.

1624. The principal is bound to pay interest upon money advanced by the agent in the execution of the agency. The interest is computed from the day on which the money is advanced.

1625. The principal is bound to indemnify the agent who is not in fault, for losses caused to him by the execution of the agency.

1626. If an agency be given by several persons, their obligations towards the agent are joint and several.

SECTION II.

THE OBLIGATIONS OF THE PRINCIPAL TOWARD THIRD PERSONS.

1627. The principal is bound in favour of third persons for all the acts of his agent, done in execution and within the powers of the agency, except in the case provided for in article 1638 of this Book, and the cases wherein by agreement or the usage of trade the latter alone is bound.

The principal is also answerable for acts which exceed such power, if he have ratified them either expressly or tacitly.

1628. The principal or his legal representative is bound toward third persons for all acts of the agent, done in execution and within the powers of the agency after it has been extinguished, if its extinction be not known to such third persons.

1629. The principal or his legal representative is bound for acts of the agent done in execution and within the powers of the agency after its extinction, when such acts are a necessary consequence of an affair already begun.

He or his representative is also bound for acts of the agent done after the extinction of the agency by death or cessation of authority in the principal, for the completion of an affair, where loss or injury might have been caused by delay.

1630. The principal is liable to third parties who in good faith contract with a person not his agent, under the belief that he is so, when the principal has given reasonable cause for such belief.

1631. He is liable for damages caused by the fault of the agent, according to the rules declared in article 986.

CHAPTER FOURTH.

ADVOCATES, ATTORNEYS, AND NOTARIES.

1632. Advocates, attorneys, and notaries are subject to the general rules contained in this Book, except as qualified or set aside by Ordinance.

1633. The rules concerning the duties and rights of advocates and attorneys, in the exercise of their functions before the courts, are contained in the Code of Civil Procedure, and in the rules of practice.

1634. The rules of prescription relating to advocates, attorneys, and notaries are contained in article 2121.

CHAPTER FIFTH.

BROKERS, FACTORS AND OTHER COMMERCIAL AGENTS.

1635 — 1654. (Superseded by the Commercial Code).

CHAPTER SIXTH.

THE TERMINATION OF AGENCY.

1655. Agency terminates

1. By revocation ;

2. By the renunciation of the agent ;

3. By the death of the principal or agent ;

4. By interdiction, bankruptcy, or other change in the condition of either party by which his civil capacity is affected ;

5. By the cessation of authority in the principal ;

6. By the accomplishment of the business or the expiration of the time for which the agency is given ;

7. By other causes of extinction common to other obligations.

1656. The principal may at any time revoke the agency, and oblige the agent to return to him the power of attorney if it be an original instrument.

1657. The appointment of a new agent for the same business has the effect of a revocation of the first appointment from the day on which the former agent has been notified of the new appointment.

1658. If notice of the revocation be given to the agent alone, it does not affect third persons who in ignorance of it have contracted with the agent, but the principal has recourse against the agent.

1659. The agent may renounce the agency after acceptance, on giving due notice to the principal. But if such renunciation be injurious to the latter, the agent is answerable in damages, unless there is a reasonable cause for the renunciation. If the agent be acting for a valuable consideration he is liable according to the general rules relating to the non-fulfilment of obligations.

1660. Acts of the agent, done in ignorance of the death of the principal or other cause whereby the agency is extinguished, are valid.

1661. The legal representatives of the agent, having a knowledge of the agency and not being incapacitated by minority or otherwise, are bound to give notice of his death to the principal and to do, in business already begun, whatever is immediately necessary to protect the latter from loss.

BOOK NINTH.

LOAN.

GENERAL PROVISIONS.

1662. Loans are of two kinds :

1. The loan of things which may be used without being destroyed, called loan for use ;

2. The loan of things which are consumed by the use made of them, called loan for consumption.

CHAPTER FIRST.

LOAN FOR USE.

SECTION I.

GENERAL PROVISIONS.

1663. Loan for use is a contract by which one person, called the lender, gives to another, called the borrower, a thing to be used gratuitously for a time, and then to be returned to the lender.

1664. The lender continues to be the owner of the thing lent.

1665. Every thing may be loaned for use which may be the object of the contract of lease or hire.

SECTION II.

THE OBLIGATIONS OF THE BORROWER.

1666. The borrower is bound to bestow the care of a prudent administrator in the safe-keeping and preservation of the thing loaned.

He cannot apply the thing to any other use than that for which it is intended by its nature or by agreement.

1667. If the borrower apply the thing to any other use than that for which it is intended, or use it for a longer time than is agreed upon, he is liable for the loss of it arising even from a fortuitous event.

1668. If the thing lent be lost by a fortuitous event from which the borrower might have preserved it by using his own, or if being unable to save both things he prefers to save his own, he is liable for the loss.

1669. If the thing lent deteriorate by the use alone for which it is lent and without fault on the part of the borrower, he is not liable for the deterioration.

1670. The borrower cannot retain the thing lent for a debt due to him by the lender, unless such debt is for expenses necessarily incurred in the preservation of the thing.

1671. If in order to use the thing the borrower have incurred expense, he is not entitled to recover it from the lender.

1672. If several persons conjointly borrow the same thing, their obligations in respect of it towards the lender are joint and several.

SECTION III.

THE OBLIGATIONS OF THE LENDER.

1673. The lender cannot take back the thing, or disturb the borrower in the proper use of it, until after the expiration

of the term agreed upon, or, if there be no agreement, until after the thing has been used for the purpose for which it was borrowed ; this rule however being subject to the exception stated in the next following article.

1674. If before the expiration of the term, or, if no term have been agreed upon, before the borrower has completed his use of the thing, there occur to the lender a pressing and unforeseen need of it, the Court may, according to the circumstances, compel the borrower to restore it to him.

1675. If during the continuance of the loan the borrower be obliged, for the preservation of the thing lent, to incur any extraordinary and necessary expense, of so urgent a nature that he cannot notify the lender, the latter is bound to reimburse it to him.

1676. When the thing lent has defects which cause injury to the person using it, the lender is responsible if he knew the defects and did not make them known to the borrower.

CHAPTER SECOND.

LOAN FOR CONSUMPTION.

SECTION I.

GENERAL PROVISIONS.

1677. Loan for consumption is a contract by which the lender gives the borrower a certain quantity of things which are consumed by the use made of them, under the obligation by the latter to return a like quantity of things of the same kind and quality.

1678. By loan for consumption the borrower becomes owner of the thing lent, and the loss of it falls upon him.

1679. If the loan be in money the obligation which results from it is the repayment of the same numerical amount in money, current at the time of payment, whether the money has increased or diminished in value subsequently to the loan.

1680. If the loan be in bullion or of provisions, the borrower is obliged to return the same quantity and quality as he has received and nothing more, whatever may be the increase or diminution of the price of them.

SECTION II.

THE OBLIGATIONS OF THE LENDER.

1681. In making a loan for consumption the lender must have the right to alienate the thing loaned, and he is subject to the obligation declared in article 1676, relating to loan for use.

SECTION III.

THE OBLIGATIONS OF THE BORROWER.

1682. The borrower is obliged to return for the things lent a like quantity of other things of the same kind and quality, at the time agreed upon.

1683. If there be no agreement by which the time for the return can be determined, it is fixed by the Court according to circumstances.

1684. If the borrower fails to return things lent, he is bound at the option of the lender to pay the value which they bore at the time and place at which, according to the agreement, the return was to be made ;

If the time and place of the return be not agreed upon, payment must be made of the value which the things bore at the time when and the place where the borrower is placed in default ;

In either of the above cases the borrower pays interest from the time of default.

CHAPTER THIRD.

LOAN UPON INTEREST.

1685. Interest upon loans is either legal or conventional.

The rate of legal interest is fixed by law at six per cent. yearly.

The rate of conventional interest may be fixed by agreement between the parties.

1686. An acquittance for the principal debt creates a presumption of payment of the interest, unless the latter is expressly excluded.

CHAPTER FOURTH.

CONSTITUTION OF RENT.

1687. Constitution of rent is a contract by which parties agree that yearly interest shall be paid by one of them upon a sum of money due to the other or furnished by him, to remain permanently in the hands of the former as a capital of which payment shall not be demanded by the party furnishing it, except as hereinafter provided.

It is subject with respect to the rate of interest to the same rules as loans upon interest.

1688. Constitution of rent may likewise be made by gift or will.

1689. Rents may be constituted either in perpetuity or for a term. When constituted in perpetuity they are essentially redeemable by the debtor ; subject to the provisions contained in articles 348, 349 and 350.

1690. The capital of a rent constituted in perpetuity may be demanded :

1. When the debtor of it fails to furnish and maintain the security as bound to do by the contract.

2. When the debtor becomes bankrupt ;

3. In the cases provided in articles 348, 349 and 350.

1691. The rules concerning the prescription of arrears of constituted rents are contained in the Book respecting *Prescription.*

1692. The creditor of a constituted rent secured by the privilege and hypothec of a vendor has a right to demand that the sale under execution of property upon which such privilege and hypothec exists shall be made subject to the rent.

1693. The rules concerning life-rents are contained in the Book respecting *Life-Rents.*

BOOK TENTH.

DEPOSIT.

1694. There are two kinds of deposit; simple deposit, and sequestration.

CHAPTER FIRST.

SIMPLE DEPOSIT.

SECTION I.

GENERAL PROVISIONS.

1695. It is of the essence of simple deposit that it be gratuitous.

1696. Movable property only can be the object of simple deposit.

1697. Delivery is essential to perfect the contract of deposit.

The delivery is sufficient when the depositary is already in possession, under any other title, of the thing which is the object of the deposit.

1698. Simple deposit is either voluntary or necessary.

SECTION II.

VOLUNTARY DEPOSIT.

1699. Voluntary deposit is that which is made by the mutual consent of the party making and of the party receiving it.

1700. Voluntary deposit can take place only between persons capable of contracting.

Nevertheless if a person capable of contracting accept a deposit made by a person incapable, he is liable to all the obligations of a depositary ; which obligations may be enforced against him by the tutor or other administrator of the incapable person.

1701. If the deposit have been made with a person incapable of contracting, the party making it has a right to obtain restoration, so long as it remains in the hands of the depositary, and afterwards a right to demand the value of the thing in so far as it has been profitable to the depositary.

SECTION III.

THE OBLIGATIONS OF THE DEPOSITARY.

1702. The depositary is bound to keep the thing deposited with the care of a prudent administrator.

1703. The depositary has no right to use the thing deposited without the permission of the depositor.

1704. The depositary is bound to restore the identical thing which he has received in deposit.

If the thing have been taken from him by irresistible force and something be given in exchange for it, he is bound to restore whatever he has received in exchange.

1705. The depositary is only bound to restore the thing deposited, or such portion of it as remains, in the condition in which it is at the time of restoration. Deterioration not caused by his fault is the loss of the depositor.

1706. The heir or other legal representative of the depositary who sells the thing deposited, in good faith and in ignorance of the deposit, is bound only to restore the price received for it, or to transfer his right against the buyer if the price have not been paid.

1707. The depositary is bound to restore any profits received by him from the thing deposited.

He is not bound to pay interest on money deposited unless he fails to restore it when bound to do so.

1708. The depositary cannot exact from the depositor proof that he is owner of the thing deposited.

1709. The restoration of the thing deposited must be made at the place agreed upon, and the cost of conveying it there is borne by the depositor.

If no place be agreed upon, the restoration must be made at the place where the thing is.

1710. The depositary is bound to restore the thing to the depositor whenever it is demanded, although the delay for its restoration may have been fixed by the contract, unless he is prevented from so doing by reason of an attachment, or opposition, or other legal hindrance, or has a right of retention as described in article 1712.

1711. All the obligations of the depositary cease if he establish that he is owner of the thing deposited.

SECTION IV.

THE OBLIGATIONS OF THE DEPOSITOR.

1712. The depositor is bound to reimburse the depositary for the expenses incurred by the latter in the preservation

and care of the thing, and to indemnify him for all losses that the deposit may have caused to him.

The depositary has a right to retain the thing deposited until such expenses and losses are paid to him.

SECTION V.

NECESSARY DEPOSIT.

1713. Necessary deposit is that which takes place under an unforeseen and pressing necessity arising from accident or fortuitous event, as in case of fire, shipwreck, pillage or other sudden calamity. It is subject to the same rules as voluntary deposit, with the exception of the mode of proof.

1714. Keepers of inns, of boarding-houses and of taverns, are responsible as depositaries for the things brought by travellers who lodge in their houses.

The deposit of such things is considered a necessary deposit.

1715. The persons mentioned in the last preceding article are responsible if the things be stolen or damaged by their servants or agents, or by strangers coming and going in the house.

But they are not responsible if the theft be committed by force of arms or the damage be caused by fortuitous event; nor are they responsible if it be proved that the loss or damage is caused by a stranger or has arisen from neglect or carelessness on the part of the person claiming it.

1716. The rules stated in article 1578 apply also to the liability of keepers of inns, boarding-houses and taverns.

CHAPTER SECOND.

SEQUESTRATION.

1717. Sequestration is either conventional or judicial.

SECTION I.

CONVENTIONAL SEQUESTRATION.

1718. Conventional sequestration is the deposit made by two or more persons of a thing in dispute, in the hands of

a third person who binds himself to restore it after the termination of the contest, to the person to whom it may be adjudged.

1719. Sequestration is not essentially gratuitous. It is in other respects subject to the rules generally applicable to simple deposit, when they are not inconsistent with the articles of this Chapter.

1720. Immovable as well as movable property may be the subject of sequestration.

1721. The sequestrator cannot be discharged until the termination of the contestation, unless by the consent of all the parties interested, or for sufficient cause by the Court.

1722. When the sequestration is not gratuitous it is assimilated to the contract of lease and hire, and the obligations of the sequestrator in respect of safe keeping of the property are the same as those of the lessee.

SECTION II.

JUDICIAL SEQUESTRATION.

1723. Sequestration or deposit may take place by judicial authority :

1. Of movable or immovable property seized under process of attachment, or in virtue of a judgment ;

2. Of money or other things tendered and deposited by a debtor in a suit pending ;

3. Upon application by an interested party, of property movable or immovable, of which the ownership or possession is in litigation.

4. Of property which, owing to its being of a perishable nature, the sale is desirable pending litigation.

1724. The sequestration may also take place by judicial authority in the following cases specified in this Code :

1. When the usufructuary cannot give security as specified in article 415 ;

2. When the substitute is put in possession under article 890.

1725. The sequestrator appointed by judicial authority is bound to apply to the safe keeping of the property in his charge the care of a prudent administrator.

He is bound either to produce it for the purpose of being sold in due course of law or to deliver it to the party entitled to it under the judgment of the Court.

He is also bound to render an account of his administration when judgment is rendered in the cause and while the cause is pending as often as ordered by the Court.

He is entitled to be paid, by the party seizing, such compensation as is fixed by law or by the Court ; unless he has voluntarily undertaken his duty at the instance of the party on whom the seizure is made.

1726. The property sequestered cannot be leased directly or indirectly to any of the parties claiming it.

1727. The sequestrator appointed by judicial authority, to whom the property has been delivered, is subject to all the obligations which attach to conventional sequestration.

1728. The judicial sequestrator may obtain his discharge after the lapse of three years, unless, for special reasons, the Court has continued his functions beyond that period.

He may also be discharged by the Court within that time upon cause shown.

1729. The special rules concerning judicial sequestration or deposit are contained in the Code of Civil Procedure.

BOOK ELEVENTH.

PARTNERSHIP.

1730 — 1797. (Superseded by the Commercial Code).

BOOK TWELFTH.

LIFE-RENTS.

CHAPTER FIRST.

GENERAL PROVISIONS.

1798. Life-rents may be constituted for valuable consideration ; or gratuitously, by gift or will.

1799. The rent may be on the life of the person who constitutes it, or who receives it, or upon the life of a third person who has no right to the enjoyment of it.

1800. It may be constituted upon one life or upon several lives.

But if it affect real estate, it cannot be for a longer term than ninety-nine years or the duration of three lives, and becomes extinct at the end of ninety-nine years, or at the death of the last of the three lives, as the case may be.

1801. It may be constituted for the benefit of a person other than the one who gives the consideration.

1802. A life-rent is void, and the consideration paid for it may be recovered, when the person upon whose life it is constituted is dead at the time of the contract, or is, without the knowledge of the parties, dangerously ill of a malady of which he dies within twenty days after the date of the contract.

CHAPTER SECOND.

THE EFFECTS OF THE CONTRACT.

1803. Non-payment of arrears of a life-rent is not a cause for recovering back the money or other consideration given for its constitution.

1804. The creditor of a life-rent secured by the privilege and hypothec of a vendor upon immovable property, afterwards seized to be sold by judicial sale, has a right to demand that the property shall be sold subject to the life-rent as a charge upon it.

1805. The debtor of the rent cannot free himself from the payment of it by offering to reimburse the capital and renouncing all claim to receive back the payments made.

1806. The rent is due only for the number of days that the person upon whose life it is constituted lives ; unless it is made payable in advance.

1807. A stipulation that the life-rent cannot be seized or taken in execution is void, unless the rent is constituted by a gratuitous title.

1808. The creditor of a life-rent on demanding payment of it must establish the existence of the person on whose life it is constituted, up to the time for which the arrears are claimed.

1809. When an immovable hypothecated for the payment of a life-rent is sold by a judicial sale, or by a voluntary sale followed by confirmation of title, the creditors whose claims are of date subsequent to that of the constitution of the rent are entitled to receive the proceeds of the sale on giving sufficient security for the continued payment of the rent, and in default of such security being given, the creditor of the rent is collocated, according to the order of his hypothec, for a sum equal to the value of the rent at the time of collocation.

1810. The value of a life-rent is estimated at the sum which, at the time of collocation, would be sufficient to purchase from a life-assurance company a life annuity of like amount.

1811. If the price of the immovable be less than the estimated value of the life-rent the creditor of it is entitled to receive such price, according to the order of his hypothec, or to receive security from the subsequent creditors for the payment of the rent until the price received by them and the interest is exhausted by such payments.

1812. The estimation of the life-rent and its payment, in all cases in which the creditor is entitled to claim the value of it, are subject to the rules contained in the foregoing articles in so far as they can be made to apply.

BOOK THIRTEENTH.

TRANSACTION.

1813. Transaction is a contract by which the parties terminate a lawsuit already begun, or prevent future litigation by means of concessions or reservations made by one or both of them.

1814. Those persons only can enter into the contract of transaction who have legal capacity to dispose of the things which are the subject of it.

1815. Transaction has between the parties to it the authority of a final judgment (*res judicata*).

1816. Error of law is not a cause for annulling transaction. With this exception, it may be annulled for the same causes as contracts generally ; subject nevertheless to the provisions of the articles following.

1817. Transaction may also be annulled when it is made in respect of a title which is null, unless the parties have expressly referred to and waived the nullity.

1818. Transaction with respect to a writing which has since been found to be false, is altogether null.

1819. Transaction upon a suit terminated by a judgment having the authority of a final judgment, and not known to either of the parties, is null. But if the judgment be subject to appeal the transaction is valid.

1820. When parties have transacted generally upon all the matters between them, the subsequent discovery of documents of which they were then in ignorance does not furnish a cause for annulling the transaction ; unless such documents have been kept back by one of the parties.

But transaction is null when it relates only to an object respecting which the subsequently discovered documents prove that one of the parties had no right whatever.

1821. Errors of calculation in transaction may be corrected.

BOOK FOURTEENTH.

GAMING CONTRACTS AND BETS.

1822. There is no right of action for the recovery of money or any other thing claimed under a gaming contract or a bet. But if the money or thing have been paid by the losing party he cannot recover it back, unless fraud be proved.

1823. The denial of the right of action declared in the preceding article is subject to exception in favour of contributions towards any prize or sum of money to be awarded to the winner of any exercise for promoting skill in

the use of arms, or of any horse or foot race, or any other lawful game which requires bodily activity or address.

1824. A note or bill of exchange given in discharge or in respect of a contract which is illegal, as a gaming contract or bet, is void as between the original parties, but is valid in the hands of any person to whom it has been transferred for value, without notice of the illegal consideration.

BOOK FIFTEENTH.

SURETYSHIP.

CHAPTER FIRST.

THE NATURE, DIVISION, AND EXTENT OF SURETYSHIP.

1825. Suretyship is the act by which a person engages to fulfil the obligation of another in case of its non-fulfilment by that other who is termed the principal debtor.

The person who contracts this engagement is called surety.

1826. Suretyship is either conventional, legal, or judicial. The first is the result of agreement between the parties, the second is constituted by law, and the third is ordered by judicial authority.

1827. The surety is not bound to fulfil the obligation of the debtor unless the latter fails to do so.

1828. Suretyship can only be for the fulfilment of a valid obligation. But the surety may, by special stipulation, renounce the benefit of an exception which may be pleaded by or on behalf of the principal debtor.

1829. Suretyship cannot be contracted for a greater sum nor under more onerous conditions than the principal obligation.

It may be contracted for a part only of the debt, or under conditions less onerous.

The suretyship which exceeds the debt, or is contracted under more onerous conditions, is not null; it is only reducible to the measure of the principal obligation.

1830. A person may become surety without the request and even without the knowledge of the principal debtor.

A person may become surety not only of the principal debtor but even of the surety of such debtor.

1831. Suretyship is not presumed; it must be expressed, and cannot be extended beyond the limits within which it is contracted.

1832. Indefinite suretyship extends to all the accessories of the principal obligation, even to the cost of the principal action, and to all costs subsequent to notice of such action given to the surety.

1833. The obligations of the surety pass to his heirs.

1834. The debtor who is bound to find a surety must offer one who has the capacity of contracting, and who has sufficient property in the Colony to secure the fulfilment of the obligation.

1835. The solvency of a surety is estimated only with regard to his real property; except in commercial matters, or when the debt is small, and in cases otherwise provided for by some special law.

Immovables which are the subject of litigation or the title to which is not clear are not taken into account.

1836. When the surety in conventional or judicial suretyship becomes insolvent, another must be found.

This rule admits of exception in the case only in which the surety was solely given in virtue of an agreement by

which the creditor has required that a certain person should be the surety.

CHAPTER SECOND.

THE EFFECT OF SURETYSHIP.

SECTION I.

THE EFFECT OF SURETYSHIP BETWEEN THE CREDITOR AND THE SURETY.

1837. The surety is liable only upon the default of the debtor, who must previously be discussed, unless the surety has renounced the benefit of discussion, or has bound himself jointly and severally with the debtor. In the latter case the liability of the surety is governed by the rules with respect to joint and several obligations.

1838. The creditor is not bound to discuss the principal debtor unless the surety demands it when first sued.

1839. The surety who demands the discussion must point out to the creditor the property of the principal debtor and advance the money necessary to obtain the discussion.

He must not indicate property situated out of the Colony, nor litigious property, nor property hypothecated for the debt and no longer in the hands of the debtor.

1840. Whenever the surety has indicated property in the manner prescribed by the preceding article, and has advanced sufficient money for the discussion, the creditor is, to the extent of the value of the property indicated, responsible as regards the surety for the insolvency of the principal debtor which occurs after his default to proceed against him.

1841. When several persons become sureties of the same debtor for the same debt, each of them is bound for the whole debt.

1842. Nevertheless each of them may, unless he has renounced the benefit of division, require the creditor to divide his action and reduce it to the share and proportion of each surety.

If, at the time that one of the sureties obtained judgment of division, some of them were insolvent, such surety is proportionately liable for their insolvency ; but he cannot be made liable for insolvencies happening after the division.

1843. If the creditor have himself voluntarily divided his action, he can no longer recede from such division, although at the time of instituting the action some of the sureties had become insolvent.

SECTION II.

THE EFFECT OF SURETYSHIP BETWEEN THE DEBTOR AND THE SURETY.

1844. The surety, who has bound himself with the consent of the debtor, may recover from him all that he has paid for him in principal, interest and costs, together with the costs incurred against him and those legally incurred by him in notifying the debtor and subsequently to such notification. He has also a claim for damages, if there be ground for it.

1845. The surety, who has bound himself without the consent of the debtor, has no remedy for what he has paid beyond what the debtor would have been obliged to pay had the suretyship not been entered into, saving the costs subsequent to the notice of payment by the surety, which are borne by the debtor.

The surety has also his recourse for the damages for which the debtor would have been liable in the absence of such suretyship.

1846. The surety who has paid the debt is subrogated in all the rights which the creditor had against the debtor.

1847. When there are several principal debtors jointly and severally bound to the same obligation, the surety who has become answerable for all of them, has his remedy against each of them for the recovery of all that he has paid.

1848. The surety who has paid first has no remedy against the principal debtor who has paid a second time without being notified of the first payment; but has a right to recover from the creditor.

When the surety has paid before being sued and has not notified the principal debtor, he loses his remedy against such debtor if, at the time of the payment, the latter had the means of having the debt declared extinct; he has however a right to recover from the creditor.

1849. The surety who has bound himself with the consent of the debtor may, even before paying, proceed against the latter to be indemnified:

1. When he is sued for the payment;

2. When the debtor becomes bankrupt or insolvent;

3. When the debtor has bound himself to effect the discharge of the surety within a certain time;

4. When the debt becomes payable by the expiration of the stipulated term, the remedy of the surety in this case being independent of any delay given by the creditor to the debtor without the consent of the surety;

5. After ten years, when the term of the principal obligation is not fixed, unless the principal obligation, such as that of a tutor, is of a nature not to be discharged before a determinate period.

1850. The rule contained in the last paragraph of the preceding article does not apply to sureties given by public officers, or other employees, in order to secure the fulfilment of the duties of their office. Such sureties have a right at all times to free themselves from future liability under their

suretyship by giving three months' notice in the absence of special agreement to the contrary.

This rule however does not exclude liability in respect of a defalcation that has taken place before the expiration of the three months, though it be not discovered within that time.

SECTION III.

THE EFFECT OF SURETYSHIP BETWEEN CO-SURETIES.

1851. When several persons become sureties for the same debtor and the same debt, the surety who discharges the debt has his remedy against the other sureties, each for an equal share.

But he can only resort to this remedy when his payment has been made in one of the cases specified in article 1849.

CHAPTER THIRD.

THE EXTINCTION OF SURETYSHIP.

1852. The causes which extinguish other obligations extinguish suretyship.

1853. The confusion which takes place in the person of the principal debtor or of his surety when one of them becomes heir of the other, does not destroy the action of the creditor against the surety of such surety.

1854. The surety may set up against the creditor all the exceptions which belong to the principal debtor and are inherent to the debt. He may even set up those which are purely personal to the debtor — such as minority, coverture, or interdiction, if known to the creditor and not expressly renounced.

1855. The suretyship is at an end when by the act of the creditor the surety can no longer be subrogated in the rights, hypothecs and privileges of such creditor.

1856. When the creditor voluntarily accepts an immovable or anything whatever in payment of the principal debt, the surety is discharged, though the creditor should afterwards be evicted from such thing.

1857. The surety who has become bound with the consent of the debtor is not discharged by the delay given to the debtor by the creditor. He may in the case of such delay sue the debtor for immediate payment.

CHAPTER FOURTH.

LEGAL AND JUDICIAL SURETYSHIP.

1858. Whenever a person is required by law or by order of a court to find a surety, he must conform to the conditions prescribed by articles 1834, 1835 and 1836.

In the case of judicial suretyship, the person offered must moreover not be exempt from civil imprisonment.

1859. When a person cannot find surety he may in lieu thereof deposit some sufficient pledge.

1860. A judicial surety cannot demand the discussion of the principal debtor.

1861. He who is simply surety of a judicial surety cannot demand the discussion of the principal debtor nor of the surety.

BOOK SIXTEENTH.

PLEDGE.

1862. Pledge is a contract by which property placed or being in the hands of a creditor, is held by him with the owner's consent in security for the debt.

The thing may be given either by the debtor or by a third person in his behalf.

CHAPTER FIRST.

THE PLEDGE OF IMMOVABLES.

1863. Immovables may be pledged upon such terms and conditions as may be agreed upon between the parties. If no special agreement be made, the fruits are applied first in payment of interest upon the debt and afterwards upon the principal. If no interest be payable the application is made wholly to the principal.

The pledge of immovables is subject to the rules contained in the following Chapter, in so far as they can be made to apply.

CHAPTER SECOND.

PAWNING.

1864. The pledging of movable property is called pawning.

1865. The pawn of a thing gives to the creditor a right to be paid from it by privilege and preference in relation to other creditors.

1866. The privilege subsists only while the thing pawned remains in the hands of the creditor or of the person appointed by the parties to hold it.

1867. The creditor cannot, in default of payment of the debt, dispose of the property given in pawn. He may cause it to be seized and sold in the usual course of law under the authority of a competent court and obtain payment by preference out of the proceeds.

1868. The debtor is owner of the property pledged until it is sold or otherwise disposed of. It remains in the hands of the creditor only as a deposit to secure his debt.

1869. The creditor is liable for the loss or deterioration of the property pledged according to the rules established in the Book respecting *Obligations*.

On the other hand, the debtor is obliged to repay the creditor the necessary expenses incurred by him for preservation.

1870. If a debt bearing interest be given in pledge, the interest is applied by the creditor in payment of the interest due to him.

If the debt for the security of which the pledge is given do not bear interest, the interest of the debt pledged is applied by the creditor in payment of the principal due to him.

1871. The debtor cannot claim the restitution of the property given in pledge, until he has wholly paid the debt in principal, interest and costs ; unless the property is abused by the creditor.

If another debt be contracted after the pledge is given and become due before that first incurred, the creditor is not bound to restore the property pledged until both debts are paid.

1872. The pledge is indivisible although the debt be divisible. The heir of the debtor who pays his portion of the debt cannot demand his portion of the property pledged while any part of the debt remains due.

Nor can the heir of the creditor who receives his portion of the debt restore the property pledged to the injury of those of his coheirs who are not paid.

1873. The rights of the creditor in the property pledged to him are subject to those of third parties upon it, according to the provisions contained in the Book respecting *Privileges and Hypothecs*.

1874. The rules contained in this Chapter are subject in commercial matters to the laws and usages of commerce.

BOOK SEVENTEENTH.

PRIVILEGES AND HYPOTHECS.

CHAPTER FIRST.

PRELIMINARY PROVISIONS.

1875. Whoever incurs a personal obligation, renders liable for its fulfilment all his property, movable and immovable, present and future, except such as is specially exempted from seizure.

1876. The property of a debtor is the common security of his creditors, and in the absence of any cause of preference, its proceeds are shared by them proportionately to the amount of their debts.

1877. The legal causes of preference are privileges and hypothecs.

CHAPTER SECOND.

PRIVILEGES.

GENERAL PROVISIONS.

1878. A privilege is a right which a creditor has of being preferred to other creditors according to the origin of his claim. It results from the law and is by its nature indivisible.

1879. Among privileged creditors preference is regulated by the different qualities of the privileges, or the origin of the the claims.

1880. Privileged claims of equal rank are paid proportionately to their amount.

1881. Persons who are subrogated in the rights of a privileged creditor have his right of preference.

Such creditor has however a preference, for any remainder due to him, over the subrogated persons to whom he has

not guaranteed the payment of the amount for which they have obtained subrogation.

1882. Persons who are merely subrogated by law in the rights of one and the same privileged creditor are paid proportionately to the amount of their respective claims.

1883. The transferees of different portions of a privileged claim are paid proportionately to their shares if the respective transfers have been made without warranty of payment.

Those whose transfers were made with warranty of payment, are preferred to the others. As between themselves, however, regard is had to the date of the notice given of their respective transfers.

1884. The Crown has certain rights and privileges resulting from the laws relating to customs, and from other provisions contained in special ordinances concerning matters of public administration.

1885. The creditors and legatees of a deceased person who are entitled to separation of property, retain, against the creditors of his heirs and legatees, a right of preference and all their privileges upon such property of the succession as may be subject to their claims.

The same right of preference exists in the cases specified in articles 744 and 901.

1886. The rule as regards the creditors of a partnership and those of the partners individually, is declared in articles 28 and 42 of the Commercial Code.

1887. Privileges may be upon movable or upon immovable property or upon both together.

SECTION I.

PRIVILEGES UPON MOVABLE PROPERTY.

1888. Privileges may be upon the whole of the movable property, or upon certain movable property only.

1889. The claims which carry a privilege upon movable property are the following, and when several of them come together, they, except in cases governed by special laws, take precedence in the following order, and according to the rules hereinafter stated :

1. Law costs, and all expenses incurred in the interest of the creditors as a body ;

2. The claims of the vendor ;

3. The claims of creditors who have a right of pledge or of retention ;

4. Funeral expenses ;

5. The expenses of the last illness ;

6. Municipal taxes ;

7. The claim of the lessor ;

8. Servants' wages, and sums due for supplies of provisions ;

9. The claims of the Crown against persons accountable for its monies.

The privileges specified under the numbers 4, 5, 6, 8, and 9 extend to all the movable property of the debtor. The others are special, and affect only particular objects.

1890. The law costs in respect of which there is privilege under the last article, are those incurred for the seizure and sale of the movable property and those of judicial proceedings for enabling the creditors generally to obtain payment of their claims.

1891. The expenses incurred in the interest of the creditors generally include such as have served for the preservation of their common security.

1892. The unpaid vendor of a thing has two privileged rights :—

1. A right to revendicate it ;

2. A right of preference upon its price.

But these rights must be exercised by the commencement of an action in respect of them within eight days after delivery to the purchaser.

1893. The right to revendicate is subject also to the following conditions :

1. The sale must not have been made on credit ;

2. The thing must still be entire and in the same condition ;

3. The thing must not have passed into the hands of a third party who being in good faith has paid for it or made a loan upon it.

1894. If the thing be sold pending the proceedings in revendication, or if, when the thing is seized at the suit of a third party, the vendor be within the delay and the thing be within the conditions prescribed for revendication, the vendor has a privilege upon the proceeds in preference to all other privileged creditors hereinafter mentioned.

1895. Creditors having a right of pledge or of retention rank according to the nature of their pledge or of their claim. This privilege cannot however be exercised, unless the right is still subsisting, or could have been claimed at the time of the seizure, if the thing have been sold.

1896. Privileged funeral expenses include only what is suitable to the station and means of the deceased, and are payable out of all his movable property.

They include the mourning of the widow, within the same restriction.

1897. The expenses of the last illness include the charges of the physicians, apothecaries and nurses during the illness of which the debtor died, and are taken out of all the movable property of the deceased.

In cases of chronic disease, the privilege covers only the expenses during the last six months before the decease.

1898. The municipal taxes which rank before all other privileged claims hereinafter mentioned, are limited to taxes on persons and personal property.

1899. The privilege of the lessor attaches to rent for a term not exceeding twelve months, whether the lease be authentic or otherwise.

1900. Domestic servants and hired persons are next entitled to be collocated by preference upon all the movable property of the debtor for whatever wages may be due to them, for a period not exceeding three months previous to the time of the seizure or of the death.

Clerks, apprentices and journeymen are entitled to the same preference, but only upon the merchandise and effects contained in the store, shop, or workshop in which their services were required for arrears of a period not exceeding three months.

1901. (Subst. 34-1956). The privileges upon ships, upon their cargoes and their freight, are declared in the Act of Parliament entitled *The Merchant Shipping Act, 1894* (57 & 58 Vict. c. 60), and the Acts amending the same, or any other statute relating thereto.

1902. Other rules concerning the collocation of certain privileged claims, are contained in the Code of Civil Procedure.

SECTION II.

PRIVILEGES UPON IMMOVABLES.

1903. (Am. 4-1908). The privileged claims upon immovables are hereinafter enumerated, and rank in the following order :—

1. Law costs and the expenses incurred for the common interest of the creditors ;

2. Funeral expenses, such as declared in article 1896, when the proceeds of the movable property have proved insufficient to pay them ;

3. The expenses of the last illness, such as declared in article 1897, and subject to the same restriction as funeral expenses ;

4. The amount of advances made, or value of supplies furnished for tilling, sowing, planting, cultivating, reaping, curing, milling, ginning and manufacturing, or claim of metayers for tilling, sowing, planting, and cultivating ;

5. Municipal and local taxes ;

6. The claim of the builder, subject to the provisions of article 1905 ;

7. The claim of the vendor ;

8. Salaries and wages of managers, overseers and servants, for a period not exceeding three months ;

9. Wages of labourers for a period not exceeding one month.

1904. (Subst. 7-1952). The privilege for advances made or supplies furnished for the cultivation of an estate and for the growing crop, including the advances and supplies for reaping, curing, milling, ginning and manufacturing and for the purchase of crops to be manufactured, exists upon the crop and upon the produce of such crop and of all crops purchased from cane farmers or otherwise and the produce thereof, and also, if such crop be not taken off before the time of the sale of the estate, upon the estate or property upon which the crop is growing, provided that the advances be made or the supplies be furnished by virtue of an order of the Judge which authorises the amount of such advances or supplies or both. The privilege in the case of the sale of the estate exists to the extent only of the additional value given to the estate through such expenditure. Metayers have a privileged claim for the value of their crop on the registration of their contracts which must be made in authentic form or signed before a Magistrate.

1905. Builders, or other workmen, and architects have a right of preference over the vendor and all other creditors, only upon the additional value given to the immovable by their works, provided an official statement establishing the state of the premises on which the works are to be made, have been previously made by an expert appointed by the Judge, and that within six months from their completion such works have been accepted and received by an expert appointed in the same manner, which acceptance and reception must be established by another official statement containing also a valuation of the work done ; and in no case does the privilege extend beyond the value ascertained by such second statement, and it is reducible to the amount of the additional value which the immovable has at the time of the sale.

In case the proceeds are insufficient to pay the builder and the vendor, or in cases of contestation, the additional value given to the property by the buildings is established by a relative valuation effected in the manner prescribed in the Code of Civil Procedure.

1906. The vendor has a privilege upon the immovable sold for all the price due to him.

If there have been several successive sales, the prices of which are wholly or partly due, the first vendor is preferred to the second, the second to the third, and so on.

The same right extends :

To donors, for the payments and charges stipulated in their favour ;

To co-partitioners, coheirs, and co-legatees upon the immovables which they owned in common, for the warranty of the partitions made between them and of the differences to be paid.

SECTION III.

HOW PRIVILEGES UPON IMMOVABLES ARE RETAINED.

1907. With regard to immovables, privileges produce no effect among creditors, unless they are made public in the

manner determined in the Book respecting *Registration of Real Rights,* saving the exceptions therein mentioned.

CHAPTER THIRD.

HYPOTHECS.

SECTION I.

GENERAL PROVISIONS.

1908. (Am. 34-1956). Hypothec is a real right, and is a charge upon immovables specially pledged by it for the fulfilment of an obligation, in virtue of which charge the creditor may cause the immovables to be sold in the hands of whomsoever they may be, and has a preference upon the proceeds as fixed by this Code.

1909. Hypothec is indivisible and binds in entirety all the immovables subject to it and each and every portion of them.

1910. Hypothec extends over all subsequent improvements and over alluvial increase of the hypothecated property.

It secures besides the principal, whatever interest accrues therefrom, under the restrictions stated in the Book respecting *Registration of Real Rights*, and all costs incurred.

It is merely an accessory and subsists no longer than the obligation which it secures.

1911. Hypothec can take place only in the cases and according to the formalities authorised by law.

1912. Hypothec may be either legal, judicial, or conventional.

1913 Legal hypothec is that which results from the law alone.

Judicial hypothec is that which results from judicial acts.

Conventional hypothec results from agreement.

1914. Hypothec upon an undivided portion of an immovable, attaches to that portion of the immovable which falls to the share of the hypothecary debtor after partition, saving the provisions of article 673.

1915. Hypothec cannot be acquired, to the prejudice of existing creditors, upon the immovables of persons notoriously insolvent, or of traders within the thirty days previous to their bankruptcy.

SECTION II.

LEGAL HYPOTHEC.

1916. (Am. 34-1956). The only rights and claims which involve legal hypothec, under the restrictions hereinafter mentioned, are declared in paragraphs one and two of this section.

1917. Legal hypothec affects generally the present and future immovables of the debtor.

1918. Such hypothec must be registered, as prescribed in the Book respecting *Registration of Real Rights.*

1919. (Rep. 34-1956).

§ 1. *Legal Hypothec of Minors and Interdicted Persons.*

1920. Minors of unsound mind and interdicted persons have a legal hypothec upon the immovables of their tutors or curators for the balance of the tutorship or curatorship account.

But the amount of the hypothec may be limited by the Judge on the assumption of the tutorship or curatorship.

1921. This hypothec takes place irrespectively of the place where the tutor or curator has been appointed.

§ 2. *Legal Hypothec of the Crown.*

1922. The Crown has a legal hypothec for monies due to it.

SECTION III.

JUDICIAL HYPOTHEC.

1923. (Am. 20-1918). Judicial hypothec results from judgments of the courts of the Colony ordering the payment of a specific sum of money. Such judgments likewise involve hypothec for interest and costs without specifying the amount subject to the restrictions contained in the Book respecting *Registration of Real Rights.*

It also results from judicial suretyship and from any other judicial act creating an obligation to pay a specific sum of money.

Judicial hypothec affects generally the immovables owned by the debtor at the time of the registration of such hypothec and those subsequently owned by him unless the same are exempt from seizure or are incapable of alienation otherwise.

But the order of the Judge authorising the amount of advances or supplies for cultivation, crops and otherwise under article 1904 confers judicial hypothec from its registration as prescribed in article 2002 only on the immovables respecting which the order was made and in so far only as the same are the property of the debtor who applied for, or of any person who consented to, the order.

SECTION IV

CONVENTIONAL HYPOTHEC.

1924. Conventional hypothec can only be granted by those who are capable of alienating the immovables which they subject to it; this rule however being subject to exception under the provisions of special enactments concerning *Fabriques.*

1925. Persons whose right to an immovable is suspended by a condition, or is determinable in certain cases, or is subject to rescission, can only grant hypothecs upon it which are subject to the same condition or to the same rescission.

1926. The property of minors and interdicted persons, and that of absentees so long as it is only provisionally held, cannot be hypothecated otherwise than in virtue of judgments, or for the causes and subject to the formalities established by law.

1927. Conventional hypothec cannot be granted otherwise than by an act in notarial form, or by will.

1928. A hypothec granted by a debtor upon an immovable of which he has possession as proprietor, but under an insufficient title, takes effect from the date of its registration if he subsequently obtain a perfect title ; but without prejudice to the rights of third parties.

The same rule applies to judgments rendered against a debtor under the same circumstances.

1929. A conventional hypothec is invalid, unless it contain a statement of the maximum principal sum to be secured by it.

This provision does not extend to life-rents or other obligations appreciable in money, which are stipulated in gifts *inter vivos*.

1930. Hypothecs created by a will upon immovables subjected by the testator to certain charges, are governed by the same rules as conventional hypothecs.

1931. Conventional hypothecs may be granted for any obligation whatever.

SECTION V.

THE ORDER IN WHICH HYPOTHECS RANK.

1932. As between the creditors, hypothecs rank in the order of their respective dates, when none of them have been

registered in conformity with the provisions contained in the Book respecting *Registration of Real Rights.*

1933. The creditor who expressly or tacitly consents to the hypothecation in favour of another of the immovable hypothecated to himself is deemed to have ceded to the latter his preference ; and in such case an inversion of order takes place between these creditors to the extent of their respective claims ; but in such manner as not to prejudice intermediate creditors if there be any.

1934. A creditor who has a hypothec upon more than one immovable belonging to his debtor may exercise it upon such one or more of them as he deems proper.

If however all or more than one of the immovables thus hypothecated be sold, and the proceeds have to be distributed, his hypothec is divided rateably upon so much of their respective prices as remains to be distributed, when there are other subsequent creditors holding hypothecs upon some one or other only of such immovables.

1935. The privileged or hypothecary creditors of a vendor rank before him, regard being had among them to the order of preference or priority.

1936. Creditors whose claims are suspended by a condition are nevertheless collocated in their order, subject however to the conditions prescribed in the Code of Civil Procedure.

1937. The provisions concerning privileges contained in articles 1881, 1882 and 1883 are also applicable to hypothecs.

CHAPTER FOURTH.

THE EFFECT OF PRIVILEGES AND HYPOTHECS WITH REGARD TO THE DEBTOR OR OTHER HOLDER OF HYPOTHECATED PROPERTY.

1938. Hypothecs do not divest the debtor or other holder of the hypothecated property, either of whom continues to

enjoy the property and may alienate it, subject however to the privilege or the hypothec charged upon it.

1939. Neither the debtor nor other holder can, with a view of defrauding the creditor, deteriorate the immovable charged with a privileged or hypothecary claim, by destroying or injuring, carrying away or selling the whole or any part of the buildings, fences or timber thereon, or cattle, or carts, cranks and other implements employed in the working of the property.

1940. In the event of such deterioration the creditor who has a privilege or hypothec upon the immovable may sue him, even though the claim be not yet payable, and recover from him personally the damages occasioned by such deterioration, to the extent of such claim and with the same right of privilege or hypothec ; but the amount so recovered goes in reduction of the claim.

1941. Creditors having a registered privilege or hypothec upon an immovable may follow it into whatever hands it passes and cause it to be sold judicially in order to be paid out of the proceeds, according to the order of their claims.

1942. In order to secure his rights the creditor has two remedies, namely, the hypothecary action and the action to interrupt prescription. The latter is treated of in the Book respecting *Prescription.*

SECTION I.

THE HYPOTHECARY ACTION.

1943. The hypothecary action may be brought by creditors whose claims are liquidated and exigible, against all persons holding as proprietors the whole or any portion of the immovable hypothecated for their claim.

1944. When the property is in the possession of an usufructuary the action must be brought against the proprietor of the land and against the usufructuary conjointly,

or notice of it must be given to whichever of the two has not been sued in the first instance.

1945. If the possessor be charged with a substitution, judgment may be obtained against him in an hypothecary action, without making the substitute a party, except when the hypothec was created by or through such possessor and in any case without prejudice to the right of the substitute as declared in the Book respecting *Gifts*.

1946. The object of the hypothecary action is to have the holder of the immovable condemned to surrender it, in order that it may be judicially sold, unless he prefers to pay the debt in principal, and interest as secured by registration, together with the costs.

If the claim be for a rent the holder in order to avoid surrendering must pay the arrears and costs, and consent to continue the payments either by a renewal deed or by a declaration which the subsequent judgment renders effective.

1947. The holder against whom an action is brought for the enforcement or for the recognition of a hypothec has a right to make either his vendor, or any previous grantor, bound to warrant the property against such claim, a party to the suit, in order that such vendor or grantor be condemned to intervene and repel the action or to make indemnification against the condemnation and any damages that may result therefrom.

1948. For this purpose the holder who is sued may set up a dilatory exception to the demand, as explained in the Code of Civil Procedure.

1949. The holder may set up against the demand all grounds of defence whatever tending to its dismissal, whether the person bound to warrant the property has been made a party or not.

1950. The holder against whom the hypothecary action is brought, and who is neither charged with the hypothec nor

personally liable for the payment of the debt, may, besides the grounds of defence tending to destroy the hypothec, set up any of the exceptions set forth in the five following paragraphs, if there be grounds for them.

§ 1. *The Exception of Discussion.*

1951. If the person who granted the hypothec or those who are personally liable for the payment of the debt possess property, the holder against whom the hypothecary action is brought may, before he can be called upon to surrender, require the creditor to sell the property belonging to the debtors personally bound, provided he indicates such property and advance the money necessary to obtain its discussion.

1952. This right of discussion however cannot be set up as an exception in respect of immovables hypothecated for the payment of a rent created for the price of the land.

§ 2. *The Exception of Warranty.*

1953. The holder may repel the hypothecary action, or the action for the recognition of a hypothec, when the prosecuting creditor is in any way whatever personally bound to warrant the immovable against such hypothec.

1954. This exception of warranty is equally available if the prosecuting creditor be himself the holder of another immovable bound for the warranty of the defendant against the hypothec sued upon. The creditor in such case cannot maintain his action unless he previously surrenders such immovable.

§ 3. *The Exception of Subrogation.*

1955. The holder who is sued has a right to be subrogated in the rights and claims of the prosecuting creditor against all other persons liable for the payment whether personally or hypothecarily.

1956. If the prosecuting creditor or those from whom he derives his claim, have destroyed any right or recourse which

the holder might otherwise have exercised in order to be indemnified against the condemnation sought for, or have by their own act become unable to transfer the same to him, the action to that extent fails.

§ 4. *The Exception resulting from Improvements.*

1957. The holder against whom the hypothecary action is brought may also demand that the surrender which he may be ordered to make, be subject to his privilege of being paid the value of the improvements made upon the immovable, either by himself or by such of the persons from whom he derives his claim as are not personally bound to the payment of the hypothecary debt, the whole in conformity with the rules contained in the Book respecting *Ownership*.

§ 5. *The Exception resulting from a Privileged Claim or a Prior Hypothec.*

1958. The holder who has received the immovable in payment of a privileged debt or of an hypothecary claim prior to that brought against him, or who has paid a prior hypothecary claim, has a right, before being compelled to surrender, to obtain from the party suing him security that the immovable will bring a sufficient price to ensure the payment of his privileged or prior claim.

SECTION II.

THE EFFECT OF THE HYPOTHECARY ACTION.

1959. The alienation of an immovable by the holder against whom the hypothecary action is brought, is of no effect against the creditor bringing the action, unless the purchaser deposits the amount of the debt, interest and costs due to such creditor.

1960. The holder against whom the hypothecary action is brought may surrender the immovable before judgment. If he do not, he may be condemned to surrender it within the usual delay or the period fixed by the Court, and in default thereof to pay the plaintiff the full amount of his claim.

The immovable must be surrendered in the condition in which it then is, the surrender being subject to the provisions contained in articles 1939 and 1940.

1961. The holder may be condemned personally to pay the rents, issues and profits which he has received since the service of process, and any damages he may have caused to the immovable since that time.

1962. The surrender and sale are effected in the manner prescribed in the Code of Civil Procedure.

1963. Servitudes or real rights which the holder had upon the immovable at the time of his acquisition of it, or which he extinguished during his possession of it revive after the surrender.

Such rights likewise revive in favour of the purchaser when, upon a demand for confirmation of title, he is obliged to deposit the purchase money in order to discharge hypothecs, or becomes evicted by a creditor who outbids him as set forth in the Code of Civil Procedure.

1964. The holder surrenders only the occupation and possession of the immovable, he retains the ownership until the adjudication, and he may at any time before such adjudication stop the effect of the hypothecary judgment and of the surrender, by paying and depositing the full amount of plaintiff's claim and all costs.

1965. Persons bound to warrant the property may likewise, upon paying the hypothecary debt or procuring the extinction of the hypothec, stop the effect of the surrender and have it declared inoperative upon petition or application to the Court in which such surrender was made.

CHAPTER FIFTH.

THE EXTINCTION OF PRIVILEGES AND HYPOTHECS.

1966. Privileges and hypothecs become extinct :

1. By the total loss of the property subject to the privilege or hypothec ; by the changing of its nature ; and, except in certain cases, by its ceasing to be an object of commerce ;

2. By the determination or legal extinction of the conditional or precarious right of the person who granted the privilege or the hypothec ;

3. By the confusion of the qualities of privileged or hypothecary creditor and purchaser of the property charged. The hypothec or privilege nevertheless reviving if the creditor who has become purchaser be evicted for a cause which is not attributable to himself ;

4. By the express or tacit remission of the privilege or hypothec ;

5. By the complete extinction of the debt to which the privilege or hypothec is attached, and also in the case provided in article 1127 ;

6. By judicial sale and also by expropriation for public purposes, the creditors in such case retaining their recourse upon the price of the property ;

7. By judgment of confirmation of title, as provided in the Code of Civil Procedure ;

8. By prescription.

BOOK EIGHTEENTH.

REGISTRATION OF REAL RIGHTS.

CHAPTER FIRST.

GENERAL PROVISIONS.

1967. Registration gives effect to real rights and establishes their order of priority according to the provisions contained in this Book.

1968. All real rights subject to be registered take effect from the moment of their registration against creditors whose rights have been registered subsequently or not at all. If however a delay be allowed for the registration of a title and it be registered within such delay, such title takes effect against subsequent creditors who have obtained priority of registration.

1969. The following rights are exempt from the formality of registration :

1. The privileges mentioned in paragraphs 1, 5, 8 and 9 of article 1903.

2. Hypothecs in favour of the Crown.

1970. The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered, except when such title is derived from a bankrupt of a person notoriously insolvent.

1971. Want of registration may be pleaded against minors, interdicted persons and married women.

1972. Registration may be demanded by minors, interdicted persons, or married women, themselves, or by any person in their behalf.

1973. When two or more persons receive deeds of conveyance of a property from the same grantor he who first registers his deed has the preference.

1974. The registration of a title conferring real rights in or upon the immovable property of a person, if such registration take place within thirty days of the bankruptcy of such person or at a time when such person is notoriously insolvent, is without effect except in the case in which the delay given for the registration of such title, as mentioned in the following Chapter, has not yet expired.

1975. The same rule applies to the registration effected after the seizure of an immovable, when such seizure is followed by judicial expropriation.

1976. Registration avails in favour of all parties whose rights are mentioned in the registered document.

1977. Privileged claims not registered take effect, as regards other unregistered claims, according to their rank or their date, and are preferred to simple chirographic claims ; saving the exceptions contained in articles 1974 and 1975.

1978. Registration does not interrupt prescription.

1979. Other provisions concerning registration, both as regards real rights and movable property and rights, are contained in other Books of this Code.

CHAPTER SECOND.

RULES PARTICULAR TO DIFFERENT TITLES BY WHICH REAL RIGHTS ARE ACQUIRED.

1980. (Subst. 10-1904). All acts *inter vivos*, conveying the ownership, *nuda proprietas* or usufruct of an immovable must be registered at length or by an abstract hereinafter called a memorial.

In default of such registration, the title of conveyance cannot be invoked against any third party who has purchased the same property or received an onerous gift of it from the same vendor or donor for a valuable consideration and whose title is registered.

Every conveyance by will of the ownerhip, *nuda proprietas* or usufruct of an immovable must be registered either at length or by memorial, with a declaration of the date of the death of the testator and the designation of the immovable.

The transmission of the ownership, *nuda proprietas* or usufruct of an immovable by succession must be registered by means of a declaration setting forth the name of the heir, his degree of relationship to the deceased, the name of the

latter, the date of his death, and the designation of the immovable.

Provided always that all acts *inter vivos* purporting to convey the ownership, *nuda proprietas* or usufruct of an immovable shall be null and void, unless prior to the execution of such acts the title of the person or persons purporting to make such conveyance shall have been registered ; but this proviso shall not annul or render void any act whereby the Crown purports to make any such conveyance, or in any manner whatsoever affect any right of the Crown.

1981. Persons conveying immovables by sale, gift or exchange preserve all their rights and privileges by registering the deed of alienation within fifteen days from its date, even against persons registering their rights between the dates of such deed and of its registration.

The right of the vendor to take back an immovable sold, in the case of non-payment of the price, does not affect subsequent purchasers who have not subjected themselves to such right, unless the deed in which it is stipulated has been registered as in ordinary cases ; nevertheless the vendor in this matter as well as for securing the price has all the advantage of the delay of fifteen days.

1982. All judgments declaring the dissolution, nullity, or rescission of a registered deed of conveyance or other title by which an immovable has been transmitted, or permitting the exercise of a right of redemption or of revocation, must be registered at length within fifteen days after they are rendered.

1983. The action of the vendor to have the sale dissolved by reason of the non-payment of the price, according to article 1446, cannot be brought against third parties, if the stipulation to that effect have not been registered.

The same rule applies to the right of redemption.

1984. The privilege of the builder dates only from the registration of the statement establishing the condition of the premises, as required in the Book respecting *Privileges and*

Hypothecs, and takes effect against other registered claims by means only of its registration within fifteen days, after the date of the second statement establishing the valuation and acceptance of the works done.

1985. The privilege of co-partitioners, as well for the payment of differences as for the other rights resulting from partition, is preserved by the registration of the deed of partition within fifteen days from its date.

1986. The same delay is allowed coheirs and co-legatees for the registration of the rights and privileges accruing to them under acts of judgments of licitation.

1987. Creditors and legatees claiming separation of property preserve a right of preference upon the estate of their deceased debtor, against the creditors of the heirs or legal representatives of the latter, provided they register within six months after the death of their debtor the rights which they have against his succession.

Such registration is effected by means of a notice specifying the nature and amount of their claims and describing any immovables affected thereby.

1988. Claims for funeral expenses and expenses of last illness do not retain their privilege upon immovables unless a memorial of such claims is registered in the manner and within the delay prescribed by the preceding article.

1989. Fiduciary substitutions in respect of immovables contained in deeds of gift *inter vivos* are subject to the general rules mentioned in article 1980 as regards third parties whose real rights upon such immovables have been registered.

As regards all other interested parties the registration of substitutions takes effect according to the provisions contained in the Book concerning *Gifts*.

1990. If the substitution be created by will, it is subject as regards registration to the provisions hereinafter set forth in respect of wills.

1991. All rights of ownership resulting from wills, and all special hypothecs therein declared, are preserved and take their full effect by means of their registration within six months from the death of the testator, if he die within the limits of the Colony, or within two years from such decease, if it occur beyond such limits.

1992. In the case of the concealment, suppression or contestation of a will, or of any other difficulty, persons interested, who, without negligence or participation on their part, are disabled from effecting its registration within the delay prescribed by the preceding article, may nevertheless preserve their right by registering within the same delay a statement of such contestation or other impediment, and registering the will within six months after it or its probate has been obtained, or after the removal of the impediment.

1993. Nevertheless the registration of the statement mentioned in the preceding article has no retroactive effect unless the will be registered within five years from the death of the testator.

1994. Married men of full age are bound to register, without delay, the hypothecs and incumbrances to which their immovables are subject in favour of their wives. In default they are liable to damages and also to indictment for misdemeanor.

1995. If the married man be a minor, his father, mother, or tutor, who consented to his marriage, is bound to effect the registration mentioned in the preceding article, on pain of being held liable for all damages in favour of the wife.

1996. (Subst. 34-1956). (1) The sole or principal notary who received the contract of marriage, or the declaration under the proviso to article 1180, and the husband, are bound to cause it to be registered at the expense of the spouses within one month after the marriage ceremony or the making of the declaration, as the case may be.

(2) In default the husband is liable summarily on the complaint of any person to a penalty of ninety-six dollars for every month it remains unregistered unless he proves to the satisfaction of the Court that the notary was supplied with funds for the purpose and the notary who has been supplied with funds for the purpose is also liable similarly to a like penalty on default.

The Court may award the complainant a portion of the penalty not exceeding one-half.

1997. (Subst. 34-1956). (1) A notary must also within one month after the execution of a contract of marriage or a declaration before him as sole or principal notary deliver a certificate to the Registrar of Deeds (in such form as the Registrar may prescribe or approve) stating the date of the contract, its place of execution, the full names of the spouses, and whether they were married in separation or community of property.

(2) In default such notary is liable summarily on the complaint of any person to a penalty of ninety-six dollars for every month such certificate is undelivered.

The Court may award the complainant a portion of the penalty not exceeding one-half.

(3) No fee is to be charged in the Registry for filing the certificate.

1998. Tutors to minors, and curators to interdicted persons are bound to register, without delay, the hypothecs to which their real estate is subject in favour of such minors or interdicted persons, under the pains hereinabove declared against married men in article 1994.

1999. (Rep. 34-1956).

2000. Every notary called upon to make an inventory is bound to see that the tutorships of the minors, or the curatorships of the interdicted persons interested in such inventories are duly registered, and, if necessary, to cause such registration to be effected at the expense of such tutors or

curators, before proceeding with the inventory, on pain of all damages.

2001. The hypothec of minors against their tutor or of interdicted persons against their curator has effect only from the registration of the act constituting the tutorship or curatorship.

2002. (Subst. 4-1908). The judgments and judicial acts of the civil courts confer hypothecs from the date of their registration. But an order of the Judge authorising the amount of advances or supplies under article 1904, must be registered within five days of the date of the order.

2003. Registration of a deed of sale secures to the vendor, in the same order of preference as for the principal, the interest for five years besides what is due upon the current year.

2004. Registration of a deed constituting a life-rent or other rent preserves a preference for the arrears of five years besides what are due upon the current year.

2005. Registration of any other claim preserves the same right of preference for the interest of only three years besides what is due upon the current year.

2006. The creditor has a hypothec for the remainder of the arrears of interest or of rent from the date only of the registration of a claim or memorial specifying the amount of arrears due and claimed.

Nevertheless the arrears of interest due at the time of the first registration and therein specified are preserved by such registration.

2007. Renunciations of dower, of successions, of legacies, or of community of property cannot be pleaded against third parties unless they have been registered.

2008. Every conveyance or transfer, whether voluntary or judicial, of a privileged or hypothecary claim must be registered.

A duplicate of the certificate of its registration must be furnished to the debtor together with the copy of the transfer.

If these formalities be not observed the conveyance or transfer is without effect against subsequent transferees who have conformed to the above requirements.

All subrogations in such rights granted by authentic deeds or by private writings must likewise be registered and notice thereof be given.

If the subrogation take place by the sole operation of law, it may be registered by transcribing the document from which it results, with a declaration to that effect.

The transfer or subrogation must be mentioned in the margin of the registry of the title creating the debt, with a reference to the number of the entry of such transfer or subrogation.

2009. The lease of an immovable for a period exceeding one year cannot be pleaded against a subsequent purchaser unless it has been registered.

2010. No deed containing a discharge from the rent of an immovable for more than one year in anticipation, can be pleaded against a subsequent purchaser unless it has been registered, together with a description of the immovable.

CHAPTER THIRD.

THE ORDER OF PREFERENCE OF REAL RIGHTS.

2011. Privileged rights which are not subject to registration take precedence according to their respective rank.

Rights subject to registration and which have been registered within the prescribed delays, take effect according to the provisions contained in the preceding Chapter.

Except the above cases and the case of article 1977, real rights rank according to the date of their registration.

If however two titles creating hypothec be entered for registration on the same day they rank together.

If a deed of purchase, and a deed creating a hypothec, both affecting the same immovable, be entered on the same day they rank according to the date of their execution.

CHAPTER FOURTH.

THE MODE AND FORMALITIES OF REGISTRATION.

2012. (Am. 23-1916). Registration is effected at length or by memorial.

It may from time to time, without however interrupting prescription, be renewed upon the demand of the creditor or his assigns or of any other person interested or entitled to demand registration. The renewal is made by transcribing, in a register kept for that purpose, a notice to the Registrar designating the document, the date of its original registration, the immovable affected and the person who is then in possession of it; and the volume and page in which the notice of renewal is registered must be referred to in the margin of the original registration.

Unless otherwise provided all documents presented for registration shall be drawn up in the English language.

SECTION I.

REGISTRATION AT LENGTH.

2013. Registration at length is effected by transcribing on the register the title or document which creates or give rise to the right, or an extract from such title made and certified according to the provisions of article 1148.

Errors of omission or commission in the registration at length of any document or in the document presented for registration do not affect the validity of such registration unless they occur in some material provision which should be noticed in a memorial or in a Registrar's certificate.

2014. (Am. 34-1956). The notices mentioned in articles 1918, 1987, 2001 and 2002 must be registered at length.

2015. (Am. 23-1916). Registration at length of a notarial deed may be obtained upon the production of a copy or extract thereof certified by the notary, if he have kept the original of record, or of the original itself, if it have been delivered by the notary.

If the title be a private writing it must be proved in the manner hereinafter prescribed with respect to memorials.

The following documents, if duly proved and authenticated, may likewise be registered :—

1. The documents mentioned in the paragraph numbered 3 of article 1152, or a notarial copy of any such document deposited with a notary in the Colony granting the copy, and copies of the powers of attorney mentioned in the paragraphs numbered 5, 6, and 7 of the said article.

2. A notarial document in the French language executed in the Colony before the first day of January, One thousand nine hundred and five.

3. Notarial copies of a certified translation in English of any document executed in any language other than English, which translation together with the document translated is deposited with a notary in the Colony granting the copy.

2016. (Subst. 10-1904). The certificate of registration at length is written upon the document itself and mentions the day and hour at which it was entered, and the book and number under which it was so entered and registered.

SECTION II.

REGISTRATION BY MEMORIAL.

2017. A memorial for registration is a summary description of the real rights which the party interested wishes to preserve. The memorial is delivered to the Registrar and transcribed upon the register.

2018. The memorial must be in writing and may be made at the request of any party interested in or bound to effect the registration, and must be attested by two subscribing witnesses.

The party requiring the memorial must subscribe his name to it, and if he cannot write, his name may be subscribed by another person, provided it be accompanied by the ordinary mark of such party made in the presence of the attesting witnesses.

The memorial may be made on behalf of the Crown by the Treasurer or other officer of the Crown in whose hands the document is, and it must state the name, office and domicile of the person by whom it is made.

2019. When there are more writings than one to complete the rights of the person requiring registration, they may be all included in one memorial without its being necessary to insert more than once therein the description of the parties or of the immovables or other property.

2020. The memorial must set forth :

1. The date of the title and the name of the place where it was executed ;

If it be a notarial act, the name of the notary who keeps the original thereof, or the name of the notaries or of the notary and witnesses who signed it, if the original have been delivered ; if it be a private writing the names of the subscribing witnesses ; if it be a judgment or other judicial act, it must designate the Court ;

2. The nature of the title ;

3. The description of the creditors and debtors and other parties thereto ;

4. The description of the property subject to the right claimed, and that of the party requiring registration ;

5. The nature of the right claimed, and, if it be a claim for money, the amount due, the rate of interest, and the taxed costs if there be any.

If the rate of interest be not specified, the registration does not preserve the right to interest beyond the legal rate.

2021. The memorial is delivered to the Registrar together with the title or document, or a notarial copy of the title, and

must be acknowledged by all or one of the parties to it, or be proved by the oath of one of the subscribing witnesses.

2022. When the memorial is executed in the Colony, it may be proved by the affidavit of one of the witnesses, sworn to before the Judge, Registrar, or commissioner.

2023. When it is executed in any other British possession, it may be proved therein by an affidavit sworn before a Judge or the mayor of any municipality.

2024. If it be executed in a foreign country, the affidavit may be sworn to before any minister, or *chargé d'affaires*, or consul or vice consul of Her Majesty, or commissioner for receiving affidavits in such foreign state.

2025. (Subst. 10-1904). When any memorial of a title is presented for registration, the Registrar is bound to endorse upon such title the words "registered by memorial", mentioning the day, the hour and time at which such memorial is entered, and also in what book and under what number the same is entered and registered; and he must sign such certificate.

The memorial remains among the records of the Registry office and forms part thereof.

2026. Every claim or memorial for the preservation of interest or of arrears of rent must specify the amount thereof and the title under which they are due, and be accompanied by the affidavit of the creditor that such amount is due.

2027. The provisions of this section, in the absence of special provision to the contrary, apply to any documents or titles which do not affect immovables, but the registration of which is required by some special law.

CHAPTER FIFTH.

THE CANCELLING OF REGISTRATIONS OF REAL RIGHTS.

2028. The registration of real rights, or the renewal thereof, may be cancelled with the consent of the parties, or

in virtue of a judgment from which there is no appeal, or which has become final.

The acquittance of a debt implies a consent to its registration being cancelled.

Any notary who executes a total or partial discharge of a hypothec, is bound to cause the same to be registered, or is liable for the damage caused by his default.

The creditor is bound to see that the discharge is registered, and is responsible for any costs that may be incurred in consequence of non-registration, and he cannot be compelled to grant a discharge, unless a sufficient sum is placed in his hands to pay for the registration and transmission.

2029. If the cancelling be not consented to, it may be demanded from the proper court by the debtor or other holder, by any subsequent hypothecary creditor, by a surety, or by any party interested, together with whatever damages may be due.

2030. The cancelling is ordered when the registration or the renewal has been effected without right or irregularly, or upon a void or informal title, or when the right registered has been annulled, rescinded, or extinguished by prescription or otherwise.

2031. The consent to the cancelling and the acquittance or certificate of discharge may be in notarial form or under private signature.

When under private signature they must be attested by two witnesses, and cannot be received by the Registrar unless they are accompanied by an affidavit of one of such witnesses sworn to before one of the functionaries mentioned in articles 2022, 2023 and 2024, as the case requires, and establishing that the money has been paid in whole or in part, and that such acquittance, certificate of discharge, or consent to the cancelling was signed in the presence of such witnesses by the party granting it.

The discharge of any hypothec in favour of the Crown may be entered in the margin against the registry of such hypothec upon the production of a copy :

1. Of an order of the Governor in Council, certified by the Administrator ;

2. Or of a certificate of Her Majesty's Crown Attorney, stating that such hypothec is discharged in whole or in part.

The discharge of any hypothec securing a life-rent is entered on the margin upon production of the certificate of death of the person on whose life the rent is created, accompanied by an affidavit identifying such person, and such affidavit may be received and certified by one of the functionaries mentioned in articles 2022, 2023 and 2024, as the case requires.

2032. The consent to the cancelling and the acquittance or certificate of discharge, or the judgment in lieu thereof, must when produced be mentioned in the margin of the registry of the title or memorial establishing the creation or existence of the right so cancelled.

The consent to the cancelling, the acquittance or the certificate of discharge, when they are private writings, or a certified copy thereof when they are in notarial form, as well as the copy of any judgment rendered to avail in lieu thereof, registered in conformity with the present article and the succeeding articles of this Chapter, must remain deposited in the Registry office.

2033. The judgment declaring the nullity, extinction, or dissolution of the right registered cannot, however, be registered, unless it is accompanied by a certificate that the delays allowed for appeal from such judgment have expired, without such appeal having taken place.

2034. Such judgment must have been served upon the defendant in the usual manner.

2035. The Sheriff is bound to cause all his deeds of sale of immovables to be registered, at the expense of the purchaser,

as soon as possible, and before delivering to any person whatever any duplicate thereof.

2036. The Registrar is bound to cause to be registered as soon as possible, at the expense of the applicant or the purchaser, as the case may be, all judgments of confirmation of title, before delivering copies thereof to any person whatever.

2037. The registration at length of confirmations of title, sheriff's sales, and other sales having the effect of discharging property from hypothecs, is equivalent to the registration of a certificate of the discharge or of the extinction of all rights which are discharged by such sales or confirmations of title ; and it is the duty of the Registrar in such case to make mention thereof in the margin of each entry establishing a previous right extinguished by such sale, confirmation of title, or decree of adjudication.

CHAPTER SIXTH.

THE ORGANISATION OF THE REGISTRY OFFICE.

SECTION I.

THE REGISTRY OFFICE AND THE REGISTERS.

2038. A registry office is established for the registration of all real rights affecting immovables, and of all other acts requiring registration.

2039. A public officer called a Registrar is appointed by the Governor to keep such registry office, who is charged to execute the duties prescribed by this title ; and every act of fraud which he commits or allows to be committed in the exercise of the duties of his office, subjects him to pay to the party injured triple damages with costs, besides loss of office and other penalties imposed by law.

2040. (Subst. 10-1904). The registry office must be kept open every day, Sundays and holidays excepted, from ten o'clock in the morning until three o'clock in the afternoon.

2041. The Registrar shall keep :

1. An entry book in which is inscribed the particulars of each document deposited for registration, the entries being numbered in order, according to the time of deposit for registration, such particulars being in each case the year, month, day and hour when the document is deposited for registration, the names of the parties to it and of the person on whose behalf it is deposited, the nature of the document, the amount for which registration is required, and a general description of the immovable affected.

2. Two registers, in which documents are transcribed at length, one of them containing all deeds of sale, and the other all other deeds and documents.

3. An alphabetical index of the names of all persons mentioned in the deeds and documents registered, in which index is entered against the name of each person, the number of each document which mentions such person, and the volume of the register in which the document is entered.

2042. The Governor in Council may alter the form of any books, indexes, or other official documents to be kept by the Registrar, or direct new ones to be kept ; and all orders to that effect are published in the *Gazette* and take effect from the day therein appointed, provided such day be not fixed at less than one month from the publication of such order.

SECTION II.

THE PUBLICITY OF THE REGISTERS.

2043. The Registrar is bound to deliver to any person demanding the same a statement certified by himself of all the real rights affecting the immovable property of any person designated in a written requisition containing a sufficient description of such person.

2044. He is bound to deliver, to all persons demanding the same, copies of the acts or documents registered, but he must

mention thereon the discharges, cancellations, conveyances, or subrogations thereof which are entered in such register or in the margin.

2045. (Subst. 10-1904). He is also bound to allow all persons from 11 a.m. to 2 p.m. during his office hours to examine the entry book free from charge.

He must likewise, upon payment of the lawful fee, exhibit the register to any person who has required the registration of an act and wishes to be assured of such registration.

2046. The entries upon the registers and books kept by the Registrar must be consecutive, without blanks or interlineations.

Every document registered must be numbered and transcribed in the order in which it is produced, and mention must be made in the margin of the register of the hour, day, month and year when it was deposited in the office for registration.

The Registrar is bound, when required to do so, to give the person who presents a document for registration a receipt indicating the number under which such document is entered in the entry-book.

SECTION III.

POWERS OF REGISTRY OFFICIALS.

2046A. (Ad. 23-1916). The Registrar may register any document which, though not technically complete, substantially complies with legal requirements, and as such may be properly registered.

A document, invalid from any cause, or in any manner, is not rendered valid by the registration thereof.

2046B. (Ad. 23-1916). Registration may be refused of any document which is incomplete, or has blanks, or is not clearly and legibly expressed, or which does not appear to the Registrar to comply with legal requirements, or which in his opinion should not be registered.

BOOK NINETEENTH.

PRESCRIPTION.

CHAPTER FIRST.

GENERAL PROVISIONS.

2047. Prescription is a means of acquiring property, or of being discharged from an obligation by lapse of time, and subject to conditions established by law.

In positive prescription title is presumed or confirmed, and ownership is transferred to a possessor by the continuance of his possession.

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law.

2048. Prescription cannot be renounced by anticipation. That acquired may be renounced, and so may also the benefit of any time during which it has been running.

2049. Renunciation of prescription is express or tacit. Tacit renunciation results from any act by which the abandonment of the right acquired may be presumed.

2050. Persons who cannot alienate cannot renounce prescription acquired.

2051. Any person interested in the acquiring of a prescription may set it up, although the debtor or the possessor have renounced it.

2052. The Court cannot of its own motion supply the defence resulting from prescription, except in cases where a claim is extinguished by law as provided in article 2129.

2053. Prescriptions in respect of immovable property are governed by the law of the place where it is situated.

2054. As regards movable property and personal actions, even in matters of bills of exchange and promissory notes and commercial matters in general, one or more of the following prescriptions may be pleaded :

1. Any prescription entirely acquired under a foreign law, when the cause of action did not arise or the debt was not stipulated to be paid in the Colony, and such prescription has been so acquired before the possessor or the debtor had his domicile therein ;

2. Any prescription entirely acquired in the Colony, reckoning from the date of the maturity of the obligation, when the cause of action arose or the debt was stipulated to be paid therein, or the debtor had his domicile therein at the time of such maturity ; and in other cases from the time when the debtor or possessor becomes domiciled therein ;

3. Any prescription resulting from the lapse of successive periods in the cases of the two preceding subdivisions of this article, when the first period elapsed under the foreign law.

2055. The period required for prescription, whether in respect of immovable or movable property, shall in no case be longer but may be shorter than the period which would be applicable to such case under the law of the Colony.

Prescriptions commenced according to the law of the Colony are completed according to the same law, without prejudice to the right of pleading those acquired previously under a foreign law, or by a union of periods under both laws, in conformity with the preceding article.

CHAPTER SECOND.

POSSESSION.

2056. Possession is the detention or enjoyment of a thing or of a right, which a person holds or exercises himself, or which is held or exercised in his name by another.

2057. For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.

2058. A person is always presumed to possess for himself and as proprietor, in the absence of proof that his possession was begun for another.

2059. When possession is begun for another, it is always presumed to continue so, if there be no proof to the contrary.

2060. Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription.

2061. Nor can acts of violence be the foundation of such a possession as avails for prescription.

2062. In cases of violence or wrongful concealment, the possession which avails for prescription begins when the defect has ceased.

Nevertheless a thief, his heirs and successors by universal title, cannot by any length of time prescribe the thing stolen.

Successors by particular title do not suffer from these defects in the possession of previous holders, when their own possession has been peaceful and public.

2063. An actual possessor who proves that he was in possession at a former period is, in the absence of proof to the contrary, presumed to have possessed during the intermediate time.

2064. A successor by particular title may join to his possession that of him from whom his title was derived, in order to complete prescription.

Heirs and other successors by universal title continue the possession of him of whom they are the heirs or successors, except in the case of interversion of title.

CHAPTER THIRD.

THE CAUSES WHICH HINDER PRESCRIPTION, INCLUDING PRECARIOUS POSSESSION AND SUBSTITUTIONS.

2065. Things which are not objects of commerce cannot be prescribed.

Special provisions explanatory of this article are to be found in the Fourth Chapter of this Book.

2066. Good faith is always presumed.

He who alleges bad faith must prove it.

2067. Those who possess for another, or under acknowledgment that they hold under another, never prescribe the ownership, even by the continuance of their possession after the term fixed.

Thus emphyteutic lessees, tenants, depositaries, usufructuaries and those who hold precariously the property of another cannot acquire it by prescription.

They cannot by prescription liberate themselves from the obligation of paying dues attached to their possession, but the amount of such dues and any arrears thereof are prescriptible.

Emphyteusis, usufruct, and other like rights do not preclude the owner of the property from prescribing against such rights, though they have been granted by himself.

He who has been put in definitive possession of the property of an absentee only begins to prescribe against him or his heirs or legal representatives, when such absentee returns or his death becomes known or may be legally presumed.

2068. Heirs and successors by universal title of those whom the preceding article hinders from prescribing cannot themselves prescribe.

2069. Nevertheless the persons mentioned in articles 2067 and 2068, and also persons charged with a substitution, may, if their title have been interverted, begin a possession avail-

able for prescription, dating from the information given to the proprietor by notification or other contradictory acts.

Such notification or other acts only avail when made or done with reference to a person against whom prescription can run.

2070. Subsequent purchasers in good faith, and for value either from a precarious or subordinate possessor, or from any other person, may prescribe by ten years' possession against him who is the proprietor during such subordinate or precarious holding.

Third parties may also, during a subordinate or precarious holding, prescribe against the proprietor by thirty years with or without title.

2071. Prescription does not run against a substitute, before his right comes into operation, in favour of the institute, or of his heirs or successors by universal title.

Prescription runs against the substitute, before his right comes into operation in favour of third parties, unless he is protected as a minor, or otherwise.

Any substitute, against whom prescription thus runs, may bring an action to interrupt it.

The possession of the institute avails a substitute, for the purposes of prescription.

Prescription runs against the institute during the time of his possession and in his favour against third parties.

After the right of the substitute comes into operation, prescription may begin to run in favour of the institute and of his heirs and successors by universal title.

2072. No one can prescribe against his title, in this sense that no one can change the cause and nature of his own possession, except by interversion.

2073. A person may prescribe against his title in the sense that he may be freed by prescription from an obligation he has contracted.

2074. Positive prescription takes place by thirty years' possession in respect of corporeal immovables in excess of what is given by the title, and negative prescription takes place in the same time for the discharge of obligations which the title imposes.

In the matter of dues and rents, the enjoyment of more than the title confers does not occasion the acquisition of such excess by prescription.

CHAPTER FOURTH.

CERTAIN THINGS IMPRESCRIPTIBLE AND OF PRIVILEGED PRESCRIPTIONS.

2075. The Crown may avail itself of prescription. The subject may interrupt such prescription by means of a petition of right, apart from the cases in which the law gives another remedy.

Among privileged persons, the privilege takes effect in the matter of prescription.

2076. The rights of the Crown with regard to sovereignty and allegiance are imprescriptible.

2077. Prescription does not run in respect of the *Cinquante Pas de la Reine,* sea-beaches, and lands reclaimed from the sea, ports, rivers, their banks, and the wharfs, works, and roads connected with them, public lands, and generally all immovable property and real rights forming part of the domain of the Crown.

2078. The rights of the Crown to the principal of rents, dues, and revenues owing and payable to it, and to the capital sums accruing from the alienation or from the use of Crown property, are also imprescriptible.

2079. All arrears of rents, dues, interest, and revenues, and all debts and rights belonging to the Crown, not declared to be imprescriptible by the preceding articles, are prescribed by thirty years.

Subsequent purchasers of immovable property charged therewith cannot be liberated by any shorter period.

2080. Positive prescription of corporeal immovables, and negative prescription as regards the principal of rents and dues, legacies and rights of hypothec, take place against the church in the same manner and according to the same rules as against private persons.

Purchasers with title and good faith prescribe against the church by ten years, whether positively or negatively, in the same way as against private persons.

Positive prescription of corporeal movables and the other negative prescriptions, including that of capital sums, take place against the church as against private persons.

2081. Roads, streets, wharfs, landing-places, squares, markets, and other places of a like nature, possessed for the general use of the public, cannot be acquired by prescription, so long as their destination has not been changed otherwise than by tolerating the encroachment.

2082. Any other property belonging to municipalities or corporations, the prescription of which is not otherwise determined by this Code, is subject to the same prescriptions as the property of private persons.

CHAPTER FIFTH.

THE CAUSES WHICH INTERRUPT OR SUSPEND PRESCRIPTION.

SECTION I.

THE CAUSES WHICH INTERRUPT PRESCRIPTION.

2083. Prescription may be interrupted either naturally or civilly.

2084. Natural interruption takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing, either by the former proprietor or by any one else.

2085. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filed and served conformably to the Code of Civil Procedure when a personal service is not required, creates a civil interruption.

Seizures, set-off, interventions, and oppositions are considered as judicial demands.

No extra-judicial demand, even when made by a notary, and accompanied with the titles, or even signed by the party notified, is an interruption, if there be no acknowledgment of the right demanded.

2086. A demand brought before a Court of incompetent jurisdiction does not interrupt prescription.

2087. Prescription is not interrupted :

If the service or the procedure be null from informality ;

If the plaintiff abandon his suit ;

If he allow peremption of the suit to be obtained ;

If the suit be dismissed.

2088. Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs.

2089. A judicial demand brought against the principal debtor, or his acknowledgment, interrupts prescription as regards the surety. The same acts against or by a surety interrupt prescription as regards the principal debtor.

2090. Renunciation by any person of a prescription acquired does not prejudice his co-debtors, his sureties, or third parties.

2091. Every act which interrupts prescription with regard to one of joint and several creditors benefits the others.

When the obligation is indivisible, acts of interruption with regard to some only of the heirs of a creditor, benefit the others.

If the obligation be divisible, even when the debt is hypothecary, acts of interruption in behalf of some only of such heirs do not benefit the other heirs. In the same case these acts only benefit the other joint and several creditors for the share of the heirs with regard to whom such acts have been done. In order that the interruption should in this case produce the full effect with regard to the other joint and several creditors, it is necessary that the acts which interrupt should have been done as to all the heirs of the deceased creditor.

2092. Every act which interrupts prescription by one of joint and several debtors, interrupts it with regard to all.

Acts of interruption with regard to one of the heirs of a debtor, interrupt prescription with regard to the other heirs and joint and several debtors, when the obligation is indivisible.

If the obligation be divisible, even when the debt is hypothecary, a judicial demand brought against one of the heirs of a joint and several debtor, or his acknowledgment, does not interrupt prescription with regard to the other heirs ; without prejudice to the right of the creditor to exercise his hypothec within the proper time on the whole of the immovable property charged for that portion of the debt to which he retains his right.

In the same case, these acts only interrupt prescription with regard to the joint and several co-debtors for the share of the heir who is sued or has acknowledged the right. In order that in this case the interruption should take place for the whole with regard to the joint and several co-debtors, it is necessary that the judicial demand or the acknowledgment should take place with regard to all the heirs of the deceased debtor.

Acts which interrupt prescription with regard to the debtor do not interrupt the prescription by a third party holding

the immovable property burthened with any charge or hypothec ; they affect him in the sense that they hinder the extinction by prescription of the debt to which the hypothec is attached.

These acts against the holders of other immovables or of other portions of the same immovable, do not prejudice the holder of a separate portion of the property, with regard to whom they have not taken place.

When done with regard to one joint holder of undivided property, they interrupt prescription with regard to the others.

In natural interruption, however, it suffices that one of the possessors of undivided property, or an heir of one of them should have kept useful possession of the whole in order to secure the advantage of it to the others.

SECTION II.

THE CAUSES WHICH SUSPEND THE COURSE OF PRESCRIPTION.

2093. (Am. 34-1956). Prescription runs against all persons, unless they are included in some exception established by this Code, or unless it is absolutely impossible for them in law or in fact to act by themselves or to be represented by others.

Saving what is declared in article 2131, prescription does not run, even in favour of subsequent purchasers, against those who are not born, nor against minors, nor against persons of unsound mind, with or without tutors or curators.

Prescription runs against absentees as against persons present and by the same lapse of time, but this rule is without prejudice to the right of taking provisional possession of the estate of an absentee, as established by this Code.

2094. (Subst. 34-1956). Husband and wife cannot prescribe against each other in respect of the rights to which they are entitled by virtue of the community or of their marriage covenants.

2095. (Subst. 34-1956). Save as provided in article 2094, prescription runs against a married woman as if she were unmarried.

2096. Neither does prescription run against the wife during marriage, even in favour of subsequent purchasers, with respect to dower and other rights of survivorship, nor with respect to the preciput or other distinct rights which she can only exercise by accepting or renouncing, after the dissolution of the community ; except that if, in either case, the community has been dissolved during the marriage, prescription begins against the wife, as regards the rights which she may then exercise in consequence of such dissolution.

Saving what is excepted in the present article, prescription acquired or which has run against the property of the community affects the share of the wife who accepts.

2097. Prescription of personal actions does not run :

With respect to debts depending on a condition, until such condition happens ;

With respect to actions in warranty, until the eviction takes place ;

With respect to debts with a term, until the term has expired.

2098. (Subst. 34-1956). Prescription runs against a vacant succession.

2099. It runs during the delays for making an inventory and deliberating.

2100. The particular rules concerning the suspension of prescription with regard to joint and several creditors and their heirs are the same as those concerning interruption in like cases, explained in the preceding section.

CHAPTER SIXTH.

THE TIME REQUIRED TO PRESCRIBE.

SECTION I.

GENERAL PROVISIONS.

2101. Prescription is reckoned by days and not by hours.

Prescription is acquired when the last day of the term has expired; the day on which it commenced is not counted.

2102. The rules of prescription in other matters than those mentioned in the present title are explained in the particular titles relating to such matters.

SECTION II.

PRESCRIPTION BY THIRTY YEARS, PRESCRIPTION OF RENTS AND INTEREST, AND THE DURATION OF THE PLEA OF PRESCRIPTION.

2103. All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.

2103A. (Ad. 34-1956). Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years, if that possession is established to the satisfaction of the Supreme Court which may issue a declaration of title in regard to the property or right upon application in the manner prescribed by any statute or rules of court.

2104. Prescription of the action to account and of the other personal actions of minors against their tutors, relating to the acts of the tutorship, takes place conformably to this rule, and is reckoned from the majority.

2105. If a title be shown, it helps to establish the defects of the possession which hinder prescription.

2106. Prescription by thirty years, has, in all prescriptible cases, the same effects as that by a hundred years or as immemorial prescription formerly had, whether as regards the right, or for covering the defects of title, informalities or bad faith.

2107. Any person who is in possession as proprietor of a thing or a right, preserves, by reason of such possession, his right to set up by plea against any demand in revendication of such thing or right, all such grounds of nullity or other grounds as tend to defeat the action, although his right to do so by direct action may have been prescribed.

In personal actions, likewise, the defendant may effectively plead all grounds tending to defeat the action, although the time during which he could urge such grounds by direct action may have elapsed.

The foregoing provisions of this article apply only to such grounds of exception as strike at the principle of the action and destroyed it at a time when no acquired prescription could prevent them from doing so. Thus a claim prescribed cannot be pleaded in compensation unless the compensation had taken effect before it was prescribed, and then it may be pleaded, whether the claim be for a debt of a commercial nature or for any other cause.

The adoption of the grounds of such plea does not revive the right to urge them by direct action.

2108. The hypothecary action joined to the personal is not subject to a longer prescription than the latter alone.

2109. (Subst. 34-1956). The term attached by law or by stipulation to a right of redemption has its effects, subject to articles 1460A, 1460B and 1460C without prescription being required.

So is the term attached to the right of a vendor to take back an immovable by reason of non-payment of the price.

The right to redeem rents comes from the law; it is imprescriptible.

2110. After twenty-nine years from the date of the last title, the debtor of emphyteutic dues or of a rent may be compelled, at his own cost, to furnish the creditor or his legal representatives with a renewal deed.

2111. With the exception of what is due to the Crown, all arrears of rents, including life rents, all arrears of interest, of house rent or land rent, and generally all fruits natural or civil are prescribed by five years.

This provision applies to claims resulting from emphyteutic leases or other real rights, even where there is privilege or hypothec.

Prescription of arrears takes place although the principal be imprescriptible by reason of precarious possession.

Prescription of the principal carries with it that of the arrears.

SECTION III.

PRESCRIPTION BY SUBSEQUENT PURCHASERS.

2112. He who acquires a corporeal immovable in good faith under a written title, prescribes the ownership thereof and liberates himself from the servitudes, charges, and hypothecs upon it by an effective possession in virtue of such title during ten years.

2113. A purchaser of dues or rents, with title and in good faith, prescribes the capital thereof by means of an enjoyment that is not defective and extends over ten years, against the creditor who has during that time entirely failed to enjoy and neglected to act, although the vendor should subsequently prove to have had no right to sell.

2114. It is sufficient that the good faith of subsequent purchasers existed at the time of the purchase, even when their effective possession only commenced later.

The same rule is observed with regard to every preceding purchaser whose possession is added to theirs for this prescription.

2115. A title which is null by reason of informality cannot serve as a ground for prescription by ten years.

2116. After prescription by ten years has been renounced or interrupted, prescription by thirty years alone can be commenced.

2117. Prescription by ten years and other prescriptions requiring shorter periods, may be set up separately against the same demand together with that by thirty years, and any one kind of prescription may be set up with any other.

2118. In cases where prescription by ten years can run, each new holder of an immovable burthened with a servitude, charge, or hypothec, may be compelled to furnish a renewal title at his own cost.

SECTION IV.

CERTAIN PRESCRIPTIONS BY TEN YEARS.

2119. (Am. 34-1956). The action in restitution of minors for lesion, the action in rectification of tutors' accounts and that in rescission of contracts for error, fraud, violence, or fear, are prescribed by ten years.

This time runs in the case of violence or fear from the day it ceased ; and in the case of error or fraud from the day it was discovered.

This time only runs with regard to interdicted persons from the day the interdiction is removed. It does not run against persons of unsound mind although not interdicted. It does not run against minors until they become of age.

2120. After ten years, architects and contractors are discharged from the warranty of the work they have done or directed.

SECTION V.

CERTAIN SHORT PRESCRIPTIONS.

2121. The following actions are prescribed by six years :

1. For professional services and disbursements of advocates and attorneys, reckoning from the date of the final judgment in each case ;

2. For professional services and disbursements of notaries, and fees of officers of justice, reckoning from the time when they became payable ;

3. Against notaries, advocates, attorneys, and other officers or functionaries who are depositaries in virtue of their office, for the recovery of papers and titles confided to them ; reckoning from the termination of the proceedings in which such papers and titles were made use of, or, in other cases, from the date of their reception ;

4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity ; bank notes, however, being excepted from this prescription ;

5. Upon sales of movable effects between non-traders, or between traders and non-traders, these latter sales being in all cases held to be commercial matters ;

6. For hire of labour, or for the price of manual, professional, or intellectual work and materials furnished, saving the exceptions contained in the following articles ;

7. For visits, services, operations and medicines of physicians or surgeons, reckoning from each service or thing furnished.

2122. (Am. 34-1956). The following actions are prescribed by three years :

1. For seduction, or lying-in expenses ;

2. For damages resulting from delicts or quasi-delicts, whenever other provisions do not apply ;

3. For wages or salaries of employees not reputed domestics and who are engaged or hired for a year or longer period ;

4. For sums due to schoolmasters and teachers, for tuition, and board and lodging furnished by them.

2123. (Am. 34-1956). The following actions are prescribed by one year :

1. For slander or libel, reckoning from the day that it came to the knowledge of the party aggrieved ;

2. For wages of domestic servants, merchants' clerks and other employees who are hired by the day, week or month, or for less than a year ;

3. For hotel or boarding-house charges.

2124. Actions against public officers in respect of acts done by them in good faith and in respect of their public duties are prescribed by six months.

2125. Short limitations and prescriptions established by ordinance, follow the rules peculiar to them, as well in matters respecting the rights of the Crown as in those respecting the rights of all others.

2126. After renunciation or interruption, except as to prescription by ten years in favour of subsequent purchasers, prescription recommences to run for the same time as before, if there be no novation ; this rule, however, being subject to the provisions of the following article.

2127. Any action which is not declared to be perempted, and any judicial condemnation, constitutes a title which is only prescribed by thirty years, although the subject matter thereof be sooner prescriptible.

A judicial admission interrupts prescription, even in an action the peremption of which is declared or which is otherwise insufficient to interrupt it alone ; but the prescription which recommences is not thereby prolonged.

2128. A continuation of like services, work, sales or supplies, does not hinder a prescription, if there have been no acknowledgment or other cause of interruption.

2129. In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable upon them.

2130. Actual possession of a corporeal movable, by a person as proprietor, creates a presumption of lawful title. Any party claiming such movable must prove, besides his own right, the defects in the possession or in the title of the possessor who claims prescription, or who, under the provisions of the present article, is exempt from doing so.

Prescription of corporeal movables takes place after the lapse of three years, reckoning from the loss of possession, in favour of possessors in good faith, even when the loss of possession has been occasioned by theft.

But a possessor in such case is secure against revendication, even in the absence of this prescription if the thing have been bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, or have been acquired in any commercial dealing.

A possessor in good faith of the lost or stolen property even when this prescription has not been accomplished, and when possession has not been acquired under any of the conditions specified in the last preceding paragraph, can be compelled to restore it in an action of revendication only upon being reimbursed the price which he has paid.

If the lost or stolen property have been sold under the authority of law, it cannot be revendicated at all.

The thief or other violent or clandestine possessor of a thing, and his successors by general title, are debarred from prescribing by articles 2061 and 2062.

2131. Prescriptions which the law fixes at less than thirty years, other than those in favour of subsequent purchasers of immovables with title and in good faith, and that in case of rescission of contracts mentioned in article

2119, run against minors, idiots and persons of unsound mind, whether or not they have tutors or curators, saving their recourse against the latter.

SECTION VI.

TRANSITORY PROVISIONS.

2132. Prescriptions begun before the promulgation of this Code, must be governed by the former laws.

Nevertheless any kind of prescription so begun, for which, according to these laws, a period longer than thirty years is required, secures title in thirty years from the time when it began to run.

BOOK TWENTIETH.

IMPRISONMENT IN CIVIL CASES.

2133. Imprisonment in civil cases is allowed only against the persons and under the conditions specified in the following articles.

2134. (Am. 34-1956). The persons liable to imprisonment are :

1. Public officers for money due to the Crown.

2. Tutors, curators, executors of wills and other administrators of successions and fiduciary institutes for whatever is due to those for whom they act.

3. Any guardian or depositary, sheriff, bailiff, or other judicial officer having charge of property under judicial authority.

4. Any person indebted as a surety for another with reference to any judicial proceeding, or indebted for the purchase of any property sold at a judicial sale.

5. A person who with intent to defraud, purchases goods on credit or procures advances in money knowing himself to

be unable to meet his engagements and concealing the fact from the person thereby becoming his creditor, or who by any false pretence or by means of any writing obtains credit for the payment of any advance or loan of money or of the price or any part of the price of any goods or merchandise with intent to defraud the person thereby becoming his creditor, and who shall not afterwards have paid the debt or debts so incurred.

6. A person condemned to pay damages in any action for illegal arrest, illegal attachment and execution, libel, slander, criminal conversation and seduction.

7. A person condemned in damages in a suit brought in virtue of articles 1939, 1940.

8. A person condemned in damages for maliciously registering or causing to be registered an unfounded claim against property.

9. A person condemned in damages for causing any property to be advertised or sold by the Sheriff well knowing that he has no claim upon the same.

10. A person condemned to pay a penalty or sum in the nature of a penalty other than a penalty in respect of a contract.

11. A person condemned for non-payment of a sum recoverable summarily before a Magistrate, in the cases where special authority to imprison is granted by ordinance.

12. A person making default under the provisions of articles 1994, 1998.

13. A person guilty of contempt of any process or order of the Court or Judge or for any fraudulent evasion of any payment or order of Court by preventing or obstructing the seizure of property or the sale of property taken in execution of such judgment or order.

2135. Any court may commit to prison for any term not exceeding six weeks, unless the judgment and costs be sooner paid, any person who refuses to pay the amount of the judgment rendered against him and costs since incurred in

good faith by the execution creditor, provided that the jurisdiction by this section given is exercised subject to the following restrictions :

That the judgment shows on its face the ground on which it is issued ;

That it is proved to the satisfaction of the Court that the person making default either has or has had since the date of the judgment the means to pay the same, and has refused and refuses to pay.

2136. The special "contrainte par corps" in case of promissory notes and bills of exchange is abolished.

2137. (Rep. 34-1956).

2138. (Rep. 34-1956).

2139. No person of the age of seventy years or upwards, and no female, can be arrested or imprisoned, by reason of any debt or cause of civil action, except such persons as fall within the cases declared in articles 2134 and 2135.

2140. No imprisonment in civil cases shall be for a longer period than two years.

PART FOURTH.

(Subst. 34-1956).

TRUSTEES.

GENERAL PROVISIONS.

Interpretation.

2141. In this Part, unless the context otherwise requires—

"authorised investments" means investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law ;

" contingent right " includes a substitution ;

" convey " and " conveyance " as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for the whole of his interest therein or for any part thereof together with the performance of all formalities required by law for the validity of the conveyance ;

" court " means the Supreme Court or a Judge thereof ;

" deed " means a notarial instrument ;

" instrument " includes Ordinance ;

" land " means immovable property as defined in this Code ;

" mortgagee " means the creditor under an hypothecary obligation whether he be the original creditor or not ;

" pay " and " payment " as applied in relation to stocks and securities and in connexion with the expression " into Court " include the deposit or transfer of the same in or into Court ;

" personal representative " means the executor original or by representation or administrator for the time being of a deceased person, and includes the Administrator General ;

" possession " includes receipt of rents and profits or the right to receive the same, if any ;

" income " includes rents and profits ; and

" possessed " applies to receipt of income of and to any vested interest less than a life interest in possession or in expectancy in any land ;

" property " includes immovable and movable property, and any share and interest in any property,

immovable or movable, and any debt, and any thing in action, and any other right or interest, whether in possession or not ;

" rights " includes interests in property ;

" sale " includes an exchange ;

" securities " includes stocks, funds, and shares ; and " securities payable to bearer " includes securities transferable by delivery or by delivery and endorsement ;

" stock " includes fully paid-up shares, and so far as relates to vesting orders made by the Court under this Part, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein ;

" transfer " in relation to stock or securities includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee ;

" trust " and " trustee " extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and " trustee " where the context admits, includes a personal representative, and " new trustee " includes an additional trustee ;

" trust corporation " means the Administrator General or a corporation entitled by law or appointed by the Court in any particular case to be a trustee ;

" trust for sale " in relation to land means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale ; " trustees for sale " means the persons (including a personal representative) holding land on trust for sale.

Application of Part.

2142. (1) This Part, except where otherwise expressly provided, applies to trusts including, so far as this Part applies

thereto, executorships and administratorships constituted or created either before or after the commencement of this Part.

(2) The powers conferred by this Part on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) The provisions of this Part do not affect the legality or validity of any thing done before the commencement of this Part, except as otherwise hereinafter expressly provided.

CHAPTER FIRST.

INVESTMENTS.

2143. A trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say :— Authorised investments.

(*a*) in any securities in which trustees in England are for the time being authorised by the law of England to invest trust funds ;

(*b*) in any securities the interest on which is for the time being guaranteed by the Imperial Parliament or by the Government of the Colony, or in any public debentures issued under the authority of and guaranteed by any Ordinance in force in the Colony ;

(*c*) on the purchase of immovable property in the Colony held as owner absolutely by the vendor ;

(*d*) on first privilege or first mortgage on immovable property in this Colony ;

and may also from time to time vary any such investment.

2144. Every power conferred by the last preceding article shall be exercised according to the discretion of the trustee, but subject to any consent or direction required by the instrument, if any, creating the trust or by law with respect to the investment of the trust funds. Discretion of trustees.

Power to retain investment which has ceased to be authorised.

2145. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the trust instrument or by the general law.

Investment in bearer securities.

2146. (1) A trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in securities payable to bearer which, if not so payable, would have been authorised investments :

Provided that securities to bearer retained or taken as an investment by a trustee (not being a trust corporation) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company.

A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this paragraph, be deemed to be such an express prohibition as aforesaid.

(2) A trustee shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property.

Loans and investments by trustees not chargeable as breaches of trust.

2147. A trustee lending money on the security of any property on which he can properly lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, if it appears to the Court—

(*a*) that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere ; and

(*b*) that the amount of the loan does not exceed two-third parts of the value of the property as stated in the report ; and

(c) that the loan was made under the advice of the surveyor or valuer expressed in the report.

Liability for loss by reason of improper investment.

2148. (1) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This article applies to investments made before as well as after the commencement of this Part.

Powers supplementary to powers of investment.

2149. (1) Trustees lending money on the security of any property on which they can lawfully lend may contract that such money shall not be called in during any period not exceeding seven years from the time when the loan was made, provided interest be paid within a specified time not exceeding thirty days after every half-yearly or other day on which it becomes due, and provided there be no breach of any covenant by the mortgagor contained in the instrument of mortgage or charge for the maintenance and protection of the property.

(2) On a sale of land held by trustees, the trustees may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a vendor's privilege or mortgage of the land sold with or without the security of any other property, such mortgage or vendor's privilege, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor or purchaser to keep them insured against loss or damage by fire to the full value thereof.

The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such mortgage or vendor's privilege, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the mortgage or vendor's privilege.

(3) Where any securities of a company are subject to a trust, the trustees may concur in any scheme or arrangement —

(*a*) for the reconstruction of the company ;

(*b*) for the sale of all or any part of the property and undertaking of the company to another company ;

(*c*) for the amalgamation of the company with another company ;

(*d*) for the release, modification, or variation of any rights, privileges or liabilities attached to the securities or any of them ;

in like manner as if they were entitled to such securities beneficially, with power to accept any securities of any denomination or description of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities ; and the trustees shall not be responsible for any loss occasioned by any act or thing so done in good faith, and may retain any securities so accepted as aforesaid for any period for which they could have properly retained the original securities.

(4) If any conditional or preferential right to subscribe for any securities in any company is offered to trustees in respect of any holding in such company, they may, as to all or any such securities, either exercise such right and apply capital money subject to the trust in payment of the consideration, or renounce such right, or assign for the best consideration that can be reasonably obtained the benefit of such right or the title thereto to any person, including any beneficiary under the trust, without being responsible for any loss occasioned by any act or thing so done by them in good faith :

Provided that the consideration for any such assignment shall be held as capital money of the trust.

(5) The powers conferred by this article shall be exercisable subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust.

(6) Where the loan referred to in paragraph (1), or the sale referred to in paragraph (2), of this article is made under the order of the Court, the powers conferred by those paragraphs respectively shall apply only if and as far as the Court may by order direct.

Power to deposit money at bank and to pay calls.

2150. (1) Trustees may, pending the negotiation and preparation of any mortgage or charge, or during any other time while an investment is being sought for, pay any trust money into a bank to a deposit or other account, and all interest, if any, payable in respect thereof shall be applied as income.

(2) Trustees may apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

CHAPTER SECOND.

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES.

GENERAL POWERS.

Power of trustees for sale to sell by auction, etc.

2151. (1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2) A trust or power to sell or dispose of land includes a trust or power to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way.

Power to sell subject to depreciatory conditions.

2152. (1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon any of the grounds aforesaid.

(4) This article applies to sales made before or after the commencement of this Part.

Power of trustees to give receipts.

2153. (1) The receipt in writing of a trustee for any money, securities, or other movable property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge to the person paying, transferring, or delivering the same and shall effectually exonerate him from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This article does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for sale of land.

(3) This article applies notwithstanding any thing to the contrary in the instrument, if any, creating the trust.

Power to compound liabilities.

2154. A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by law, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit —

(*a*) accept any property, movable or immovable, before the time at which it is made transferable or payable ; or

(*b*) sever and apportion any blended trust funds or property ; or

(*c*) pay or allow any debt or claim on any evidence that he or they think sufficient ; or

(*d*) accept any composition or any security, movable or immovable, for any debt or for any property, movable or immovable, claimed ; or

(*e*) allow any time for payment of any debt ; or

(*f*) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust,

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

Power to raise money by sale, mortgage, etc.

2155. (1) Where trustees are authorised by the instrument, if any, creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, they shall have and shall be deemed always to have had power to raise the money required by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession.

(2) This article applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes.

Protection to purchasers and mortgagees dealing with trustees.

2156. No purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees shall be concerned to see

that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof.

Devolution of powers or trusts.

2157. (1) Where a power or trust is given to or imposed on two or more trustees jointly, the same may be exercised or performed by the survivors or survivor of them for the time being.

(2) Until the appointment of new trustees the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, shall be capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or other the trustees or trustee for the time being of the trust.

(3) This article takes effect subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

(4) In this article "personal representative" does not include an executor who has renounced or has not proved.

Power to insure.

2158. (1) A trustee may insure against loss or damage by fire any building or other insurable property to any amount, including the amount of any insurance already on foot, for the full value of the building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trust without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2) This article does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

Application of insurance money where policy kept up under any trust, power or obligation.

2159. (1) Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a trust, whether by fire or otherwise, shall, where the policy has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in

performance of any covenant or of any obligation, statutory or otherwise be capital money for the purposes of the trust.

(2) If any such money is receivable by any person, other than the trustees of the trust, that person shall use his best endeavours to recover and receive the money, and shall pay the net residue thereof, after discharging any costs of recovering and receiving it, to the trustees of the trust, or if there are no trustees capable of giving a discharge therefor, into Court.

(3) Any such money —

(*a*) if it was receivable in respect of property held upon trust for sale, shall be held upon the trusts and subject to the powers and provisions applicable to money arising by a sale under such trust ;

(*b*) in any other case, shall be held upon trusts corresponding as nearly as may be with the trusts affecting the property in respect of which it was payable.

(4) Such money, or any part thereof, may also be applied by the trustees, or, if in Court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged, but any such application by the trustees shall be subject to the consent of any person whose consent is required by the instrument, if any, creating the trust to the investment of money subject to the trust.

(5) Nothing contained in this article prejudices or affects the right of any person to require any such money or any part thereof to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any law or otherwise.

(6) This article applies to policies effected either before or after the commencement of this Part, but only to money received after such commencement.

2160. Trustees may deposit any documents held by them relating to the trust, or to the trust property, with any banker or banking company or any other company whose

Deposit of documents for safe custody.

business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

Reversionary interests, valuations, and audit.

2161. (1) Where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action, the trustees on the same falling into possession, or becoming payable or transferable may —

(*a*) agree or ascertain the amount or value thereof or any part thereof in such manner as they may think fit ;

(*b*) accept in or towards satisfaction thereof, at the market or current value, or upon any valuation or estimate of value which they may think fit, any authorised investments ;

(*c*) allow any deductions for duties, costs, charges and expenses which they may think proper or reasonable ;

(*d*) execute any release in respect of the premises so as effectually to discharge all accountable parties from all liability in respect of any matters coming within the scope of such release ;

without being responsible in any such case for any loss occasioned by any act or thing so done by them in good faith.

(2) The trustees shall not be under any obligation and shall not be chargeable with any breach of trust by reason of any omission —

(*a*) to apply for any stop or other like order upon any securities or other property out of or on which such share or interest or other thing in action as aforesaid is derived payable or charged ; or

(*b*) to take any proceedings on account of any act, default, or neglect on the part of the persons in whom such securities or other property or any of them or any part thereof are for the time being, or had at any time been, vested ;

unless and until required in writing so to do by some person, or the tutor of some person, beneficially interested under the trust, and unless also due provision is made to their satisfaction for payment of the cost of any proceedings required to be taken :

Provided that nothing in this paragraph shall relieve the trustees of the obligation to get in and obtain payment or transfer of such share or interest or other thing in action on the same falling into possession.

(3) Trustees may, for the purpose of giving effect to the trust, or any of the provisions of the instrument, if any, creating the trust or of any law, from time to time (by duly qualified agents) ascertain and fix the value of any trust property in such manner as they think proper, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

(4) Trustees may, in their absolute discretion, from time to time, but not more than once in every three years unless the nature of the trust or any special dealings with the trust property make a more frequent exercise of the right reasonable, cause the accounts of the trust property to be examined or audited by an independent accountant, and shall, for that purpose, produce such vouchers and give such information to him as he may require ; and the costs of such examination or audit, including the fee of the auditor, shall be paid out of the capital or income of the trust property, or partly in one way and partly in the other, as the trustees, in their absolute discretion, think fit, but, in default of any direction by the trustees to the contrary in any special case, costs attributable to capital shall be borne by capital and those attributable to income by income.

Power to postpone sale.

2162. (1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale,

in the exercise of their discretion, for any indefinite period; nor shall a purchaser of immovable property be concerned in any case with any directions respecting the postponement of a sale.

(3) The foregoing provisions of this article apply whether the trust for sale is created before or after the commencement of this Part.

(4) Where a disposition or settlement coming into operation after the commencement of this Part contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

Power to employ agents.

2163. (1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating or otherwise administering any property, real or personal, movable or immovable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the Colony or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(3) Without prejudice to such general power of appointing agents as aforesaid —

(*a*) a trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed having in the body thereof or endorsed thereon a receipt for such money or valuable consideration or property, the deed being executed, or the endorsed receipt being signed, by the person entitled to give a receipt for that consideration ;

(*b*) a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment ; and the production of any such deed by the solicitor shall have the same validity and effect as if the person appointing the solicitor had not been a trustee ;

(*c*) a trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of insurance, by permitting the banker or solicitor to have the custody of, and to produce, the policy of insurance with a receipt signed by the trustee, and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment :

Provided that nothing in this paragraph shall exempt a trustee from any liability which he would have incurred if this Part had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor, as the case may be, to pay or transfer the same to the trustee.

This paragraph applies whether the money or valuable consideration or property was or is received before or after the commencement of this Part.

Power to concur with others.

2164. Where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate, the trustees or personal representatives may (without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto) execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares and notwithstanding that any one or more of the trustees or personal representatives may be entitled to or interested in any such other share, either in his or their own right or in a fiduciary capacity.

Power to delegate trusts during absence abroad.

2165. (1) A trustee intending to remain out of the Colony for a period exceeding one month may, notwithstanding any rule of law or equity to the contrary, by power of attorney duly registered, delegate to any person (including a trust corporation) the execution or exercise during his absence from the Colony of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons :

Provided that a person being the only other co-trustee and not being a trust corporation shall not be appointed to be an attorney under this paragraph.

(2) The donor of a power of attorney given under this article shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor.

(3) The power of attorney shall not come into operation unless and until the donor is out of the Colony, and shall be revoked by his return.

(4) The power of attorney shall be in notarial form or be attested by at least one witness and shall be registered within thirty days of execution, if executed in the Colony, or within thirty days of first arrival in the Colony, if executed out of the Colony, with a statutory declaration by the donor that he intends to remain out of the Colony for a period

exceeding one month from the date of such declaration, or from a date therein mentioned.

(5) The statutory declaration aforesaid and a statutory declaration by the donee of the power of attorney that the power has come into operation and has not been revoked by the return of the donor shall be conclusive evidence of the facts stated in favour of any person dealing with the donee.

(6) In favour of any person dealing with the donee, any act done or instrument executed by the donee shall, notwithstanding that the power has never come into operation or has become revoked by the act of the donor or by his death or otherwise, be as valid and effectual as if the donor were alive and of full capacity, and had himself done such act or executed such instrument, unless such person had actual notice that the power had never come into operation or of the revocation of the power before such act was done or instrument executed.

(7) For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by law or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer but not including the power of delegation conferred by this article.

(8) The fact that it appears from any power of attorney given under this article, or from any evidence required for the purposes of any such power of attorney or otherwise, that in dealing with any stock the donee of the power is acting in the execution of a trust shall not be deemed for any purpose to affect any person in whose books the stock is inscribed or registered with any notice of the trust.

INDEMNITIES.

Protection against liability in respect of rents and covenants.

2166. (1) Where a personal representative or trustee liable as such for —

(*a*) any rent, covenant, or agreement reserved by or contained in any lease ; or

(*b*) any rent, covenant or agreement payable under or contained in any grant made in consideration of a constituted rent ; or

(*c*) any indemnity given in respect of any rent, covenant, or agreement referred to in either of the foregoing paragraphs,

satisfies all liabilities under the lease or grant which may have accrued, or been claimed, up to the date of the conveyance hereinafter mentioned, and, where necessary, sets apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum which the lessee or grantee agreed to lay out on the property demised or granted, although the period for laying out the same may not have arrived, then and in any such case the personal representative or trustee may convey the property demised or granted to a purchaser, legatee, devisee, or other person entitled to call for a conveyance thereof, and thereafter —

(i) he may distribute the residuary movable and immovable property of the succession of the deceased testator or intestate, or as the case may be, the trust property (other than the fund, if any, set apart as aforesaid) to or amongst the persons entitled thereto, without appropriating any part, or any further part, as the case may be, of the property of the deceased or of the trust property to meet any future liability under the said lease or grant ;

(ii) notwithstanding such distribution, he shall not be personally liable in respect of any subsequent claim under the said lease or grant.

(2) This article operates without prejudice to the right of the lessor or grantor, or the persons deriving title under the lessor or grantor, to follow the assets of the deceased or the trust property into the hands of the persons amongst whom the same may have been respectively distributed, and applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

(3) In this article "lease" includes an underlease and an agreement for a lease or underlease and any instrument giving any such indemnity as aforesaid or varying the liabilities under the lease; "grant" applies to a grant whether the rent is created by limitation, grant, reservation, or otherwise, and includes an agreement for a grant and any instrument giving any such indemnity as aforesaid or varying the liabilities under the grant; "lessee" and "grantee" include persons respectively deriving the title under them.

Protection by means of advertisement.

2167. (1) With a view to the conveyance to or distribution among the persons entitled to any movable or immovable property, the trustees of a disposition on trust for sale, or personal representatives, may give notice by advertisement in the *Gazette*, and in a daily or weekly newspaper circulating in the Colony, and such other like notices, including notices elsewhere than in the Colony, as would in any special case, have been directed by a Court of competent jurisdiction in an action for administration, of their intention to make such conveyance or distribution as aforesaid, and requiring any person interested to send to the trustees or personal representatives within the time, not being less than two months, fixed in the notice or, where more than one notice is given, in the last of the notices, particulars of his claim in respect of the property or any part thereof to which the notice relates.

(2) At the expiration of the time fixed by the notice the trustees or personal representatives may convey or distribute the property or any part thereof to which the notice relates to or among the persons entitled thereto, having regard only to the claims, whether formal or not, of which the trustees or personal representatives then had notice, and shall not, as respects the property so conveyed or distributed, be liable to any person of whose claim the trustees or personal representatives have not had notice at the time of conveyance or distribution; but nothing in this article —

(*a*) prejudices the right of any person to follow the property, or any property representing the same, into

the hands of any person, other than a purchaser, who may have received it ; or

(*b*) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(3) This article applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust.

Protection in regard to notice.

2168. A trustee or personal representative acting for the purposes of more than one trust or succession shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or succession if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or succession.

Exoneration of trustees in respect of certain powers of attorney.

2169. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the act or payment the person who gave the power of attorney was subject to any disability, or bankrupt, or dead, or had done or suffered some act or thing to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying :

Provided that —

(*a*) nothing in this article shall affect the right of any person entitled to the money against the person to whom the payment is made ;

(*b*) the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees.

2170. (1) A trustee shall be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be

answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust money or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default.

(2) A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers.

CHAPTER THIRD.

APPOINTMENT AND DISCHARGE OF TRUSTEES.

Limitation of the number of trustees.

2171. (1) Where, at the commencement of this Part, there are more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

(2) In the case of dispositions on trust for sale of land made or coming into operation after the commencement of this Part —

(*a*) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy ;

(*b*) the number of the trustees shall not be increased beyond four.

(3) This article only applies to dispositions of land, and the restrictions imposed on the number of trustees do not apply —

(*a*) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes ; or

(*b*) where the net proceeds of the sale of the land are held for like purposes.

Power of appointing new or additional trustees.

2172. (1) Where a trustee, either original or substituted, and whether appointed by a Court or otherwise, is dead, or remains out of the Colony for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit to act therein, or is incapable of acting therein, or is a minor, then subject to the restrictions imposed by this Part on the number of trustees —

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust ; or

(*b*) if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving or continuing trustee,

may, by writing, appoint one or more other persons (whether or not being the person exercising the power) to be a trustee or trustees in the place of the trustee so deceased, remaining out of the Colony, desiring to be discharged, refusing, or being unfit or being incapable, or being a minor, as aforesaid.

(2) Where a trustee has been removed under a power contained in the instrument creating the trust, a new trustee or new trustees may be appointed in the place of the trustee who is removed, as if he were dead, or, in the case of a corporation, as if the corporation desired to be discharged from the trust, and the provisions of this article shall apply accordingly, but subject to the restrictions imposed by this Part on the number of trustees.

(3) Where a corporation being a trustee is or has been dissolved either before or after the commencement of this Part, then, for the purposes of this article and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trust or powers reposed in or conferred on the corporation.

(4) The power of appointment given by paragraph (1) of this article to the personal representatives of a last surviving or continuing trustee shall be and shall be deemed always to have been exercisable by the executors for the time being (whether original or by representation) of such surviving or continuing trustee who have proved the will of their testator or by the administrators for the time being of such trustee without the concurrence of any executor who has renounced or has not proved.

(5) But a sole or last surviving executor intending to renounce, or all the executors where they all intend to renounce, shall have and shall be deemed always to have had power, at any time before renouncing probate, to exercise the power of appointment given by this article, if willing to act for that purpose and without thereby accepting the office of executor.

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then and in any such case —

(*a*) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust ; or

(*b*) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being,

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee unless the instrument, if any, creating the trust or any law provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

(7) Every new trustee appointed under this article as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all

respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(8) The provisions of this article relating to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this article.

(9) Where a person of unsound mind, being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee, under this article, unless leave has been given by the Court to make the appointment.

Power to appoint trustees of property belonging to persons out of the Colony.

2173. (1) Where a person out of the Colony is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Part (in this paragraph called "the deceased") to a legacy, or to the residue of the succession of the deceased, or any share therein, and such legacy, residue or share is not under the will, if any, of the deceased, bequeathed to trustees for the person out of the Colony, the personal representatives of the deceased may by writing appoint the Administrator General, a trust corporation or two or more persons not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such legacy, residue or share for the person out of the Colony, and may execute or do any assurance or thing requisite for vesting such legacy, residue or share in the trustee or trustees so appointed.

On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any investment authorised by this Part.

(2) Where a personal representative has before the commencement of this Part retained or sold any such legacy, residue or share, and invested the same or the proceeds

thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

Supplemental provisions as to appointment of trustees.

2174. (1) On the appointment of a trustee for the whole or any part of trust property —

(*a*) the number of trustees may, subject to the restrictions imposed by this Part on the number of trustees, be increased ; and

(*b*) a separate set of trustees, not exceeding four, may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed, then, save as hereinafter provided, one separate trustee may be so appointed ; and

(*c*) it shall not be obligatory, save as hereinafter provided, to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed, and a sole trustee when appointed will be able to give valid receipts for all capital money, a trustee shall not be discharged from his trust unless there will be either a trust corporation or at least two individuals to act as trustees to perform the trust ; and

(*d*) any assurance or thing requisite for vesting the trust property, or any part thereof, in a sole trustee, or jointly in the persons who are the trustees, shall be executed or done.

(2) Nothing in this Part shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

Evidence as to a vacancy in a trust.

2175. (1) A statement, contained in any instrument coming into operation after the commencement of this Part by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the Colony for more than twelve months or refuses or is unfit to act or is incapable of acting or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of property subject to the trust, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

Retirement of trustee without a new appointment.

2176. (1) Where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust, then, if such trustee as aforesaid by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Part without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

Vesting of trust property in new or continuing trustees.

2177. (1) Where by a deed a new trustee is appointed to perform any trust, then —

(*a*) if the deed contains a declaration by the appointor to the effect that any interest in any land

subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons, as owners with right of survivorship between them and for the purposes of the trust, the interest or right to which the declaration relates ; and

(*b*) if the deed is made after the commencement of this Part and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the interests and rights with respect to which a declaration could have been made.

(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then —

(*a*) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as owners with right of survivorship between them, and for the purposes of the trust, the interest or right to which the declaration relates ; and

(*b*) if the deed is made after the commencement of this Part and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Part, shall, notwithstanding that the interest or right to be vested is

not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in paragraphs (1) and (2) of this article, as the case may require, such interests and rights as are capable of being and ought to be vested in those persons.

(4) This article does not extend —

(*a*) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any enactment or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture ;

(*b*) to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Ordinance or Act of Parliament.

In this paragraph " lease " includes an under-lease and an agreement for a lease or under-lease.

(5) For purposes of registration of the deed in any registry, the person or persons making the declaration, expressly or impliedly, shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Part.

CHAPTER FOURTH.

POWERS OF THE COURT.

APPOINTMENT OF NEW TRUSTEES.

Power of Court to appoint new trustees.

2178. (1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found

inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is a person of unsound mind, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(2) An order under this article, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this article gives power to appoint an executor or administrator.

Power to authorise remuneration.

2179. Where the Court appoints a person or corporation, other than the Administrator General, to be a trustee either solely or jointly with another person, the Court may authorise such person or corporation to charge such remuneration for his or its services as trustee as the Court may think fit.

Powers of new trustee appointed by the Court.

2180. Every trustee appointed by the Court shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

VESTING ORDERS.

Vesting orders of land.

2181. In any of the following cases, namely —

(i) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power ;

(ii) where a trustee entitled to or possessed of any land or interest therein, or entitled to a contingent right therein, either solely or jointly with any other person —

(*a*) is under disability ; or

(*b*) is out of the jurisdiction of the Court ; or

(*c*) cannot be found, or, being a corporation, has been dissolved ;

(iii) where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any interest in land ;

(iv) where it is uncertain whether the last trustee known to have been entitled to or possessed of any interest in land is living or dead ;

(v) where there is no personal representative of a deceased trustee who was entitled to or possessed of any interest in land, or where it is uncertain who is the personal representative of a deceased trustee who was entitled to or possessed of any interest in land ;

(vi) where a trustee jointly or solely entitled to or possessed of any interest in land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or interest or a release of the right, to convey the land or interest or to release the right, and has wilfully refused or neglected to convey the land or interest or release the right for twenty-eight days after the date of the requirement ;

(vii) where land or any interest therein is vested in a trustee, whether by way of mortgage or otherwise, and it appears to the Court to be expedient ;

the Court may make an order (in this Part called a " vesting order ") vesting the land or interest therein in any such person in any such manner and for any such interest as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct :

Provided that —

(*a*) where the order is consequential on the appointment of a trustee, the land or interest therein shall be vested in the persons who, on the appointment, are the trustees ; and

(*b*) where the order relates to a trustee entitled or formerly entitled jointly with another person, and such trustee is under disability or out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved, the land, interest or right shall be vested in such other person who remains entitled, either alone or with any other person the Court may appoint.

Orders as to contingent rights of unborn persons.

2182. Where any interest in land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence would, in respect thereof, become entitled to or possessed of that interest on any trust, the Court may make an order releasing the land or interest therein from the contingent right, or may make an order vesting in any person the interest of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order consequential on order for sale or mortgage of land.

2183. Where the Court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of any interest in the land, or entitled to a contingent right therein, and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee for the purposes of this Part, and the Court may, if it thinks expedient, make an order vesting the land or any part thereof for such interest as the Court thinks fit in the purchaser or in any other person or creating a mortgage on the land.

Vesting order consequential on judgment for

2184. Where a judgment is given for the specific performance of a contract concerning any interest in land, or for sale or exchange of any interest in land, or generally

specific performance, etc.

where any judgment is given for the conveyance of any interest in land either in cases arising out of the doctrine of election or otherwise, the Court may declare —

(*a*) that any of the parties to the action are trustees of any interest in the land or any part thereof within the meaning of this Part ;

(*b*) that the interests of unborn persons who might claim under any party to the action, or under the will or marriage contract of any deceased person who was during his lifetime a party to the contract or transaction concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Part ;

and thereupon the Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees.

Effect of vesting orders.

2185. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a trustee, have the same effect —

(*a*) as if the persons who before the appointment were the trustees, if any, had duly executed all proper conveyances of the land for such interest as the Court directs ; or

(*b*) if there is no such person, or no such person of full capacity, as if such person had existed and been of full capacity and had duly executed all proper conveyances of the land for such interest as the Court directs ;

and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.

2186. In all cases where a vesting order can be made under any of the foregoing provisions, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order made under the appropriate provision.

Vesting orders as to stock and things in action.

2187. (1) In any of the following cases, namely —

(i) where the Court appoints or has appointed a trustee, or where a trustee has been appointed out of Court under any statutory or express power ;

(ii) where a trustee entitled alone or jointly with another person to stock or to a thing in action —

(*a*) is under disability ; or

(*b*) is out of the jurisdiction of the Court ; or

(*c*) cannot be found, or, being a corporation, has been dissolved ; or

(*d*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled ; or

(*e*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a thing in action for twenty-eight days next after an order of the Court for that purpose has been served on him ;

(iii) where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a thing in action is alive or dead ;

(iv) where stock is standing in the name of a deceased person whose personal representative is under disability ;

(v) where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient,

the Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover the thing in action, in any such person as the Court may appoint.

Provided that —

(*a*) where the order is consequential on the appointment of a trustee, the right shall be vested in the persons who, on the appointment, are the trustees ; and

(*b*) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2) In all cases where a vesting order can be made under this article, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer :

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

(3) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Part, may transfer the stock to himself or any other person, according to the order, and all corporations, associations and companies shall obey every order under this article according to its tenor.

(4) After notice in writing of an order under this article it shall not be lawful for any coporation, association or company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order.

(5) The Court may make declarations and give directions concerning the manner in which the right to transfer any stock or thing in action vested under the provisions of this Part is to be exercised.

(6) The provisions of this Part as to vesting orders shall apply to shares in ships registered under the Acts of Parliament or under any Ordinance or Order in Council relating to merchant shipping as if they were stock.

Vesting orders of charity property.

2188. The powers conferred by this Part as to vesting orders may be exercised for vesting any interest in land, stock, or thing in action in any trustee of a charity or society over which the Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the Court under its general or statutory jurisdiction.

Vesting orders in relation to minor's beneficial interests.

2189. Where a minor is beneficially entitled to any property, the Court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the minor, make an order —

(*a*) appointing a person to convey such property ; or

(*b*) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the Court may think fit.

Orders made upon certain allegations to be conclusive evidence.

2190. Where a vesting order is made as to any land under this Part founded on an allegation of any of the following matters, namely —

(*a*) the personal incapacity of a trustee or mortgagee ; or

(*b*) that a trustee or mortgagee or the personal representative of or other person deriving title under a trustee or mortgagee is out of the jurisdiction of the Court or cannot be found, or being a corporation has been dissolved ; or

(*c*) that it is uncertain which of two or more trustees, or which of two or more persons interested in a mortgage, was the survivor ; or

(*d*) that it is uncertain whether the last trustee or the personal representative of or other person deriving title under a trustee or mortgagee, or the last surviving person interested in a mortgage, is living or dead ;

(*e*) that any trustee or mortgagee has died intestate without leaving a person beneficially interested under the intestacy or has died and it is not known who is his personal representative or the person interested ;

the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any Court upon any question as to the validity of the order ; but this article does not prevent the Court from directing a reconveyance or surrender or the payment of costs occasioned by any such order if improperly obtained.

Orders of Court to be registered.

2191. In all cases where the Court shall, under the provisions of this Part, make a vesting order, or any order having the effect of a conveyance or assignment of any land or any interest therein, an office copy of such order shall be registered in the Registry of Deeds and Mortgages and such order shall take effect upon and from the time of the registration of such office copy.

Registration of vesting order made by Court in England 15 Geo. V ch. 19.

2192. (1) Where the Court in England has made a vesting order under the Trustee Act, 1925, (15 Geo. V. ch. 19) in respect of land or personal property in the Colony, and the vesting order so made is produced to the Registrar for registration, such vesting order shall, on payment of a fee of three dollars, be registered in the Registry of Deeds and Mortgages.

(2) For the purposes of this article, a duplicate of a vesting order sealed with the seal of the Court making the same, or a copy thereof, certified as correct by the officer having the custody of the original order, shall have the same effect as the original.

(3) In this article " Court " has the same meaning as the Court referred to in section 67 of the Trustee Act, 1925.

JURISDICTION TO MAKE OTHER ORDERS.

Power of Court to authorise dealings with trust property.

2193. (1) Where, in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the Court may think fit, and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order under this article, or may make any new or further order.

(3) An application to the Court under this article may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

Persons entitled to apply for orders.

2194. (1) An order under this Part for the appointment of a new trustee or concerning any interest in land, stock, or thing in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or thing in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2) An order under this Part concerning any interest in land, stock, or thing in action subject to a mortgage, may be made on the application of the owner of the mortgaged land or any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Power to give judgment in

2195. Where in any action the Court is satisfied that diligent search has been made for any person who, in the

absence of a trustee.

character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel or solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to charge costs on trust property.

2196. The Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be raised and paid out of the property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Power to relieve trustee from personal liability.

2197. If it appears to the Court that a trustee, whether appointed by the Court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Part, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the Court in the matter in which he committed such breach, then the Court may relieve him either wholly or partly from personal liability for the same.

Power to make beneficiary indemnify for breach of trust.

2198. (1) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman make such order as to the Court seems just, for impounding all or any part of the interest of the beneficiary in the trust property by way of indemnity to the trustee or persons claiming through him.

(2) This article applies to breaches of trust committed as well before as after the commencement of this Part.

PAYMENT INTO COURT.

Payment into Court by trustees.

2199. (1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into Court; and the same shall, subject to rules of Court, be dealt with according to the orders of the Court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3) Where money or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the Court may order the payment into Court to be made by the majority without the concurrence of the other or others.

(4) Where any such money or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the money or securities to the majority of the trustees for the purpose of payment into Court.

(5) Every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the money and securities so transferred, paid or delivered.

Indemnity for acts done in pursuance of this Part.

2200. This Part, and every order purporting to be made under this Part, shall be a complete indemnity to all persons for any acts done pursuant thereto, and it shall not be necessary for any person to inquire concerning the propriety of the order, or whether the Court by which the order was made had jurisdiction to make it.

GENERAL PROVISIONS.

Rules of Court.

2201. The Chief Justice may make rules of Court regulating the practice and procedure in respect of any proceedings in the Supreme Court under this Part.

This Part binding on Crown.

2202. The Provisions of this Part bind the Crown.

FINAL PROVISION.

2203. (34-1956, s. 222). Nothing in the repeals effected by the Civil Code (Amendment) Ordinance, No. 34 of 1956, shall affect the validity, invalidity, effect, or consequences of anything already done or suffered, — or any right, title, obligation or liability, already acquired, accrued, or incurred, or any remedy or proceeding in respect thereof, — or the proof of any past act or thing.

CHAPTER 243.

THE CODE OF CIVIL PROCEDURE.

(In Force 15th April, 1882; Proclamation gaz. 22nd February, 1882.)

(Printed with amendments to 30th June, 1957.)

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CHAPTER 243.

THE

CODE OF CIVIL PROCEDURE.

PART FIRST.

GENERAL PROVISIONS.

1. (Subst. 3-1957). The time and duration of the terms and sittings and of the vacations of the Supreme Court are regulated by rules of court or any other statutory provision relating thereto.

2. (Subst. 3-1957). The Supreme Court does not sit on non-juridical days.

3. (Am. 3-1957). Barristers must appear in dark clothes, and in such robes and bands as are worn in the Supreme Court of Judicature in England. No barrister not so habited shall be heard in any cause in the Supreme Court.

4. (Subst. 3-1957). The Sheriff and the Registrar appear in Court in their robes.

5. The Sheriff and Registrar personally attend the Court *de die in diem* during all sittings of the Court.

6. No solicitor, Registrar, or Sheriff shall be bail or surety in any action or proceeding in any Court.

7. "Solicitor" in this Code means a procureur or attorney-at-law.

8. Any writ of summons or other proceeding which, before the Proclamation of the Governor appointing the day upon which the birthday of the Sovereign is to be celebrated, or a day to be observed as a general fast or thanksgiving, was made returnable on the day so fixed, may be returned on the next juridical day.

9. If the day on which anything ought to be done in pursuance of the law is a non-juridical day, such thing may be done with like effect on the next following juridical day.

10. Persons present at sittings of the Courts must remain uncovered, and in silence.

11. (Am. 17-1953). All orders given by the Court or Judge for the maintenance of good order during the sittings must be instantly obeyed.

The word "Judge" used alone, either in this Code or in the Civil Code, means a Judge of the Supreme Court.

12. The provisions of the two last preceding articles must likewise be observed wherever the Judge is in the exercise of his functions.

13. Any person who, during the sitting of the Court or of the Judge, disturbs order, utter signs of approbation or disapprobation, or refuses to withdraw or to obey the orders of the Judge, or the admonitions of the criers or other officers of the Court, may be condemned at once to a fine or imprisonment, or both, according to the discretion of the Court or Judge.

14. If the disturbance is caused by a person discharging any function before the Court, he may, in addition to the punishment imposed in the preceding article, be suspended from such function.

15. The Court in all cases brought before it may, according to circumstances, even of its own accord, pronounce

orders or reprimands, and suppress writings, or declare them libellous.

16. (Subst. 3-1957). Provision for the appointment and remuneration of interpreters is contained in the Supreme Court Ordinance or any other statute.

17. The Court or Judge may require an oath when it is deemed necessary, and may in such case, as well as in any case when an oath is required by law, or the rules of practice, administer the same.

18. No person can bring a suit at law unless he has an interest therein.

19. No person can be a party to a suit, either as claimant or defendant, in any form whatever, unless he has the free exercise of his rights, except where special provisions apply.

Those who have not the free exercise of their rights must be represented, assisted, or authorised in the manner prescribed by the laws which regulate their particular status or capacity.

All foreign corporations or persons, duly authorised under any foreign law to appear in judicial proceedings, may do so before any Court in the Colony.

Any person who, according to the laws of a foreign country, is authorised to represent a person who has died or made his will therein, leaving property in the Colony, may also appear as such in judicial proceedings before any Court in the Colony.

20. Several causes of action may be joined in the same suit, provided they are not incompatible or contradictory, that they seek condemnations of a like nature, and that their joinder is not prohibited by some express provision.

A creditor cannot divide his debt for the purpose of suing for the several portions of it by different actions.

21. No judicial demand can be adjudicated upon unless the party against whom it is made has been heard or duly summoned.

22. If the consent of any one who should be joined as plaintiff cannot be obtained, he may be made a defendant for reasons stated in the declaration.

23. The Court cannot adjudicate beyond the conclusions of a suit, but may grant them only in part.

24. A party who brings a suit for less than he is entitled to, upon the same cause of action, may remedy the omission by a supplementary demand in the same suit before judgment rendered.

25. No person can use the name of another to plead, except the Crown through its recognized officers. Tutors, curators, and others representing persons who have not the free exercise of their rights, plead in their own name in their respective qualities. Corporations plead in their corporate name.

26. In any judicial proceeding it is sufficient that the facts and conclusions be distinctly and fairly stated, without any particular form being necessary, and such statements are interpreted according to the words in ordinary language.

27. All provisions and rules concerning procedure are interpreted with reference to each other and in such a manner as to give them all the effect intended ; and whenever this Code does not contain any provision for enforcing or maintaining some particular right or just claim, or any rule applicable thereto, any proceeding adopted which is not inconsistent with law or the provisions of this Code is received and held to be valid.

28. No public officer, or other person fulfilling any public duty or function, can be sued for damages by reason of any act done by him in the exercise of his functions, nor can any

judgment be rendered against him, unless notice of such suit has been given him at least one month before the issuing of the writ of summons.

Such notice must be in writing, it must specify the grounds of the action, must be served upon him personally, or at his domicile, and must state the name and residence of the plaintiff.

29. Any party to a suit may appear and plead either in person or through the ministry of a solicitor.

30. Neither the day of service nor the terminal day is counted in the delays fixed for summoning.

Delays continue to run upon Sundays and holidays ; but if a delay expires on a non-juridical day, it is of right extended to the next following day.

The same rule applies to all other delays in procedure.

31. (Am. 4-1939). The provisions of article 1 of the Civil Code apply to this Code.

1. Any copy of this Code, or of the Civil Code of St. Lucia, or any extract of either of the said Codes, purporting to be printed by the Government Printer, is deemed authentic.

Any abbreviated form of reference to any Act or part of an Act, is sufficient if it is intelligible.

2. (*a*) A receivable order is an order authorising the payment of money into the Supreme Court, or into the West Indian Court of Appeal, or to the Sheriff, or to the Administrator General, and the order is obtained from the Registrar of the Court, the Sheriff or the Administrator General, as the case may be.

(*b*) The order is addressed to the Treasurer and requests the Treasurer to place the amount therein mentioned to the credit of the account of the officer issuing the order.

(*c*) The Registrar of the Court may require payments into Court or to the Registrar to be made to the credit of his account as Sheriff.

3. The payment is only deemed complete when the Treasury receipt for the amount mentioned in the receivable order is filed with the officer from whom the order is obtained. This, however, does not apply to fees of Court.

4. Payments are made by the Registrar, Sheriff, or Administrator General, as the case may be, upon an order signed by the Judge or in virtue of a judgment or other lawful authority authorising such payments. The party entitled to receive the amount signs a receipt prepared by the officer authorised to pay, and receives an order upon the Treasurer for payment of the amount signed by the officer paying and countersigned by the chief clerk to the said officer. But if the chief clerk as acting officer issues the order it is to be countersigned by the second clerk or by such person as the Governor may appoint to countersign the order.

32. The Court or Judge may enlarge the time allowed for doing any act or taking any proceedings, upon such terms as the justice of the case requires, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time allowed.

33. The Court or Judge may adjourn the trial, hearing or determination of any action or proceeding for such time and on such terms as justice requires.

34. The Court or Judge may allow any amendment of any writ, declaration, pleading, or other document at any time and on such terms as justice requires.

35. Where a delay of only one day is given, the delay is that of a juridical day.

PART SECOND.

PROCEDURE BEFORE THE SUPREME COURT.

BOOK FIRST.

SUPREME COURT.

PRELIMINARY PROVISIONS.

(Modified by 1. Leeward Islands and Windward Islands (Courts) Order in Council, 1939 (Imp.) and 2. Supreme Court Ordinance, 1955.)

36. The Court has original jurisdiction in all suits or actions which are not exclusively within the jurisdiction of the District Court or of the Admiralty.

37. (Am. 23-1916; 17-1953). The Supreme Court or Judge may, from time to time, make any rules of practice that may be necessary for regulating proceeedings, in or out of term, in causes and matters, whether in the Supreme or in the District Court, and on all matters of procedure.

The Supreme Court or Judge may also make any tariffs of fees for the counsel, solicitors, examiners, and other officers appointed by the Court, whose salaries are not fixed by law.

The Governor in Council may make, modify, revoke, or amend, any such rules or tariffs; and no rules or tariffs are valid until approved by the Governor in Council, or published by Proclamation of the Governor. Her Majesty may disallow such rules or tariffs after they have come into force. Any officer or other person receiving any other or greater fees or emoluments than are specified in the tariff in force for the discharge of the duties and services therein mentioned, is liable to a penalty of not more than ninety-six dollars for each offence.

The power to make rules of court conferred on the Chief Justice by this article shall be deemed to include the power to

add to, vary or annul any existing rules of court or articles of the said Code of Civil Procedure.

The Chief Justice may also make, add to, or annul any rules of court for the more effectual carrying out of any of the provisions of the Civil Code or of any other statute, and any such rules may repeal any provision of the said Civil Code or of any other statute and substitute other provisions in lieu thereof.

All such rules of court shall, on being approved by the Legislative Council, have the same force and effect as an Ordinance, and shall come into operation on publication in the *Gazette* or on such other day as may be prescribed in such rules.

All such rules of court may be disallowed by Her Majesty in the same manner and with the same consequences as in the case of an Ordinance.

37A. (Ad. 23-1916). In all cases of procedure not provided for by the Code of Civil Procedure or any rules of court, or otherwise, the procedure or practice shall be such as the Judge may direct or approve.

38. (Am. 23-1916). The Judge and Registrar, and every commissioner as hereinafter mentioned, has a right to administer and receive the oath, whenever it is required by law, by rules of practice, or by order of a Court or Judge, unless such right be restricted by special law.

The Governor may, from time to time, appoint fit persons residing in any part of Great Britain and Ireland, or in any of the British colonies, as commissioners for receiving such affidavits.

Every member of the Legislative Council, stipendiary Magistrate, and justice of the peace is *ex officio* a commissioner for taking such affidavits.

Every affidavit thus received has the same force and effect, and is entitled to the same credence as if it had been received in open Court.

Affidavits have a like force if received before a commissioner authorised by the Lord Chancellor to administer affidavits in Chancery in England ; or before a notary public under his hand and official seal ; or before the mayor or chief magistrate of any city, borough, or incorporated town in Great Britain or Ireland, in any of Her Majesty's colonies or in any foreign country, under the common seal of such city, borough, or incorporated town ; or before any Judge of a superior court in any of Her Majesty's colonies or dependencies ; or before any consul, vice-consul, temporary consul, pro-consul, or consular agent of Her Majesty exercising his functions in a foreign country.

Affidavits have a like effect if sworn before a British diplomatic officer exercising his functions in any place outside of the Colony.

The words " Commissioner of the Supreme Court, " whenever they are used in this Code, mean any person capable of receiving affidavits under any of the provisions of this article.

39. (Am. 17-1953.) If a party establishes under oath that he does not possess sufficient means to make the necessary disbursements, the Court or Judge, on being satisfied by affidavit that such party has a right of action or a good defence, may grant him leave to plead *in forma pauperis*, and may order all officers of justice, including the Crown Attorney, to afford their services without any remuneration ; but such party, if he fails in the suit, is not exempt from condemnation to pay costs to the other party.

40. Such leave may, however, be revoked by the Court or Judge, upon proof that the party was or has since become able to make the necessary disbursements.

41. If a party proceeding *in forma pauperis* obtains judgment in his favour, the other party may be condemned to pay costs, including those of the officers of justice, who are then entitled to an execution to obtain payment thereof from such party by way of distraction.

No more than one execution can, however, be issued for all the taxed costs remaining unpaid ; it is issued at the instance of the Registrar, or of any party interested, and the monies are returned into the office of the Registrar, who pays the same free of charge to the parties entitled thereto.

41A. (Ad. 17-1953.) (See now Supreme Court Ordinance, s. 20.)

BOOK SECOND.

THE SUIT.

CHAPTER FIRST.

SUMMONS.

42. Every action before the Supreme Court is instituted by means of a writ of summons, in the name of the Sovereign ; saving the exceptions contained in this Code, and other cases provided for by special laws.

43 Writs of summons are issued by the Registrar, upon the written application of the plaintiff.

44. They must be drawn up in the English language.

45. They are attested and signed by the Registrar.

46. The absence of the seal of the Court does not invalidate the writ.

47. Writs of summons are directed to the Sheriff, and command him to summon the defendant to appear before the Court at the time and place therein mentioned.

48. The writ must state the names, the occupation or quality, and the domicile of the plaintiff, and the names and actual residence of the defendant.

In actions upon bills of exchange or promissory notes, or any other private writings, whether negotiable or not, it is sufficient to give the initials of the Christian or first names of the defendant, such as they are written upon such bills, notes, or instrument.

When a corporate body is a party to the suit, it is sufficient to insert its corporate name, and to indicate the name of the place where its principal office is.

When the name of any partner is unknown, the partners may be sued in the name of the firm.

One partner may sue, and be sued by the remaining partners, for a partnership debt.

A firm which has registered its partnership in conformity with article 20 of the Commercial Code may sue and be sued in the name of the firm.

49. The causes of action must be stated in the writ or in a declaration annexed to it.

50. When the real name of a defendant is unknown, he may be sued under the name by which he is known. The Court or Judge, if satisfied that the real name was not known, may allow the proper name to be substituted.

51. The unknown heirs or representatives of a deceased person may be sued as such, but the party deceased must be fully described. If the defendants appear, they must do so in their proper names.

52. If the object of the demand is a thing certain, it should be described in such a manner as clearly to establish its identity.

If it relates to a corporeal immovable, the nature of such immovable, the town, village, street, or district wherein it is situated, and also the lands conterminous to it, should be mentioned.

If it is a body of land, known under a particular name, it is sufficient to give its name and its situation.

If the immovable forms part of a district, town, or village, the lots in which are numbered, it is sufficient to state its number.

53. (Subst. 3-1957). (1) All persons may be joined in one action as plaintiffs, in whom any right to relief (in respect of or arising out of the same transaction or series of transactions) is alleged to exist, whether jointly, severally, or in the alternative, (where if such persons brought separate actions any common question of law or fact would arise; provided that, if upon the application of any defendant it shall appear that such joinder may embarrass or delay the trial of the action, the Court or a Judge may order separate trials, or make such other order as may be expedient), and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief unless the Court or a Judge in disposing of the costs shall otherwise direct.

(2) Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

(3) Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

(4) All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may

be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

(5) It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him ; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

(6) The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

(7) Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

(8) Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons ; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties, either in addition to or in lieu of the previously existing parties.

This rule shall apply to trustees, executors, and administrators, sued in proceedings to enforce a security upon a hypothecary obligation or otherwise.

(9) Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorised by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

54. No party can be summoned on a Sunday or a holiday without the express leave of the Judge.

55. No summons can be served before six o'clock in the morning or after six o'clock in the afternoon.

This provision does not apply, however, to cases of *capias ad respondendum.*

56. Service is effected by leaving with the defendant a copy of the writ of summons, and of the declaration if there is one.

The copy must be certified by the Registrar or by the solicitor for the plaintiff. But no service is necessary when the solicitor is authorised by power of attorney to receive service.

57. Service must be made either upon the defendant in person, or at his domicile, or at the place of his ordinary residence, upon a reasonable person belonging to the family.

In the absence of a regular domicile, service may be made upon the defendant at his office or place of business, if he has one.

58. In all cases in which the defendant resides in the same domicile with the plaintiff he must be served personally, unless the Judge grants leave to serve him otherwise.

59. If there are several defendants, they are served in the manner above mentioned, separately and distinctly, and a copy of the summons is left with each of them, except in the cases hereinafter provided.

60. Service upon a general partnership may be made at its place of business, if it has one, and if it has not, upon one of the partners.

61. Service upon a joint-stock company may be made at its office, upon a person employed in such office, or elsewhere, upon its president, secretary, or agent.

62. If the partnership has no known office or place of business, or if a corporation has not any known president, or secretary, or agent, upon a return to that effect, the Court or Judge may order substituted service.

63. Church *fabriques* and vestries are served by leaving copies of the summons separately with the *curé* or rector, or person performing his functions in the parish, and with the then acting churchwarden.

64. Service upon masters or captains of ships or other mariners, who have no domicile in the Colony, may be made on board the ship they belong to, upon a person in the ship's employ.

65. (Rep. 3-1957).

66. If the defendant has left or has never had his domicile in the Colony, and has property therein, the Court or Judge, or the Registrar, upon a return stating that he cannot be found in the Colony, may order service upon any known agent of the defendant, when the power of attorney has been duly registered by the Registrar, or may allow substituted service, or may order that the defendant appear within two months from the last publication of such order, which must be published twice in the *Gazette*.

67. Persons imprisoned may be summoned by personal service between the wickets.

68. The service of a summons in church, in Court, or upon a member of the legislature in the council chamber is null.

69. Persons may be summoned to appear upon any day in the year other than a Sunday or holiday.

70. The Sheriff and his officers cannot make services in cases in which they are interested, nor in those which concern their relations by birth or affinity, if nearer than the degree of cousin-german.

71. In ordinary cases a defendant must file an appearance within eight days from day of service.

In cases of substituted service the Judge fixes the delay for the filing of an appearance.

72. Writs of summons must be returned into the Registrar's office on or before the day fixed.

73. The writ must be accompanied with a return or certificate of service.

74. Such return of service must state :

1. The day and hour of the service ;

2. The place where and the person with whom a copy of the writ was left ;

3. The amount of the costs of service.

75. The truth of the return must be contested by motion.

CHAPTER SECOND.

THE RETURN.

76. Every writ of summons, and every writ of capias or attachment, must be filed in the Registrar's office, on or before the last day on which the defendant is therein summoned to appear.

77. Upon the petition of a defendant the Judge may order the immediate return of the writ and declaration.

78. If the writ is not returned, as hereinabove provided, the defendant may obtain the benefit of a default against the plaintiff, and be discharged from the suit, with costs, upon filing the copy of the writ served upon him. Plaintiff may renew his action.

SECTION I.

APPEARANCE.

79. The defendant, when duly summoned, must appear, either in person or by his solicitor, and must file a written appearance in the Registrar's office within the delay fixed, or on the next following juridical day. A copy of the appearance must be served upon the plaintiff.

SECTION II.

ELECTION OF DOMICILE.

80. Every party appearing in person is held, by reason of such appearance, to have elected domicile in the office of the Registrar.

Whenever one of the parties who has not appeared by a solicitor has, since the commencement of the suit, left the Colony, or has no domicile therein, all orders, rules, notices, or other proceedings may be served upon him at the Registrar's office, as being his legal domicile, provided the Sheriff alleges in his return that he has made fruitless endeavours to find him, and that, to the best of his belief, he is not within the limits of the Colony.

81. Solicitors are bound to elect domicile within the town of Castries.

In default of making such election of domicile, such solicitors are held to have elected domicile at the Registrar's office, where all services upon them may be validly made.

SECTION III.

NON-APPEARANCE.

82. If the defendant does not appear within the delay prescribed, the Registrar, on the next following juridical day, must enter a default against him, and the plaintiff, upon obtaining a certificate of such entry, may proceed to judgment *ex parte*.

83. Notwithstanding the entry of such default, the defendant may, at any time before judgment, upon special application and sufficient cause shown, be relieved from it, upon such conditions as the Court may think proper to impose.

84. This application must be served upon the plaintiff at least one day before it is presented.

SECTION IV

JUDGMENT BY DEFAULT OR EX PARTE.

85. In any action, even if joined with any writ which can be issued before judgment, founded upon a notarial document, bill of exchange, promissory note, cheque, private writing, verbal agreements to pay specific sums of money, upon detailed accounts for goods sold and delivered, or for money lent, judgment may be rendered forthwith, if the defendant fails to appear or plead, upon production together with the inscription of an affidavit of the plaintiff or one of the plaintiffs, or of any other credible person, duly made before the Judge, Registrar, or commissioner of the Supreme Court, and establishing that to the knowledge of the deponent the amount claimed is due by the defendant to the plaintiff.

86. In every such case, the Registrar, upon the case being inscribed for judgment, draws up a judgment in the name of the Court, conformably to the demand and to the amount which appears to be due ; and such judgment is held to be the judgment of the Court and is recorded accordingly.

87. The plaintiff may, at any time before executing such judgment, renounce the same, and upon filing with the Registrar his renunciation in writing, he may proceed in the ordinary form, in the same manner as if it had not been rendered. He must, however, bear the costs of such judgment.

SECTION V.

CONFESSION OF JUDGMENT.

88. The defendant may, at any stage of the proceedings, file a confession of judgment for the whole or any part of the demand.

The confession must be signed by the defendant, or be made by his special attorney, whose power of attorney, in notarial form, must be filed with such confession.

89. If the person who appears as defendant in order to confess judgment, is unknown to the Registrar, the latter must require him to produce the copy of the summons, or to procure the counter-signature of a solicitor.

90. If the plaintiff accepts such confession, he may inscribe the case forthwith for judgment, and the Registrar draws up, in conformity with such confession, a judgment, which is held to be the judgment of the Court, and is recorded and executed accordingly.

The judgment thus drawn up need not mention the presence of the Judge, but it must contain a recital of the confession, as it was given, and of the inscription by the plaintiff, and, lastly, the condemnation in the name of the Court against the defendant.

91. If the confession of judgment is not accepted, the plaintiff must give the defendant notice to that effect, and after such notice the case is proceeded with in the ordinary course ; and if the plaintiff does not obtain more from the Court than he would have had upon the confession, he is not entitled to more costs than if the confession had been accepted ; the Court may grant the defendant whatever costs of contestation it may think proper.

92. If there are several defendants in the same suit, some only of whom confess judgment, the plaintiff may proceed upon such confession to recover against those who have acknowledged their indebtedness, and may continue the suit against the others.

SECTION VI.

THE FILING OF EXHIBITS.

93. The plaintiff must, at the time that he returns the writ, file in the Registrar's office the written proofs which he has alleged in support of his demand, together with a list of such exhibits.

94. If the exhibits are private writings, or notarial originals, the party may retain them until required by the Court or Judge to produce them, provided he files copies thereof, certified by him or by his solicitor.

95. Exhibits filed cannot be taken out of the office, unless the opposite party consents and a receipt is given.

96. Any person in possession of a document filed and forming part of a record, or having taken or received it, may, upon motion, be coerced by imprisonment to return the same, without prejudice to his liability for damages.

97. Until the exhibits have been filed, in the manner hereinabove prescribed, the plaintiff cannot proceed with his demand, when defendant has appeared.

98. Every exhibit filed in a cause becomes common to all the parties to the suit, and they may obtain copies thereof from the Registrar so long as it remains in his hands.

99. The Registrar cannot receive any exhibit in blank, nor any list of exhibits in which the designation of any exhibit is not filled up.

100. If the exhibits in support of the demand have not been filed on the return day, they cannot be filed afterwards without giving notice to the opposite party ; saving the provisions of article 94.

CHAPTER THIRD.

CONTESTATION.

SECTION I.

GENERAL PROVISIONS.

101. All exceptions to the jurisdiction, exceptions to the form, and dilatory exceptions, must be filed within four days from the return of the writ, except in the case mentioned in article 115.

102. The plaintiff is bound to answer any such exception within eight days after it is filed ; excepting where he is himself obliged to call in warrantors ; the delay then begins only from the expiration of the delays to which such warrantors are entitled to answer the demand brought against them.

103. The defendant, when he is entitled to reply, must file his replication within eight days from the filing of the plaintiff's answer.

104. A like delay of eight days is allowed for the filing of any other pleading that may be necessary, or is permitted by the Court or Judge, in order to complete the issues.

105. The party failing to file any such preliminary exception, answer or replication, or other pleading, within the delays prescribed, is by law foreclosed from doing so, unless the Court or Judge, upon cause shown, has extended the delay, or has otherwise ordered.

106. No plea containing a preliminary exception can be filed, unless it is accompanied with a deposit of nine dollars and sixty cents.

SECTION II.

EXCEPTIONS TO THE JURISDICTION.

107. When an exception to the jurisdiction filed by the defendant, is maintained, the action must be dismissed.

108. The Court may dismiss an action brought before it if the plaintiff has previously instituted another action which is still pending against the defendant in another Court, whether in the Colony or out of it, and based upon the same grounds.

109. An action must be dismissed, even though no exception has been pleaded, if it be manifestly not within the jurisdiction of the Court.

110. The Court, in declaring itself incompetent, may award costs.

SECTION III.

EXCEPTIONS TO THE FORM.

111. The following grounds must be pleaded by exception to the form :

1. Informalities in the writ or service ;

2. Informalities in the declaration, when it contravenes the provisions contained in articles 19, 25, 49, 52, and 56.

The informalities must be specifically stated.

112. If the copy of the writ or of the declaration is incorrect, or different from the original, the plaintiff may, upon leave of the Court or Judge and on payment of costs, furnish the defendant with a correct copy.

113. Defects in the writ or service, and informalities in the declaration, are waived by the appearance of the defendant and his failure to take advantage of them within the delays prescribed.

SECTION IV.

DILATORY EXCEPTIONS, ACTIONS IN WARRANTY, AND SECURITY FOR COSTS.

114. The defendant may stay the suit by dilatory exception :

1. If the delays to which he is entitled for the purpose of making an inventory and deliberating, whether as heir, or legatee, or in the case of community of property, have not expired ;

2. If he has a right to demand security, that for costs excepted, from the plaintiff, or the execution of some precedent obligation ;

3. When the plaintiff contravenes the rule that the parties should remain in their respective positions until these are changed by judicial authority ;

4. When the defendant has a right to exercise a recourse in warranty against a third party ;

5. When he has a right to demand the discussion of the principal or original debtor ;

6. When the plaintiff has joined in his action several claims which are incompatible ; and in such case the defendant cannot be bound to defend the action until the plaintiff has declared his option ;

7. If the plaintiff does not reside in the Colony, and a power of attorney from him is not produced. The Court or Judge may however permit the action to proceed on security being given on the part of the plaintiff ;

8. If all the parties interested, and whose presence is necessary, are not made parties to the suit.

115. If the dilatory exception is founded upon the legal delay for making an inventory and deliberating, the delays for pleading to the action, and even for setting up other preliminary pleas, do not begin to run against the defendant until after the time allowed him to make such inventory and to deliberate.

116. If the defendant has warrantors to call in, he may, by means of a dilatory exception, obtain that his delay to plead to the action be not computed until the warrantors have been called in and held to plead to the merits.

117. The delay allowed to call in warrantors is eight days after service of the principal demand, exclusive of the delay required to summon the warrantors.

118. The demand in warranty must be special and contain a summary statement of the grounds upon which it is made with a copy of the principal demand and of the pleadings which require the calling in of the warrantors.

119. In cases of personal warranty, that is warranty in respect of personal property, the warrantor may take up the defence of the defendant, or may intervene and contest the principal demand.

120. In cases of real warranty, the purchaser who is disturbed or evicted, is not bound to call in first his immediate warrantor, but he may summon in warranty any more remote warrantor who may eventually be bound to intervene in the suit.

121. In cases of real warranty, the warrantor may take up the defence of the warrantee, who is relieved from the contestation, if he requires it.

Nevertheless, although relieved from the contestation, he remains in the suit, and may act in it for the protection of his rights.

Judgments rendered against the warrantor may be executed against the warrantee.

It is sufficient, in any case, that the judgment be served upon the warrantee, without any other demand or procedure being necessary.

122. A surety, other than a judicial one, is not bound by a judgment rendered against his principal in a suit in which he was not a party of record.

123. Any person against whom an action is brought for malicious prosecution, illegal arrest, assault, seduction, libel or slander, or other action of a like nature, or a *qui-tam* action, may plead by way of exception supported by affidavit, that the plaintiff has no visible means of paying the costs in case of an adverse judgment, and the Court may thereupon order such plaintiff to give security.

123A. (Ad. 34-1956, s. 7). Every person, not resident in the Colony, who institutes any proceeding in its Courts, is bound to give to the opposite party, whether a subject of Her Majesty or not, security for the costs which may be

incurred in consequence of such proceeding unless he possess real property in the Colony of the minimum value over and above all incumbrances of four hundred and eighty dollars.

124. An intervening party and an opposant claiming property are considered as persons instituting proceedings, and if non-residents, are bound to give security as required by article 123A.

125. Whenever, according to articles 123, 123A, 124, and 770 of this Code, a person is bound to give security, all proceedings in the case may be stayed upon application of the adverse party to the Judge, until such security has been given. The security of one solvent person is sufficient.

126. The amount of the security may, in all cases, be fixed by the Court or Judge. Any person bound to give such security may deposit the amount with the Registrar.

127. If the security be not given within the time appointed by the Court or Judge, the Court may nonsuit the plaintiff.

128. The exception of discussion, whenever it lies, is subject to the general rules contained in this section and to the special provisions contained in articles 1837, 1838, 1839, 1951, and 1952 in the Civil Code.

129. Before answering a motion or a dilatory exception, or any other preliminary plea filed, the plaintiff may, if he thinks the motion or exception is filed solely in order to retard the suit, require the defendant, in writing, to plead to the merits and may foreclose him if such plea to the merits is not filed within eight days from the demand thereof ; in which case the Court takes cognizance of no other issues than those raised upon the motion or preliminary exceptions.

130. If the defendant files his pleas to the merits, proof takes place upon all the issues, unless the Court otherwise orders ; and if he succeeds upon the preliminary exception, he may recover from the plaintiff the costs incurred upon the

contestation of the merits to which he was forced under the provision of the preceding article.

131. When the defendant has pleaded a dilatory exception which is afterwards maintained, the foreclosure from pleading to the merits, obtained against him under article 129, is without effect; but he is bound to file his pleas to the merits within eight days after the expiration of the delays granted upon his exception, and in default of his so doing the foreclosure holds good.

If, upon being required to do so by the plaintiff, the defendant has pleaded to the merits, he may, after the judgment maintaining his dilatory exception, and within eight days, amend his pleas or plead anew, without thereby incurring any costs; in default of his doing so he is presumed to abide by the pleas filed.

132. When the object of the dilatory exception maintained is the calling in of warrantors, the defendant in the principal suit cannot be foreclosed from pleading until after the expiration of eight days, counting from the day on which the warrantor could himself have been foreclosed from pleading to the action in warranty.

The warrantor may, within the delays granted to the warrantee, plead to the action brought against the latter, whether the warrantee has already pleaded to it or not.

133. Grounds of preliminary exception may, in certain cases, be urged by motion, according to the practice of the Court.

SECTION V.

(Subst. 3-1957).

PROCEEDINGS IN LIEU OF PRELIMINARY EXCEPTIONS AND DEMURRERS.

134. Notwithstanding anything contained in articles 101 to 133 and articles 173 to 189 it shall not be necessary for a defendant in any cause or proceeding to take or urge any

matter by way of preliminary or dilatory exception, or by way of incidental improbation, but any matter which might formerly have been so taken or urged may be relied on by way of defence to such cause or proceeding.

135. (1) The Court has an inherent jurisdiction to stay proceedings which are an abuse of its process.

(2) Any person, whether a party or not to any cause or matter, who would formerly have been entitled to stay an action by dilatory exception, may apply to the Court or a Judge by motion in a summary way for a stay of proceedings in any such cause or matter, either generally, or so far as may be necessary for the purposes of justice, and the Court shall thereupon make such order as shall be just.

136. (1) No demurrer shall be allowed.

(2) Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

(3) If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counterclaim or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

137. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

138. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order

is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

139. Any application such as is referred to in subsection (2) of section 24 of the Crown Proceedings Ordinance (which relates to proceedings *in rem* instituted against property belonging to the Crown) may be made to the Court or a Judge at any time before trial by motion or summons, or may be made at the trial of the proceedings.

SECTION VI.

CONTESTATION UPON THE MERITS.

140. All pleas to the merits must be filed within eight days after the appearance, except in the cases otherwise provided for in Section IV.

If they are not filed within such delay the adverse party may demand them, and if they are not filed within the three next following juridical days, the Registrar may grant the plaintiff a certificate of foreclosure.

141. The same delay of eight days is allowed the plaintiff to answer the pleas, unless such answer is in the nature of an exception to the jurisdiction, an exception to the form, or a dilatory exception, in which case the delay is four days only, pursuant to article 101.

142. A like delay of eight days is allowed for the filing of any other pleading necessary to complete the issues.

143. After the expiration of these delays, the party failing to file a pleading is by law foreclosed from doing so without the consent of the opposite party, or leave of the Court or Judge.

144. Such foreclosure does not, however, take place without an order from the Court or Judge if the opposite party has not filed with his pleadings, in the manner

prescribed, the exhibits or written proofs upon which it is founded ; and if such exhibits and written proofs are not filed with such pleading, they cannot afterwards be filed without the consent of the opposite party or leave of the Court or Judge.

145. When an amendment of any pleading has been allowed, the delay to answer such pleading is reckoned, according to the foregoing rules, from the day on which the amendment is made and served, without any demand of answer being necessary.

146. When the defendant is foreclosed from pleading, the plaintiff may proceed *ex parte*, and may, if the case admit of it, proceed to judgment, according to the provisions contained in articles 85 and 86.

147. (Subst. 3-1957). (1) No particular form of words is required in any pleading, but the pleading must contain a concise statement of the material facts on which the party relies, in sufficient detail to enable the Court to ascertain the issue or issues which it is requred to determine.

(2) The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, prescription, release, payment, performance, or facts showing illegality.

148. The nullity of a deed may be invoked by any pleading. All the parties thereto having been put in the case, judgment may be given without its being necessary to bring a direct action.

149. The quality of the party suing is admitted unless specifically denied, except in the cases of tutors and curators, whose appointments must be registered, and in the case of women separated as to property from their husbands.

150. Every denial of a signature to a bill of exchange, promissory note or other private writing or document upon which any claim is founded, must be accompanied with an affidavit of the party making the denial, or of some person acting as his agent or clerk and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other on the document is forged, or, in the case of a promissory note or bill of exchange, that the necessary protest, notice and service have not been regularly made, stating in what the irregularity consists; without prejudice however to the recourse of such party by improbation.

In the case of promissory notes, or bills of exchange payable at a particular place, they are presumed, as against the maker or acceptor, to have been presented at that place at maturity, unless the exception founded upon such want of presentation is accompanied with an affidavit that, at the time they became due, provision had been made for their payment at the specified place.

The denial of any document specified in article 1152 of the Civil Code, must be accompanied by the giving of security for the costs of the commission required to obtain the proof of such document. In the cases of paragraphs 5 and 6 of the same article, the denial of the original deposited, must moreover be accompanied by an affidavit of the party making the denial, stating that he doubts and does not believe that the original in question has been signed by the person or executed in the manner therein mentioned. The party wishing to make use of the copy filed is then bound to prove the original, and for this purpose the person who has charge of the original is bound, upon the order of the Judge, to deposit it in the Court; and the Registrar is bound to furnish the depositor at the expense of the contesting party with a certified copy.

The original, the genuineness of which is thus denied, may be annexed to the commission required to obtain its proof.

151. When a party has pleaded incompatible or contradictory grounds in the same plea, he may be required by the

opposite party to choose between such grounds or plead anew, and in default of such choice the incompatible grounds are held to be of no effect, and are set aside.

SECTION VII.

ISSUE JOINED.

152. The issues are completed:

1. By declaration, exceptions, pleas and replications, or special answers.

2. They are also held to be completed by foreclosure from filing, or by failure to file pleas, replications, or special answers.

153. If these proceedings are not sufficient to fully set out the grounds of the parties, the Court or Judge may however grant leave to file further pleadings.

154. Where any ground of defence arises after the defendant has filed his plea, or after he has been foreclosed from so doing, the defendant within eight days after such ground of defence has arisen, upon cause shown supported by affidavit, may, by leave of the Court or Judge, make a plea or further plea setting forth the same.

SECTION VIII.

CONSOLIDATION.

155. When a plaintiff brings two or more actions against the same defendant upon matters which might properly form the subject of one action, or when a plaintiff brings actions against different defendants but the dispute in each is substantially the same, the Court or Judge may, when moved thereto, stay proceedings in all the actions instituted, except one, until that action has been determined, upon the condition that the party moving agree to be bound by the judgment to be rendered in the test action which proceeds. If the judgment rendered be appealed from, the judgment in

appeal is considered as having been rendered in each consolidated case, except as to costs.

The costs are in the discretion of the Court.

156. When two or more actions are brought against the same defendant for the payment of different amounts in money they may be consolidated, and continued as one action.

CHAPTER FOURTH.

INCIDENTS.

SECTION I.

INCIDENTAL DEMANDS AND COUNTERCLAIMS.

157. The plaintiff may, in the course of the suit, make an incidental demand :

1. In order to add to the principal demand something he has omitted to include in it ;

2. In order to claim a right accrued since the service of the principal suit and connected with the right claimed by such suit ;

3. In order to demand something which he requires for the purpose of avoiding a ground of defence set up by the defendant.

158. This incidental demand is accompanied by the documents in support thereof. It must be served upon the opposite party.

159. (Subst. 3-1957). (1) The defendant may set-off, or set up by way of incidental demand or counterclaim against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross-claim.

(2) Where a set-off or counterclaim is established as a defence against the plaintiff's claim, the Court may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

160. The Court may, in its discretion, give judgment in the principal demand only if the incidental one be of a nature unjustly to delay the plaintiff in the principal demand, and afterwards give judgment upon the incidental demand.

161. (Am. 3-1957). Incidental demands by the defendant are likewise accompanied by the documents in support thereof, and served and filed at the same time as the pleas to the merits.

162. Issue is joined upon incidental demands in the same manner as upon the principal demand, and their contestation is subject to the same rules, delays and foreclosures.

SECTION II.

INTERVENTIONS.

163. Every person interested in the event of a pending suit is entitled to be admitted a party thereto, in order to maintain his rights.

164. An intervention is formed by a petition, containing the grounds which justify the party in intervening, with conclusions to that effect, and must be accompanied with the exhibits in support thereof.

165. The petition must be served upon the parties in the suit with a notice, stating the time and place when and where the petitioners will apply to the Court or Judge for its allowance.

166. The petition does not stay proceedings in the principal suit unless the Court or Judge make an order to that effect.

167. When the intervention is allowed, the petition must be filed the same day in the Registrar's office with the exhibits in support, unless the Court or Judge gives delay for filing the exhibits. If the petition and exhibits are not filed on the day when the intervention is allowed, or if the exhibits are not filed within the delay granted by the Court or Judge, the intervention is considered as abandoned, and the parties in the original suit may proceed as if no petition in intervention had been made. The Judge may, however, allow a renewal of the proceedings upon a fresh petition and upon such terms as he thinks fit. The delay for answering the intervention is eight days from the day of the filing of the exhibits.

168. An intervenant may, however, serve his intervention containing his grounds for intervening upon the parties in the case with a petition to the Court or Judge, stating the time and place when and where it is to be presented. When the intervention is allowed, the delay for announcing it is eight days from the date of its allowance. The intervention must be filed *immediately* after its allowance, with the exhibits in support.

169. The proceedings in intervention, subsequent to those hereinbefore mentioned, are the same as in an ordinary suit.

SECTION III.

MISJOINDER OR NON-JOINDER OF PARTIES.

170. No action shall be dismissed by reason of the misjoinder or non-joinder of parties. The Court may in every action deal with the matter in controversy, so far as regards the rights and interests of the parties actually and properly before it.

171. The Court or Judge may, at any stage of the proceedings, either upon or without the application of any party, and upon such terms as may appear just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, or that there be added the name

of any party, whether plaintiff or defendant, who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate and settle all the questions involved in the action.

172. All parties whose names are added as defendants must be served with a summons, and the proceedings, as against them, are deemed to have begun only on the service of such summons.

SECTION IV.

IMPROBATION.

173. Besides the action of improbation which may be brought as a principal and direct action, by which a plaintiff seeks to have a notarial document produced by himself declared null, any party in a suit may proceed by improbation against any notarial document produced by the opposite party.

Nevertheless, as regards service of writs or of notice, the return must be contested on motion.

If the contestation be deemed frivolous, the contesting party may be condemned to pay such costs as the Court may think reasonable.

174. Incidental improbation is begun by a petition to the Court or Judge, praying that the party be allowed to proceed by improbation against the document therein designated, and that the opposite party be held to declare whether he intends to make use of such document.

The petition must be signed by the party himself, or by his agent under power of attorney.

175. The petition must be served upon the opposite party before it is presented.

176. The petition must be accompanied by a deposit in the Registrar's office of a sum fixed by the Court or Judge, to

meet the costs to be incurred, in whole or in part, in the event of the improbation being dismissed.

177. Improbation may be begun at any stage of the suit until the closing of the evidence, and even afterwards before judgment, upon proof that the falsity was not ascertained until after evidence was closed.

All proceedings in the principal suit are suspended until the improbation is adjudicated upon.

178. The opposite party must declare whether or not he intends to make use of the document impugned, and file in the Registrar's office a precise declaration to that effect, previously served upon the plaintiff in improbation.

The declaration must also be signed by the party or by his attorney, under a special power to that effect, filed with the declaration.

The declaration must be made within eight days from the filing of the petition, unless the delay is extended by the judge.

179. If the defendant in improbation fails, within the delay prescribed, to make such declaration, or declares that he does not intend to make use of the document, it is rejected from the record. If the conclusions demand it, it is also declared null by the Court.

180. If the defendant in improbation declares that he intends to make use of the document, the Court or Judge, upon the demand of either of the parties, orders that such document, and the original thereof, if necessary, shall be deposited in the Registrar's office within a fixed delay.

181. If the defendant in improbation does not file the documents impugned within the delay fixed by the Court or Judge, the Registrar, upon the request of the plaintiff in improbation, prepares and files a certificate of the non-production of such documents, and the documents are forthwith rejected from the record.

182. As soon as the document impugned has been deposited in the office of the Registrar, he proceeds to draw up a descriptive statement of its condition ; this is done at the instance of either party, the other party being either present or duly notified.

The descriptive statement must mention and describe the first and last words of each page, the erasures, words written over, interlineations, marginal notes, initials, and signatures upon the document, and all other similar circumstances ; the document is initialled and the statement is signed by the Registrar and by the parties or their solicitors, or else mention is made of the reasons why the parties refused to sign upon being required to do so.

183. The parties take communication of the impugned document from the hands of the Registrar, and without removing it.

184. Eight days after the making of the descriptive statement, the plaintiff in improbation must file his articles of improbation and serve the same on the defendant. If he omit to do so, the proceedings in improbation are considered abandoned, and the original suit is proceeded with as if no improbation had been made.

185. The defendant in improbation has a like delay of eight days to file and serve his answers. He may, however, before serving his answers, move the Court to have the articles of improbation declared non-pertinent and inadmissible. The Court, if it reject the motion, may grant the defendant further delay.

186. In other respects the issues are joined and tried as in ordinary suits, and are subject to the same rules and the same foreclosures.

187. The judgment which decides upon the improbation likewise determines to whom of right the document shall be handed over.

188. While the document impugned remains in the Registrar's office, no copies thereof can be delivered without an order from the Court or Judge, after the parties have been heard or have been notified.

189. The provisions of this section, except those of article 176, are observed, in so far as they apply, with regard to direct actions of improbation.

SECTION V.

DISAVOWAL.

190. Any party may disavow his solicitor who has exceeded his powers. He may also disavow a solicitor who acts as such without authority, without prejudice to his rights if he does not do so. But the disavowal must be made as soon as such party becomes aware of the undue assumption of power or authority.

191. A disavowal may take place during the suit or after judgment.

The latter kind is mentioned in the Chapter on petitions in revocation of judgment.

192. A disavowal can only be made by the party himself or his attorney under a special power, and the party himself must declare that he did not authorise the act of procedure which he repudiates.

193. Disavowal is made by filing a declaration, in the office of the Registrar, that the party disavows the act in question, as never having authorised the same.

194. The party disavowing is bound to proceed without delay to have the disavowal declared valid, and this is done by a petition served upon both the solicitor, or his heirs, and the opposite party.

195. After notice of the disavowal has been given, all proceedings in the principal action are stayed.

196. The procedure upon the disavowal is the same as in ordinary suits.

197. If the disavowal is maintained, the acts disavowed are annulled and the parties are placed in the same position as they were in at the time that the acts were done.

SECTION VI.

CHANGE OF SOLICITORS.

198. If the case has not been heard upon the merits, all proceedings had or judgments rendered since the death of the solicitor of one of the parties, or when such solicitor can no longer act, or has withdrawn, are null, unless such party has appeared in person, or appointed another solicitor, or after being called upon has failed to do so.

199. A solicitor who desires, of his own accord, to cease representing a party, must give notice to such party and to the opposite party.

200. If the solicitor of one of the parties ceases to act as such, either in consequence of being appointed to a public office incompatible with his profession, or of suspension, or death, the opposite party, when represented by a solicitor, is sufficiently informed without further notice.

201. When one of the parties ceases to be represented before the case is submitted to the consideration of the Court, the opposite party must notify him to appoint another solicitor.

202. If the defendant thereupon fails to appoint a solicitor or to appear in person, the plaintiff may proceed with the suit *ex parte*.

If the plaintiff is the party thus in default he may be non-suited.

203. A party's revocation of the powers of his solicitor will not be received unless he pays him his fees and disbursements, taxed after hearing or notice being given to the party.

204. A party who revokes the powers of his solicitor must immediately appoint another, without being notified to that effect by the opposite party, and in default of his doing so the case may be proceeded with as provided in article 202.

CHAPTER FIFTH.

TRIAL.

SECTION I.

WRITTEN INTERROGATORIES.

205. The parties in any suit may, at any time before the hearing, be examined upon written interrogatories pertinent to the issues.

206. Parties are summoned to answer interrogatories by means of a process, issued in the name of the Sovereign by the Registrar, upon a written requisition to that effect, and ordering the party to appear before the Court, to answer the interrogatories to be put to him.

207. The order to answer upon interrogatories is served upon the person or at the domicile of the party, and not upon his solicitor, unless such party is absent or absconding; and a copy, both of the order and of the interrogatories, must be left with him.

If the party is absent, the solicitor who has been served, may apply to have delay given to him to appear, or, upon indicating the place where such party then is, to have him examined under a commission.

208. A party summoned to answer interrogatories must appear in person, in order to give his answers after being previously sworn.

Nevertheless, if the party be a corporation or legally recognized body or community, it must, by special resolution,

name an attorney to answer in its place, and specify the answer he must give and swear to as being that which such corporation intends to give.

209. If the party served with the rule fails to attend or to answer the questions put to him, a default is recorded against him and the facts are held to be admitted.

The party who thus makes default may, however, answer the interrogatories afterwards, but he must bear whatever costs are occasioned by his default.

If any dispute arises as to the pertinency of the interrogatories, it is settled by the Court or Judge.

210. The answers are taken down by the Registrar ; and the Judge may put any other interrogatories he may deem necessary and pertinent. If the party refuses to answer such interrogatories, the Judge causes them to be written out and placed in the record, and they are held to be admitted. If required by any of the parties the Judge takes down the answers to the interrogatories.

211. The interrogatories must be drawn up in a clear and precise form, in such a manner that the absence of an answer shall be an admission of the fact sought to be proved.

212. The answers must be direct to the question, categorical and precise, and free from injurious or libellous expressions.

213. Every answer which is not direct, categorical and precise, may be rejected, and in such case the facts mentioned in the interrogatory are held to be proved.

214. The party who applied for the interrogatories may refrain from putting them, or may, after they are answered, declare that he does not intend to avail himself of the answers ; and upon his so refraining, or upon such declaration being made, the Court cannot take cognizance of the answers, which are thereupon held not to have been given.

215. The answer of any party to a question put to him may be divided only in the following cases, and then according to circumstances and in the discretion of the Court :

1. When it contains facts which are foreign to the issue ;

2. When the part of the answer objected to is improbable or invalidated by evident fraud or by bad faith, or by contrary evidence ;

3. When the facts contained in the answers have no connection with each other.

216. The expense of interrogatories forms part of the costs in the case.

217. Any party, on being served with a rule to answer interrogatories, may demand the necessary funds to pay his travelling expenses ; but when he is before the Court he cannot claim to be paid before he is sworn or before answering.

He has a right to have his expenses taxed, and such taxation may be enforced by execution against the opposite party.

SECTION IA.

(Ad. 3-1957).

DISCOVERY.

217A. Any party may, without filing an affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents as may, in their or his

discretion, be thought fit. In an action for libel or slander the Court or a Judge may grant discovery of documents relating to any issue raised in the action. Provided that discovery shall not be ordered when and so far as the Court or Judge shall be of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

217B. The affidavit to be made by any person against whom an order for discovery of documents has been made under article 217A, shall specify which, if any, of the documents therein mentioned he objects to produce.

217C. On the hearing of any application for discovery of documents the Court or Judge in lieu of ordering an affidavit of documents to be filed may order that the party from whom discovery is sought shall deliver to the opposite party a list of the documents which are or have been in his possession, custody or power relating to the matters in question. Provided that the ordering of such list shall not preclude the Court or Judge from afterwards ordering the party to make and file an affidavit of documents.

217D. It shall be lawful for the Court or a Judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or Judge shall think right ; and the Court may deal with such documents, when produced, in such manner as shall appear just.

SECTION II.

NOTICE OF ADMISSIONS.

218. Any party may give notice to the other that he admits the truth of the facts alleged in the declaration or other pleading.

219. Either party may call upon the other to admit any document, and in case of refusal or neglect to admit, after such notice, the costs of proving any such document, shall

be paid by the party so neglecting or refusing, whatever the results of the action may be, unless the Court or Judge certify that the refusal to admit was reasonable.

SECTION III.

EVIDENCE.

§ 1. *Inscription for Proof and Hearing.*

220. After issue joined, either of the parties may inscribe the case upon the roll for the adduction of evidence, and for final hearing immediately after.

221. The Registrar keeps a roll for the purpose of such inscriptions.

222. Notice of the inscription must be given to the opposite party, at least eight days before that fixed for the proof.

223. The evidence is taken down in writing.

224. The Court may, by a rule of practice promulgated in open Court, set apart such days, out of term, as may be deemed convenient for proceeding to proof.

225. In any case wherein it is established upon oath that a witness is about to depart from the Colony, and that thereby one of the parties may be deprived of his testimony, the Judge may, at any stage of the proceedings after service of summons, receive the deposition of such witness, in presence of, or after due notice to, the parties; and such deposition has the same effect as if it was taken at the trial.

The same thing may be done, in cases of evident necessity, when it is established upon oath that the witness is prevented, by serious illness or infirmity, from attending before the Court.

If the witness is still alive and in the Colony, and his attendance can be procured, at the time of the proof being taken, he must be examined anew in the ordinary time and manner, if it be required by either party.

§ 2. *Summoning Witnesses.*

226. Witnesses, if they do not appear voluntarily, are summoned at the instance of the party requiring their attendance by means of a writ of subpoena, a copy of which is served upon them one day at least before that fixed for their examination, the delay being increased at the rate of one day for every additional ten miles, when the distance exceeds ten miles.

227. Witnesses may be summoned either to declare what they know, or to produce some document in their possession, or to do both.

228. Any witness, duly summoned, who, without sufficient cause, fails to attend at the place and time appointed, may, upon a rule served upon him, be condemned, by the Court or Judge, to a fine not exceeding forty-eight dollars, to be recovered, for the use of the Crown, in the same manner as any other sum awarded by judgment, independently of any recourse the party who summoned him may have for damages caused by such default, and of imprisonment for contempt; provided that at the time he was served with a subpoena a sufficient sum was tendered to him for travelling expenses, at the rate usually allowed.

229. Any person who is present in the room in which the proof is being taken may be examined as a witness, and is bound to answer, under the same penalties as if he had been regularly summoned by the party who desires to examine him.

230. The evidence given by a party to a suit examined as a witness may be used as a commencement of proof in writing.

231. If the person to be summoned as a witness is in prison, the party requiring him may, upon petition to the Court or Judge, obtain an order upon the gaoler to bring such person before the Court to give evidence.

§ 3. *The Examination of Witnesses.*

232. Any party may demand that during the examination of any witness, the other witnesses should be out of the Court or room in which the examination is taken.

233. Before the deposition of a witness can be taken, he must swear or solemnly affirm in such cases where a solemn affirmation is lieu of an oath is by law allowed to tell the truth.

234. The form of oath and the manner of taking it may in the discretion of the Court or Judge be changed, according to the religious creed of the witness, in such a manner, however, as to bind him to declare nothing but the truth.

235. Any witness refusing to take the oath or affirmation is deemed to refuse to give evidence.

236. A witness who is present cannot refuse to give evidence, under pretext that the necessary amount to defray his travelling expenses has not been paid to him.

237. Before the witness is admitted to be sworn he may be examined by either of the parties as to his belief in God, and in a state of rewards and punishments after death.

238. Written questions may be submitted to a deaf mute who can read and write. His answers may be written down by himself.

§ 4. *Evidence taken in Presence of the Judge.*

239. In contested cases not inscribed for proof and hearing at the same time, notice of inscription must be given to the adverse party eight days before the day fixed for proof, the witnesses are examined in presence of the Judge, the parties being either present or duly notified, and the Judge may ask the witnesses any questions he may deem necessary. The Registrar takes down the evidence, and all objections

insisted upon by either of the parties, and the decision thereupon.

240. The evidence is read, and, if necessary, explained to the witness, who may make the necessary additions or alterations in order to express himself correctly. The deposition is then signed by him, if he can write, the fact being mentioned if he cannot, and being finally signed by the Judge, constitutes and is held to be the evidence of the witness.

241. If one of the parties require it, either verbally or in writing, the Judge himself is bound to take down the notes of the evidence and of the objections as mentioned in article 239. The Registrar afterwards makes a fair copy of them, which is certified by the Judge and filed of the record as evidence given in the case.

242 The Judge takes down or causes the Registrar to take down, notes of all admissions made verbally by the parties; and such notes, signed by the Judge, are evidence in the same manner as if they were signed by the parties.

243. The witness being sworn by or having made an affirmation before the Registrar, must first be asked and must declare his names, surname, age, quality or occupation, and domicile.

244. A party cannot impeach the credit of a witness produced by himself, but he may prove by others the contrary of what such witness has stated, or by leave of the Judge, he may prove that at other times he has made a statement inconsistent with his present testimony; provided, in the latter case, the witness be first questioned upon the subject.

245. Witnesses are examined by the party producing them, or his counsel, but only touching the facts in issue; and the questions must not be leading unless the witness evidently attempts to elude the question or to favour the other party.

246. When a party has ceased examining a witness he has produced, the opposite party may cross-examine such witness upon the facts referred to in his examination in chief ; or he may require an entry to be made of his declining to cross-examine.

247. A witness may be re-examined by the party producing him, when new facts have been elicited on the cross-examination, or for the purpose of explaining his answers to the cross-questions.

248. When witnesses are called to prove the identity of any object in the possession of one of the parties, the Court or Judge may order that the party shall, either in Court or at any other convenient place or time, exhibit such object to the witnesses thus called to give evidence concerning it ; and in default of his so exhibiting the object, it will be held to have been identified.

The Court or Judge may likewise order any witness who is in possession of any object which is the subject of the litigation, to produce it, under the same penalties in case of default, as for refusing to answer pertinent questions.

249. A witness may object to answer questions put to him, if his answer would expose him to a criminal prosecution.

This objection can only be made by the witness himself.

250. He cannot be compelled to declare what has been revealed to him confidentially in his professional character as religious or legal adviser, or as an officer of state where public policy is concerned.

251. The Court may forbid any question which appears to be intended to insult or annoy, or which though proper in itself, appears to the Court needlessly offensive in form.

252. The Court may forbid any question which it regards as indecent or scandalous, although such question may have

some bearing on the case before the Court, unless it relates to facts in issue or matters necessary to be known in order to determine whether or not the facts in issue existed.

253. A witness is bound to produce any other than an official document in his possession touching the matter in issue, and if it is a private writing, to allow a copy or extracts thereof to be taken ; and such copies or extracts, certified by the Registrar, are entitled to the same credence as would be given to the original. If the document be a notarial one the witness may refuse to produce it unless the cost thereof be paid him.

254. Any witness who, without valid reason, refuses to answer or to produce documents or other things connected with the suit and in his possession, may be compelled by imprisonment to do so.

255. Any person summoned to produce a document without being summoned to give evidence is deemed to have complied with the summons if he cause such document to be deposited with the Registrar.

256. A witness cannot withdraw without the permission of the Judge.

257. If the examination of a witness cannot be completed on the day he appears, he is bound to attend again on the next following juridical day, or on such other day as is assigned to him by the Judge, which day is mentioned in the notes of his evidence or entered upon the registers of the Court, and in default he is liable to the same penalties as for refusing to attend upon the subpoena.

258. It is the duty of the Judge to ask the witnesses if they require taxation, and if they do to tax their expenses, with due regard to the nature of the journey and the duration of their stay.

259. The taxation may be enforced by execution against the party who summoned the witness, after the delay and in the manner prescribed in respect of any judgment of the Court. Execution may be sued out by the witness against the opposite party condemned to pay the expenses of such witness, provided that no execution has already been sued out by the party who obtained the judgment, or that the amount allowed the witness has not already been paid to such party or his solicitor in virtue of a duly receipted bill of costs.

260. When one party has closed his evidence, the other party shall enter upon his counter-evidence and have his witnesses examined, unless otherwise ordered by the Court.

261. If, on the day fixed for hearing or continuing the evidence, the party who is bound to proceed does not produce any witnesses, or give any valid reason for their absence, his evidence may be declared closed.

§ 5. *Evidence Taken down at Length.*

262. Upon the consent in writing of all the parties to a case, the proof may be taken down in writing in the manner hereinafter provided, either before the Judge or Registrar, who, in such case, may exercise all the powers of the Judge, except as to the objections which must be reserved for the decision of the latter.

If the Judge is unable to attend Court on the day fixed for taking evidence, the Registrar may preside, and in such case he exercises all the powers of the Judge except as regards the objections made by either party, which must be taken down in writing and reserved for the decision of the Court at the final hearing of the case.

263. With the consent of the parties evidence may be taken on any juridical day, before the Registrar, who presides and acts in the manner hereinbefore provided with respect to sittings, for taking evidence.

264. The credence to be given to unauthenticated marginal notes, to words written upon others, and to interlineations is left to the discretion of the Court or Judge. The number of words struck out and of marginal notes must be mentioned in the jurat.

§ 6. *Taking Evidence before Examiners.*

265. The Court or Judge may appoint a competent person as an examiner to take the evidence when, by reason of the nature of the dispute, or the number and distance of the witnesses to be examined, or the intricacy or multiplicity of the facts to be proved, or any other sufficient cause, it is shown to the Court, by any of the parties concerned, that the ends of justice will be better attained by the appointment of such examiner.

266. The rule appointing an examiner must specify the place where the evidence shall be taken, and the delay within which it must be concluded. This delay may be extended by the Court or Judge upon sufficient cause shown.

267. The examiner, before entering upon his functions, must be sworn before the Judge, or Registrar, to fulfil his duties faithfully and impartially; and such oath must be in writing and be annexed to his return.

268. He must give the parties at least eight days' notice of the time and place at which he will begin the examination.

269. The witnesses are summoned, by means of a writ of subpoena to appear before the examiner, who may administer the oath to them, may receive any documentary evidence produced by the parties, and has all the powers of the Judge stated in § 4 of this section.

270. Any party to the suit may also be summoned to answer interrogatories *viva voce* before the examiner. The latter may administer the necessary oath, and put such further questions as he may deem necessary and pertinent.

If the party refuses to answer any such questions, they are reduced to writing, and the facts contained in them are held to be proved.

If the party summoned fails to appear, the party who took out the order cannot take advantage of the default unless he has caused him to be served with the interrogatories which he intends him to answer.

271. After the evidence has been taken, the examiner must make a return of his proceedings, on or before the day fixed by the Court or Judge.

§ 7. *Commissions for the Examination of Witnesses.*

272. When any of the witnesses or of the parties reside beyond the Colony, the party who requires to examine them may obtain a commission appointing one or more persons to receive the answers of such witnesses or parties.

273. Application for that purpose must be made within four days after issue joined; except under particular circumstances, left to the discretion of the Court or Judge. Such an application may be granted by the Court or Judge, upon its being satisfactorily shown by affidavit that the commission is necessary, and after notice to the adverse party.

274. The commissioners are chosen as follows:

If both parties join in the commission each furnishes four names. From the list thus formed each party alternately strikes out two names; this is done in the presence of the Judge, who out of the four remaining names chooses three; to whom the commission is addressed.

If both parties do not join in the commission it is addressed to the persons chosen by the Judge.

275. The Court or Judge fixes the number of commissioners who must be present in order to execute the commission, and gives directions and authority for swearing witnesses.

276. Annexed to the commission are the interrogatories and cross-interrogatories of each party, which shall have been allowed by the Judge after due notice to the other party.

277. The commission must also be accompanied with instructions addressed to the commissioners, under the signature of the Judge, to guide them in its execution.

278. The return consists of a certificate of the commissioners who acted, endorsed upon the commission, and stating that the execution appears by the schedule thereto annexed.

The return must be under a sealed envelope, upon which are endorsed an indication of its contents and the name of the cause. It cannot be opened and published without an order from the Court or Judge.

279. The party who applies for a commission must himself see to its being transmitted and executed.

280. If both parties have joined in the commission, both are equally bound to have it transmitted and executed.

281. The Court or Judge may order the parties to proceed with the case :

1. If it appears that the commission was obtained solely in order to delay the judgment ;

2. If the return has been delayed longer than justice requires.

§ 8. *Evidence ex parte.*

282. (Am. 3-1957). When the defendant fails to appear or to plead to the action, the plaintiff in suits other than those mentioned in article 85, may inscribe his case for trial and hearing upon any day. If any oral evidence is necessary it is proceeded with before the Court, as in contested cases. When required by either party, the Judge takes notes of the evidence as in other cases.

A defendant foreclosed from pleading is entitled to at least one day's notice before taking evidence ; and he may cross-examine the witnesses, and make such objections as he thinks proper, but he is not entitled to produce witnesses.

283. All evidence offered by the plaintiff is filed and remains in the record in the same manner as if the defendant had appeared and pleaded to the action.

§ 9. *The Incidents of Evidence.*

284. All applications to the Court upon any incident of the evidence may be made by motion, stating succinctly the object and reasons of the application.

285. The Court may, at any time before judgment, in its discretion and under such conditions as it deems just, allow any pleading to be amended so as to agree with the facts proved ; and any pleading is sufficiently sustained if the facts alleged agree sufficiently with the facts proved, and if in the opinion of the Court the opposite party has not been led into error as to the real nature of the facts intended to be alleged and proved.

285A. (Ad. 3-1957). Notwithstanding anything in articles 239 to 242 it shall not be necessary on the trial of an action for the evidence of a witness to be taken in the form of a deposition, and it shall be sufficient for the Court to take down, or cause to be taken down under its direction, notes of the evidence, and of all objections insisted on by either party, with the decisions on such objections.

§ 10. *Order of Trial.*

(Ad. 3-1957).

285B. (1) When the action is called on for trial, the plaintiff, in the absence of circumstances shifting the burden of proof, is entitled to begin.

(2) After his opening speech, he calls his witnesses in support of his case, and if no witnesses are intended to be called on the other side, he sums up his case. If the defendant calls witnesses, the plaintiff is entitled to defer his second speech until the defendant's case is closed, and then to reply on the whole case.

(3) The defendant opens his case in a similar manner to the plaintiff, examines his witnesses, and then sums up his case.

(4) The same rules apply whether a party is represented by counsel or appears and pleads in person.

(5) This order of proceedings may be varied by leave of the Court.

SECTION IV.

EXPERTS, VIEWERS, REFERENCES IN MATTERS OF ACCOUNT, AND ARBITRATORS.

286. Before deciding upon the merits of the case, the Court may, if necessary, order reference in the cases hereinafter mentioned at any time.

§ 1. *Viewers and Experts.*

287. Whenever the facts in contestation between the parties can only be verified by view of the object or premises, or whenever the evidence produced by each party is contradictory, or when the nature of the case requires it, the Court or Judge may if it be thought proper or upon the application of either party, order the facts to be verified by one or more experts skilled in the matter.

The order for experts must specify clearly and distinctly the matters to be verified.

288. The reference must be made to three experts or to one.

289. If, at the time of the order for experts, their appointment has been agreed upon by the parties, the order records such appointment.

290. If the experts are not agreed upon by the parties, the Court or Judge fixes a day on which the latter must attend before the Court or Judge in order to appoint them; and in default of an order to that effect either party may summon the other to attend as aforesaid, within a reasonable delay, for the purpose of such appointment.

291. The parties are bound to attend on the day appointed, and if they then fail to agree or if one of them be absent the Court or Judge appoints an expert or experts for them.

In the case of any of the experts being validly recused others are appointed in their stead, in the manner above prescribed.

292. The grounds for recusing an expert are:

Relation or alliance, to the degree of cousin-german inclusively;

Intimacy;

Enmity;

Subornation;

Interest;

Being in the employ of one of the parties;

Being a party in a similar suit, or the solicitor or agent of a party in the case.

293. As soon as the experts are named, either party may have the order served upon them, together with a requisition calling upon them to be sworn.

294. If any one of the experts neglects or refuses to be sworn or to act, either of the parties may summon the other to attend before a Judge in order that another person may be named to replace such expert.

295. The experts, before taking any proceedings in the investigation, must be sworn to perform their functions with impartiality and to the best of their ability.

This oath must be in writing, and be certified by the person who administers it.

296. The oath must be taken before a Judge, or the Registrar, before a commissioner for taking affidavits, before an expert already duly sworn, or before any other person indicated in the order for experts.

297. A copy of the order for experts, together with the necessary papers, must be given to them, after the Registrar has taken a receipt.

298. The experts are bound to fix the time and place at which they will proceed with the reference, and to notify the parties, allowing a delay of at least three days when the distance from the domicile of the parties respectively does not exceed ten miles, and one day more for every additional ten miles.

299. The experts must hear the parties and the witnesses in accordance with the terms of the order naming them ; each of them is authorised to administer the oath to the witnesses or the parties, as the case may be, and the witnesses are summoned to attend before the experts, whatever may be the distance.

300. The evidence of the witnesses must be taken down in writing, certified and annexed to the report of the experts, and it must mention whether the witnesses are related or allied to the parties, and in what degree, and whether they are in the employ of either party, or interested in the suit.

301. If all the experts agree, they make one and the same report, if not, each of them makes his separate report, if he thinks proper.

302. The report of the experts must be made on or before the day fixed by the Court. It must contain reasons and details, so as to enable the Court to appreciate the facts ; it must also be signed by the experts or be in the form of a notarial original.

303. If the experts delay or refuse to file their report, they may be summoned, with the same delays as in ordinary procedure, by a rule of court, to show cause why they should not be condemned, and even compelled by imprisonment to do so.

304. The Court is not bound to adopt the opinion of the experts nor that of a majority of them.

§ 2. *References to Accountants.*

305. In matters where accounts have to be rendered or adjusted, or which require calculations to be made, and in matters of separation of property, or partition of community or succession, the Court may refer the case to one or more persons skilled in such matters ; and such persons are subject to the rules above prescribed concerning experts.

Such accountants have the powers given to experts by the foregoing articles, and are bound to follow the directions of the Court ; and their reports are adopted, or rejected in the same manner as reports of experts.

§ 3. *Arbitrators.*

306. The Court may, of its own motion or upon the application of one of the parties, refer any matter of dispute to the decision of arbitrators.

307. The preceding provisions relating to experts apply to arbitrators, in so far as as they are compatible with those of the present paragraph.

308. Arbitrators can only adjudicate upon the matters submitted to them. They are bound to observe the same formalities as experts, according to articles 299 and 300, unless by the consent of all parties, the final decision is left to them : but they are not bound to give the reasons of their decision.

They cannot award costs unless the Court has empowered them to do so.

§ 4. *General Provisions Applicable to the three preceding Paragraphs.*

309. The accounts of experts, accountants, and arbitrators are taxed by the Court or Judge. They have a recourse against all the parties to the suit jointly and severally.

310. The party who intends to avail himself of a report of experts or accountants must make application to have it received; and if the opposite party desires to take advantage of any informalities or causes of nullity therein, he must do so by a counter-application.

311. If a report of experts or accountants is free from informalities or causes of nullity, it is received, together with the depositions and documents annexed, as part of the evidence in the case.

312. In the case of an award of arbitrators, the party intending to avail himself of it may apply for its confirmation and for judgment in conformity with it. The other party cannot oppose it except by an application to have the report declared inadmissible on the ground of informality or some other cause of nullity.

CHAPTER SIXTH.

DIVERS OTHER INCIDENTAL PROCEEDINGS.

SECTION I.

CONTINUANCE OF SUITS.

313. When a case is ripe for judgment, it cannot be delayed either by change of the civil status of the parties or by loss of the quality in which they were acting.

314. The case is ripe for judgment, when the hearing is completed.

315. The solicitor who is aware of the death or change of civil status of his party, or of the loss of the quality under

which he was acting, is bound to notify the opposite party; and all proceedings had up to the day when such notice is given are valid.

316. In cases which are not ready for judgment, all proceedings had subsequently to notice given of the death or change of status of one of the parties, or of the loss of the quality in which he was acting, are void; and the suit is suspended until its continuance by those interested, or until the latter have been called in to continue it.

317. A suit may be continued:

1. By the heirs or representatives of a deceased party;
2. By a minor who has attained full age;
3. By a wife who has obtained separation of property from her husband, when the suit affects her private property.
4. By the person who replaces the party who has lost the quality in which he was acting.

318. The continuance may be effected upon petition, filed in the Registrar's office, after being served upon the opposite party.

This petition may be contested in the same manner as any suit.

319. If the continuance is not contested within the delays prescribed, it is held to be admitted, and in such case, as also when it is declared by the Court to be valid, the opposite party may continue on from the last proceedings taken in the original suit.

320. If the persons interested do not continue the suit, the party remaining in it may compel them to do so by a demand in the usual form which is joined to the original suit.

321. In all cases, whether the continuance is voluntary or ordered by the Court, it is effected by following up the last valid proceedings taken in the suit.

SECTION II.

THE OATH PUT BY THE COURT.

322. The Court may, of its own motion, order either of the parties, or both, to appear and answer such questions as it deems necessary to elucidate the matters in dispute; according to the provisions contained in article 1176 of the Civil Code.

SECTION III.

DISCONTINUANCE.

323. The plaintiff, or plaintiffs if there be more than one, may, at any time before judgment, discontinue his suit or proceeding on payment of costs.

324. Discontinuance may be effected by a simple declaration to that effect, signed by the party or his solicitor, and delivered into Court or filed in the Registrar's office. It has no effect, however, against the opposite party unless it has been served upon him.

325. Discontinuance replaces matters as of course in the state in which they would have been, had the suit or proceeding not been commenced.

326. The Court or Judge may, upon the application of the defendant, or of a defendant if there be more than one, order the whole or any part of any pleading filed by him to be withdrawn or struck out.

327. The discontinuance of one of several parties does not affect the rights of others. The proceedings are carried on with respect to them as if no discontinuance had been made.

328. A plaintiff who has effected a discontinuance cannot begin again unless he previously pays the costs incurred by the opposite party upon the suit or proceeding discontinued, either to the opposite party or on his refusal to accept, into Court.

SECTION IV.

PEREMPTION OF SUITS.

329. Suits are perempted when no proceeding has been taken therein during three years.

330. Peremption, however, does not take place :

1. When the party has ceased to be represented by his solicitor, in the cases mentioned in articles 199 and 200 ;

2. When the party himself dies, or has changed his civil status ;

3. When proceedings are compulsorily stayed by any incidental proceeding, an interlocutory judgment, reference to experts, arbitrators, or accountants, or when the record cannot be found.

331. Peremption takes place against corporations, all individuals, and even against all persons represented by tutors or curators, such persons, however, having recourse against those who represent them.

It does not take place against the Crown.

332. Peremption must be declared by the Court, upon a motion of which the solicitor, if there is one, has had notice ; otherwise the notice must be given to the party himself.

333. Peremption is barred by any pertinent or legal proceeding taken after the lapse of three years and before the service of the motion to have it declared ; but it cannot be affected by any proceeding taken subsequently to the service of such motion.

334. Peremption does not extinguish the right of action, but only the suit or proceeding.

335. The Court, in declaring the peremption of the suit, may condemn the plaintiff to pay costs as in other cases.

SECTION V.

MISCELLANEOUS PROVISIONS.

336. Every notice of inscription for hearing must be given by serving a copy of the inscription at least two days before the day fixed for such hearing.

337. (Mod. Sup. Ct. Rules.) In reckoning the delays in matters of pleading or trial, the periods of the vacations prescribed by rules of court shall not be counted; and no party to a cause can be obliged to proceed during those periods without a special order of the Court or Judge.

338. (Superseded by Supreme Court Rules).

339. Whenever the Sheriff is interested or personally concerned in any suit or action, any writ which would otherwise be served by him, must be addressed to and served by the Registrar or anyone specially appointed by him.

CHAPTER SEVENTH.

MOTIONS AND RULES.

340. A motion must be in writing and must contain the grounds in support of the order sought. No other grounds can be heard.

341. One day's notice of a motion or of a rule is a sufficient notice when the party to be served resides within ten miles of the place where the Court is held. When the distance exceeds ten miles, a further delay of one day must be given for every additional ten miles.

342. When an order is made *ex parte*, any party whose rights are affected may apply to the Court or Judge to vary or discharge it.

343. The following motions, being motions of course may be made and filed, without giving any previous notice, in the

office of the Registrar, and rules *nisi*, entered thereon by the Registrar as if made in open Court :—

1. For the Sheriff to return a writ.

2. To set aside or confirm a report.

3. To pay money into Court otherwise than tender with plea.

4. That the seizing party declare whether he admits or contests an opposition.

5. That the party seized declare whether he admits or contests the opposition.

6. That the Sheriff bring in the body.

344. Any party intending to produce an affidavit, or paper written in support of any notice or rule, must with the copy of such motion or rule, serve on the opposite party a copy of the affidavit or other paper-writing intended to be produced ; and in default of so doing the opposite party is entitled to delay to take communication of the documents.

CHAPTER EIGHTH.

FINAL JUDGMENT.

SECTION I.

JUDGMENT ON THE MERITS.

345. When after the hearing of a suit, judgment has been reserved, it cannot be stayed by reason of the death of the parties, or of their solicitors.

346. When the Judge is unable from illness or other reason to render judgment in person, he may transmit the draft of the judgment certified by himself to the Registrar, who shall read it in open Court after having given the parties one day's previous notice, or he may read it on a day fixed for the sitting of the Court without notice. The judgment has the same force and effect as if pronounced by the Judge on the day it was so read.

347. In all contested cases, and in those not provided for by articles 85, 86 and 90, judgment must be rendered in open Court.

The Court may appoint days out of term for rendering judgments that have been reserved.

348. Every judgment for damages must fix their amount.

349. Every judgment must mention the cause of action, and must be susceptible of execution.

In contested cases it must moreover contain a summary 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 was rendered.

350. The judgment must be entered without delay in the register of the Court in conformity with the draft initialled by the Judge.

351. In the case of difference between the draft and the entry thereof in the register, the draft is to be followed; and the Court or Judge may, without any formality, order the rectification of the register.

352. Every judgment condemning a party to the restitution of rents, issues and profits, must fix their amount, and this is done by experts if the case requires it; and the party condemned is bound for that purpose to produce all accounts and documents, showing the receipts, all leases of immovables, and a statement of the cost of tilling, planting, cultivating and manufacturing incurred by him.

353. When a plea of compensation or set-off is allowed, the Court may give judgment for any balance due to the defendant, or may otherwise adjudge him such relief as he may be entitled to.

354. If any error of calculation or other obvious error be made in the judgment, it may be corrected by the Judge

before the expiration of the time allowed for an appeal, but notice of such alteration must be given to the parties. The delay for issuing execution and for appeal counts from the service of the notice.

355. When a plaintiff is nonsuited, he has the right of bringing another action after payment of the costs of the former actions. The term "nonsuit" is equivalent to the term "sauf a se pourvoir."

356. Unless it is expressly ordered, it is not necessary to have the final judgment served on the party condemned, except in uncontested cases, in cases where a party is condemned to deliver a specific thing within a fixed delay, where imprisonment is awarded, and judgments in recognition of hypothecs, rendered against defendants having a known domicile in the Colony.

No final judgment, however, is to be served when rendered in the cases mentioned in article 1531 of the Civil Code.

357. Any party may, on giving notice to the opposite party, renounce either a part only or the whole of any judgment rendered in his favour, and have such renunciation recorded by the Registrar; and in the latter case the cause is placed as it was before the judgment.

SECTION II.

COSTS.

358. The losing party must pay costs, unless for special reasons the Court orders otherwise.

In actions of damages for personal wrongs, if the damages awarded do not exceed nine dollars and sixty cents, no greater sum can be allowed for costs than the amount of such damages.

When final judgment is given in the Supreme Court for an amount which ought to have been sued for in the District Court, the Court may give such costs as are allowed in the

District Court, or may refuse costs to the plaintiff, or may condemn him to pay costs.

359. When the Court or Judge shall be of opinion that any allegation of fact denied, or not admitted by the defence, ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra-costs occasioned by their having been denied or not admitted.

360. Costs are taxed by the Registrar upon production of a bill thereof, notice having been previously given to the adverse party, and according to the tariff in force. Such taxation may, within six months, be submitted for the revision of the Judge after the adverse party has received such notice as the Judge may deem sufficient.

Neither the application for revision, however, nor the delay allowed for such revision, can suspend the execution of the judgment; the debtor, however, having recourse against the execution creditor in the event of the amount being levied or paid before such revision.

361. Whenever witnesses are summoned from beyond the jurisdiction, their expenses cannot be taxed, against the opposite party, for more than it would have cost to examine them by means of a commission, unless the Court or Judge otherwise orders.

362. Solicitors may demand that their fees and all disbursements actually made by them, be made payable to them by the judgment.

If such demand be not made on or before the day on which the judgment was rendered it can only be granted after the opposite party has been notified to show cause against it. Such a demand is called a demand for distraction of costs.

363. The Sheriff may demand the payment of his fees for the service of any writ before he executes it.

BOOK THIRD.

REMEDIES AGAINST JUDGMENTS.

CHAPTER FIRST.

THE REVISION OF JUDGMENTS BY DEFAULT.

364. The defendant may apply by petition, within a year and a day, for the revision of any judgment rendered against him by default, in the following cases :

1. In all cases of simple attachment, or attachment by garnishment, when the service has been effected under the provisions of article 66.

2. Whenever he has not been served personally or at his real domicile, or ordinary and actual place of residence. But when he has been personally served in the Colony with a copy of the judgment he must apply by petition within ten days from such service. If personally served beyond the Colony he must apply within six months of the service.

365. The defendant may also seek relief against any judgment rendered in conformity to the provisions of article 85, by means of an opposition, made either before or after seizure, but before sale, or within ten days from the date of a return of *nulla bona,* if there is one, or within ten days from the service upon him of any seizure by garnishment, issued in virtue of such judgment, when no personal service has been made upon the defendant of the judgment rendered against him.

366. The petition for revision mentioned in article 364, and the opposition mentioned in article 365, must contain all grounds, whether in support of such petition or opposition, or against the judgment, and be accompanied by all documents in support of it.

367. The petition or opposition must, moreover, be accompanied with an affidavit of the defendant, or of one of the defendants, or of some other credible person, that the

allegations contained in such petition or opposition are, to his knowledge, true ; and, in the case of article 365, a sufficient sum must be deposited with the Registrar to meet the costs incurred after the return of the writ up to the judgment, including the service thereof ; which costs must be paid to the plaintiff as soon as they are taxed, out of the sum so deposited. The petition is served and presented to the Court in the ordinary manner.

368. The opposition mentioned in article 365 is filed in the Registrar's office ; but the Registrar must not receive it unless a copy thereof is at the same time left for the plaintiff.

369. The filing of such opposition has the effect of suspending the sale when accompanied by the Judge's order to that effect, under the seizure until it is decided by the Court. The Registrar must grant a certificate in duplicate of the filing of the opposition mentioned in the preceding article ; and one of the duplicates must be given to the officer making the seizure, who must give a receipt therefor, in default of which it is served upon him at his own cost. The officer is thereupon bound to stay his proceedings, and to return into Court the writ of execution and the certificate which he has received.

370. If the opposition is filed before the issuing of a writ of execution, notice of the filing thereof must be given to the plaintiff, and the delays for contesting the same are computed from the date of the service of such notice.

371. The petition for revision, and the opposition, are held to form part of the proceedings upon the original suit, and to be a defence to the action, and, as such, are subject to the provisions concerning the contestation of ordinary suits.

372. If the opposition is maintained, in whole or in part, the costs incurred upon the execution are borne by the plaintiff.

373. If the opposition is maintained by reason of any irregularity in the proceedings of the plaintiff, the Court may grant or refuse costs.

The proceedings previous to the commission of the irregularity are valid.

374. If no opposition is made to a judgment rendered in virtue of article 85, within the delay mentioned in articles 364 and 365, the allegations of the declaration are held to be admitted and proved.

CHAPTER SECOND.

PETITIONS TO SET ASIDE JUDGMENT.

375. Judgments which are not susceptible of being appealed from or opposed, as hereinbefore provided, may be revoked upon a petition, supported by affidavit, presented to the Court by any person who was a party to or was summoned to be a party to the suit, in the following cases :

1. Where fraud or artifice has been made use of by the opposite party ;

2. When they have been rendered upon documents which have been subsequently discovered to be false, or upon any unauthorised tender or consent disavowed after judgment ;

3. When, since they were rendered, documents of a conclusive nature have been discovered, which had been withheld or concealed by the opposite party ;

4. When rendered upon admissions not authorised, subject to the provisions of articles 190 and 192 of this Code ;

5. When the judgment has been given for things not prayed for ;

6. If the judgment grants more than has been asked.

376. It can be received only during the six months after the discovery of the fraud or the falsity, or of the documents withheld, and in all other cases only during the six months

after the judgment, or a copy thereof, has been served when service is required.

377. Notwithstanding the limitations contained in the two preceding articles, the Court may grant relief from any judgment of the Court or Judge when such judgment has been irregularly obtained, and in such cases and under such circumstances as relief would be granted by the Courts in England.

378. Petitions for revocation of judgment cannot prevent or stay execution, unless an order to suspend is granted by the Court or Judge.

379. The solicitor who acted for a party in the cause or suit may also represent him upon the petition in revocation of judgment.

380. If there are sufficient grounds for a petition in revocation of judgment, the Court may replace the parties in the same position as they were in before the judgment, and the proceedings are the same as in ordinary suits. The Court allows the petition upon such terms as it thinks just. It may at the same time give judgment upon the merits of the original suit.

CHAPTER THIRD.

OPPOSITIONS BY THIRD PARTIES.

381. Any person whose interests are affected by a judgment rendered in a case in which neither he nor persons representing him were made parties, may file an opposition to such judgment.

382. This opposition is formed by means of a petition to the Court, which must contain the grounds of opposition, and proper conclusions, and must be served upon the parties in the cause, or upon the solicitors who represented them, if it is made within a year and a day after the judgment. The

truth of the allegations contained in the opposition must be sworn to, as in the case of an opposition to annul.

383. The proceedings upon oppositions by third parties are the same as upon ordinary suits. They do not prevent the execution of the judgment unless the Court or Judge order a stay of execution.

BOOK FOURTH.

THE EXECUTION OF JUDGMENTS.

CHAPTER FIRST.

THE VOLUNTARY EXECUTION OF JUDGMENTS.

SECTION I.

GIVING SECURITY.

384. Every judgment ordering security to be given must fix the time within which sureties shall be offered.

385. Sureties are offered after notice served upon the opposite party, and, when not objected to, they enter into a bond at the Registrar's office.

386. Except in cases where the law requires only personal justification, if a surety is objected to he may be required to give in a declaration of his real property, together with his titles thereto.

Sureties may in all cases be required to justify on oath their sufficiency, and the Judge or Registrar may receive and administer the necessary oath.

387. A surety may be objected to :

1. If he has not the qualifications required according to the Book respecting *Suretyship* in the Civil Code ;

2. If he is not sufficient.

388. The sufficiency of a surety is decided upon the documents and affidavits produced, without a proof being ordered.

389. If the surety is accepted, the bond is drawn up and entered into in conformity with the judgment, and remains in the Registrar's office as part of the record in the case.

390. The acceptance of sureties is decided upon summarily, without any petitions or writings, and the bond is entered into notwithstanding oppositions or appeals, and without prejudice thereto.

SECTION II.

ACCOUNTING.

391. Every judgment ordering an account must fix a delay for rendering it. If no delay has been fixed, the plaintiff may petition the Court or Judge to appoint a day.

392. The account must be rendered nominately to the party entitled to it, it must be sworn to and be filed in the Registrar's office within the delay fixed, together with the vouchers in support thereof.

The Court or Judge may, however, upon motion of which notice has been duly given, extend the delay for rendering the account.

393. The account must contain, under separate heads, the receipts and expenditure, and close with a recapitulation of such receipts and expenditure, establishing the balance; whatever remains to be recovered being reserved for a separate head.

394. Under the head of receipts must be placed all sums which the accounting party has received, and all those that he ought to have received during his management.

395. The accounting party cannot place under the head of expenditure the costs of the judgment ordering him to account, unless he is authorised to do so by the Court or Judge; but he may charge under that head his travelling expenses, the attendances of the solicitor who made up the account, the cost of presenting and verifying it, and of whatever copies thereof are required.

396. If the account shows an excess of receipts over expenditure, the party to whom it is rendered may provisionally demand execution for the balance, having, however, besides, his right to contest the remainder of the account.

397. Parties accounted to are bound to take communication of the account and vouchers at the Registrar's office, and to file their contestations of the account, if they contest it, within a delay of fifteen days, which may be extended by the Court or the Judge upon application pursuant to notice.

398. Parties accounted to, whose interests are the same, must name the same solicitors; if they do not agree in their choice, the solicitor first in the case remains solicitor of record, saving the right of the other parties accounted to to employ solicitors of their own, upon payment of all costs occasioned thereby.

399. The accounting party has a delay of eight days after the filing of the contestation to file his answers in support of the account, and the other party has a similar delay to file his replications.

400. In default of filing the contestations, answers, or replications within the delay, the party bound to file them is held to admit whatever is contained in the document he fails to contest.

401. After the issues are completed upon the account rendered, the parties proceed to trial and hearing according to the ordinary course, or the Court may refer the case for

settlement to arbitrators, or to a practitioner or an accountant, according to its nature.

402. The judgment upon the account must contain a computation of the receipts and expenditure, and establish the balance if there be any.

403. If the defendant fails to render an account, the plaintiff makes one.

SECTION III.

SURRENDER.

404. The voluntary execution of any judgment ordering the restitution and delivery of any movable or immovable is effected, unless the judgment makes other provisions, by delivering the movable, and surrendering the possession of the immovable, in such a manner that the party entitled thereto may take possession of it ; and this must be done in conformity with the judgment, and the provisions contained in the Book respecting *Obligations* in the Civil Code.

405. The voluntary execution of a judgment ordering the surrender of an hypothecated immovable, is effected by means of a declaration of the defendant, filed in the Registrar's office, to the effect that he surrenders it in compliance with the judgment and by his relinquishing his possession.

406. When an immovable is thus surrendered, the Court or Judge, upon application of a creditor, may name a curator to the surrender, against whom all ulterior proceedings are directed. The plaintiff may, however, issue execution against the property declared to be hypothecated if no curator be appointed.

407. The curator has a right to collect the rents, issues, and profits, due and accrued from the time of the surrender, and may even grant leases if the sale is prevented during any considerable time.

The rents, issues, and profits of the immovable surrendered are treated as realty, and are distributed in the same manner as the price.

SECTION IV.

TENDER GENERALLY AND PAYMENT INTO COURT.

408. A tender must describe the object offered ; and if it be of money, it must contain an enumeration and description thereof.

409. Tender may be made at any time before the close of the hearing by an authentic document, or in any other manner which admits of its being proved.

Tender may be made in a suit by demanding record thereof, and must be accompanied with payment into Court.

410. Tender may be made at the domicile elected in a contract.

411. The authentic document recording the tender, if there is one, must state the answer made by the creditor, or the person representing him, the fact of his being called upon to sign such answer, and in default of his signature, the reason why it was not signed.

412. A debtor who has made a tender and is afterwards sued, may renew it by his pleadings, and pay the amount into Court upon a receivable order.

413. Monies paid into Court cannot, without the authorisation of the Court or Judge, be withdrawn by the party who paid them in.

Unless the tender is conditional, the party to whom it is made is entitled to receive the monies paid in, without prejudicing his claim to the remainder.

The party entitled to money paid into Court receives payment by cheque.

414. The expense of the tender made out of Court is borne by the debtor ; but, if it is declared sufficient, the costs attending the payment into Court are borne by the creditor.

415. The debtor may demand that a sum sufficient to pay the costs of contestation be retained, subject to the order of the Court, in the event of the creditor not accepting the amount tendered as a full satisfaction of his claim.

CHAPTER SECOND.

COMPULSORY EXECUTION OF JUDGMENTS.

SECTION I.

GENERAL PROVISIONS.

416. The judgment of a Court can only be put into execution by means of a writ issuing in the name of the Sovereign and addressed to the Sheriff.

The writ is attested and signed in the same manner as original writs, it must bear the seal of the Court, and must mention the date of the judgment to be executed and the day on which it is returnable.

The Sheriff cannot receive payment of the amount mentioned in the writ otherwise than upon a receivable order when the amount is above one hundred and forty-four dollars.

417. Judgment can only be executed upon the party against whom it is rendered.

If he changes his civil status or dies before judgment is executed, it cannot be executed against him nor against his representatives, unless a notice be previously served upon his representatives to show cause why execution should not issue, and judgment be given thereon by the Court or Judge.

But if the party dies or changes his civil status after execution has commenced, the execution continues.

418. If the judgment does not order a thing that is purely personal to the judgment creditor, it may be executed in his

name, even after his death; if any contestation arises upon the execution, his representatives must intervene.

The writ of execution is issued upon a *praecipe* signed by the solicitor of the representatives, whose names and description must be set forth therein.

419. When the judgment orders the performance of some physical act, the officer charged with its execution may use the necessary force for that purpose; observing, however, at the same time, all necessary formalities.

SECTION II.

EXECUTION IN REAL ACTIONS.

420. When a party condemned to surrender or restore an immovable refuses to do so within the delay prescribed, the plaintiff (or when any person in possession of any immovable sold by judicial sale refuses to deliver it, the purchaser) may obtain a writ of possession to eject him, and to be placed in possession.

But no such writ can issue against any party other than the defendant or judgment debtor, who has been in peaceable possession as proprietor for more than a year and a day since the rendering of the judgment, or since the date of the sale, as the case may be.

421. The officer entrusted with the execution of such writ must be accompanied by two witnesses, and draw up a minute of his proceedings.

SECTION III.

EXECUTION IN PERSONAL ACTIONS.

422. Judgments for the payment of a sum of money cannot be executed before the expiration of eight days from their date.

Nevertheless upon an application of the plaintiff accompanied by an affidavit establishing circumstances under which simple attachment might issue before judgment, the Judge

may allow execution to issue before the expiration of eight days, but the sale cannot take place any sooner than if the writ of execution had issued after the ordinary delay.

423. In all suits accompanied with attachment, either in the hands of the defendant or of third persons, in which the defendant has only been summoned by advertisements in the *Gazette*, a judgment rendered by default cannot be executed within a year, unless the plaintiff, in the presence of and to the satisfaction of the Judge, gives good and sufficient sureties to refund the monies levied, in the event of the judgment being reversed upon revision, together with the costs of such revision.

But execution may issue, as in ordinary cases, after the expiration of eight days from the service in the Colony of a copy of the judgment upon the defendant or his duly appointed attorney.

424. A creditor may cause to be seized in execution the movable or immovable property of his debtor, in the possession of such debtor, or movables of his in the possession either of such creditor himself or of third persons, if the latter do not object ; if they do, the creditor must adopt a seizure by garnishment. But the movables must be first sold in every case, except the execution creditor consent to the sale of his immovables in the first place, or if the Judge order otherwise upon cause shown.

425. A creditor may exercise at the same time the different means of execution which the law allows him. He may cause the movable property and the immovables to be seized under the same writ, except in the case of judgments in hypothecary actions.

426. Seizure of movables in execution takes place under a writ addressed to the Sheriff, ordering him to levy the amount of the debt, interest, if any is due, and the costs, both of the suit and of the execution, and such writ is made returnable on a day certain within six weeks from the day it bears date.

If the creditor has received any part of his judgment claim, he is bound to make mention of it on the back of the writ of execution.

§ 1. *Of Seizure of Movables.*

427. (Am. 25-1889.) (1) The debtor may select and keep from seizure :—

1. The bed, bedding, and bedsteads in use by him and his family ;

2. The ordinary and necessary wearing apparel of himself and his family ;

3. One set of cooking utensils, one table, three chairs, three knives, three forks, three spoons, three plates, three teacups, three saucers, and one cutlass ;

4. Fuel and food, not more than sufficient for thirty days, and not exceeding in value nine dollars and sixty cents ;

5. Tools and implements or other chattels ordinarily used in his trade to the value of nine dollars and sixty cents.

Nevertheless, the things and effects mentioned in paragraphs 4 and 5 are not exempt from seizure and sale when the suit is to recover the price of their purchase, or they have been given in pawn.

(2) No tenant shall be entitled to claim exemption from seizure and sale of the effects and things enumerated in paragraph (1) of this article if such seizure shall be effected at the instance of any landlord and for the recovery of rent in respect of the house, room or tenement in which such effects and things shall have been seized or taken in execution ; but the tenant shall be entitled to select and keep from seizure the following effects only, namely :—

1. The ordinary and necessary wearing apparel of the tenant and his family ;

2. Tools and implements ordinarily used by the tenant in his trade, business, or occupation, and not exceeding in value the sum of nine dollars and sixty cents ;

3. Fuel and food sufficient for the tenant and his family for at least forty-eight hours.

428. The following are also exempt from seizure :

1. Consecrated vessels and things used for religious worship ;

2. Alimentary allowances granted by a Court ;

3. Sums of money or objects given or bequeathed upon the condition of their being exempt from seizure ;

4. Sums of money or pensions given as aliment, even though the donor or testator has not expressly declared that they should be exempt from seizure ;

5. Wages and salaries not yet due ;

Alimentary allowances and things given as aliment may however be seized and sold for alimentary debts ;

6. Salaries of public officers and pay of all persons in Government employ.

429. The seizure of movables is established by an inventory made by the Sheriff.

430. The inventory must contain :

1. Mention of the writ of execution, its date, and its purport ;

2. A description of the things seized, their number, weight and measure according to their nature, and in the case of vessels as required by the laws respecting them ;

3. The appointment of a guardian, or the name of the depositary furnished by the debtor ;

4. The signature of the guardian or depositary, and of the witnesses, in the case of article 439, or mention that they cannot sign, and the signature of the seizing officer ;

5. Mention of the day on which the seizure is made, and whether it was made before or after noon.

The Sheriff or officer making the seizure is bound to accept a solvent depositary offered by the debtor, and in such case he is not answerable for the acts of the depositary, if he proves that when he accepted him such depositary was solvent to the amount of the property entrusted to his care.

The Sheriff cannot take his relations or connections, to the degree of cousins-german, as guardians or depositaries of the things seized. Nor can he take as such the judgment debtor nor his wife or children, on pain of being liable for all costs and damages.

Brothers, uncles or nephews of the judgment debtor may be appointed guardians, if they consent to be so.

The debtor must also be called upon to sign the inventory, and his refusal or inability to do so must be stated.

431. There must be two copies of the inventory, one of which must be given to the guardian or depositary and another to the debtor, and each copy must be signed by all those whose signatures are required by the preceding article.

432. The guardian or depositary has a right, at the time of his appointment, to remove the property in order to keep it in charge, and to place guards, if necessary, in the place where it is.

If the seizing officer cannot find a responsible guardian or depositary, he may, after serving the inventory upon the debtor, have the things taken away and removed to a place of safety, until he finds such guardian or depositary.

If the person appointed guardian or depositary becomes, while the seizure lasts or is suspended, insufficient to be responsible for the property seized, the Judge may, upon the application of a creditor, authorise the appointment of another person sufficiently solvent or reliable, and may order that the property seized be placed under his care, or in his possession by the Sheriff, after a verification and inventory of the whole has been made.

433. The Sheriff upon an order from the Judge, granted for cause shown, upon application in writing by a creditor, may have effects seized in the country parts removed to the nearest town, or some other place specified, in order that he may there sell them. When sugars are seized the Court or Judge may order the Sheriff or sequestrator to send them to England for sale, insurance being effected.

434. Money, bank bills, bills of exchange, promissory notes, cheques, debentures, bonds, obligations, mortgages, titles of debts, account books, guarantees for money, shares in banks, or other commercial or industrial associations, and all documents of commercial value may be seized and sold like other movables belonging to the debtor.

The purchaser may sue in his own name for the recovery of any sum payable to the judgment debtor. The warranty of the Sheriff is limited to the sum for which the thing was sold.

Upon the application of any creditor made before the the sale, the Sheriff may be ordered to sue in his said quality upon any claim of the judgment debtor in virtue of any movable seized when the same is recoverable, security being given by the creditor to the satisfaction of the Judge that he will pay all costs and charges which may be incurred in the prosecution of the action.

435. If current money is seized, mention of its kind and quantity must be made in the inventory, and the Sheriff must return it with the other monies levied.

436 The seizure of shares in any financial, commercial or industrial company or association, duly incorporated, is made by serving such company with a copy of the writ of execution, together with a notice that all the shares held by the defendant in such company are placed under execution. A similar notice is served upon the debtor.

437. If there be more than one place at which the company may be served, the service hereinabove mentioned, when

made elsewhere than at the place where the transfer of shares and the payment of dividends may be validly made, has no effect against subsequent purchasers until a sufficient time has elapsed to allow notice of the service to be transmitted from the place where it was made to the place where transfers of shares should be entered ; and the company is bound to effect such transmission.

The seizure of such shares includes all benefits and profits attached to them.

438. The Sheriff has a right to demand from the party seizing whatever sums of money may be necessary for the safekeeping of the property seized, according to the provisions contained in articles 687 and 688.

439. If the debtor is absent, or if there is no person to open the doors, cupboards, trunks, or other closed places, or if he refuses to open them, the seizing officer must draw up a minute of the fact, and thereupon the Judge may order the opening to be effected by all necessary means, in the presence of two witnesses and with such force as may be required, without prejudice to imprisonment in case of refusal, violence or other physical impediment.

440. If the debtor has no domicile in the Colony, a copy of the inventory of seizure is left for him at the office of the Registrar.

441. Immediate notice must be given to the debtor, and to the guardian or depositary, of the place and time at which the movables will be offered for sale.

442. The sale of movables seized is advertised by a notice in the *Gazette,* stating summarily the names of the parties, the nature of the effects and the time and place of sale ; and a duplicate of such notice must be posted in the Sheriff's office from the time of such advertisement until the day of the sale, which cannot take place until after the expiration of eight days from the day of the first publication.

443. Seizures in execution can only be made between the hours of six in the morning and six in the evening, except in cases of fraudulent removal, and may if necessary be continued on following days for affixing seals or placing guards.

444. Seizures cannot be made on Sundays or holidays, except in cases of fraudulent removals.

445. If the property has been attached before judgment, it is not necessary to proceed to a verification, but it is sufficient to give a notice to the debtor and guardian or depositary of the place and time of sale, as prescribed in article 441, and to give the notice required by article 442.

446. A creditor who has made a seizure of the effects of his debtor cannot obtain a second writ of execution, unless the previous writ has been returned or accounted for.

§ 2. *Oppositions to the Seizure of Movables.*

447. A seizure of movables in execution may be contested by opposition, either by the debtor himself, or by third parties.

448. The debtor may demand that the seizure of movables in execution be annulled :

1. On the ground of informalities in the seizure, or of the exemption of some of the articles seized, under articles 427 and 428 ;

2. On the ground of the extinction of the debt ;

3. For any reason of a nature to affect the judgment sought to be executed.

If a part only of the debt is extinguished, the opposition has the effect of preventing the sale for more than is due.

449. The owner of a thing seized may oppose the sale of it.

450. Neither the part owner, the pledger, nor the lessor can oppose the seizure and sale of the movables subject to his claim, and he can only exercise his privilege upon the proceeds of the sale.

451. Oppositions to the seizure and sale of movables must be accompanied with an affidavit that the allegations contained in them are true, and that they are not made with the intent of unjustly retarding the sale, but with the sole view of obtaining justice. They stay proceedings when the Judge gives an order to that effect.

452. Oppositions are served upon the Sheriff by leaving with him the original thereof, which he is bound to return into Court without delay.

453. After the return of the opposition, the opposant moves that the other parties to the suit declare whether they intend to admit or to contest it, and in default of such declaration the opposant has a right to be relieved from the seizure, with costs against the judgment debtor, unless the Court otherwise orders.

454. If the other parties, or any of them, declare that they intend to contest the opposition, the contestation is subject to the rules which apply in ordinary suits.

455. If it be alleged in the opposition that the seizing creditor has seized the things, the sale of which is opposed, knowing that they did not belong to the judgment debtor, or that he knew that the articles seized were exempt from seizure, he may be condemned to pay the costs of the opposition if maintained.

456. If on the hearing of an opposition errors of form are proved to exist in the levy or advertisements, the Court maintains the proceedings previous to the error, and if necessary extends the date of the return of the writ.

457. The rules concerning peremption of suits apply equally to oppositions.

§ 3. *The Sale of Movables under Execution.*

458. If there is nothing to prevent the sale of the movables seized, it takes place at the time and place mentioned in the notice.

If the sale has been delayed by any obstacle, subsequently removed, or if there were no bidders, new notices or publications must be given, but the sale cannot take place after the day fixed for the return of the writ, except in virtue of a judgment of the Court or order of the Judge.

459. The guardian or depositary is bound, at the time fixed for sale, to produce all the effects seized, which were placed in his charge.

460. The officer conducting the sale must make minutes thereof, specifying each article put up for sale, the name and residence of each purchaser, and the price of each purchase.

461. The things seized are adjudged to the last and highest bidder, subject to immediate payment of the price, and in default of such payment the thing adjudged is immediately put up again. But payment of the purchase-money of a ship can only be made upon a receivable order. If the purchaser fail to pay within three days after the sale, the ship is re-sold at his cost and charges, and he may be condemned to pay damages for his default.

462. The officer conducting the sale cannot, either directly or indirectly, receive anything beyond the price of the adjudication, under pain of being liable for extortion.

463. The guardian or depositary has a right to a discharge or receipt for the effects which he produces, and the minutes of sale must make mention of any effects which have not been produced.

464. The guardian or depositary may be condemned, even on pain of imprisonment, to produce the property he took in charge or pay the amount due to the seizing creditor. He

may, however, upon establishing the value of the effects which he fails to produce, be discharged upon payment of such value.

465. The adjudication of movable property under execution transfers, by law, the ownership of the things thus adjudged.

In the case of seizures of shares in any financial, commercial, or industrial company or association, duly incorporated, the Sheriff is bound, within ten days after the sale, to serve such company or association, in the manner mentioned in article 437, with a certified copy of the writ of execution, endorsing thereon a certificate designating the person to whom he adjudged the shares seized, and such purchaser thereupon becomes a shareholder in the company, and has all the rights and obligations of one, and may require an entry to be made to that effect, in the manner prescribed by law, by the officer appointed for that purpose by the company.

466. No demand for annulling a sale of movables under execution can be received against a purchaser who has paid the price, except in the case of fraud or collusion, and without prejudice to the recourse of the party aggrieved against the seizing creditor and those acting in his behalf.

467. Immediately after the sale, the costs thereof, including the pay of the appointed guardian, must be taxed by the Judge or by the Registrar, subject in the latter case to revision, if required.

§ 4. *The Payment and Distribution of the Monies Levied.*

468. The amount levied is returned into Court by the Sheriff, to await the judgment.

469. When the monies are returned into Court, as well as in all other cases where monies of which an account has been rendered into Court or monies other than the procceds of immovables are to be distributed, the distribution of the monies is made among all the creditors according to their

rank, and rateably among those of the same rank. Before distribution the creditors are notified by the Registrar to file their claims within eight days after the first publication of the notice in the *Gazette*.

470. The claims may be made out in a summary manner, and it is sufficient to state the names, occupation, and residence of the claimant, and the nature and amount of his claim.

They must be accompanied by vouchers, if there are any. They are filed in the Registrar's office.

471. Different parties, having the same grounds, may join together and file a claim.

472. The monies, if the proceeds of vessels, are distributed according to the law of England and, in other cases, according to the order prescribed in the Book respecting *Privileges and Hypothecs* in the Civil Code, and in the provisions hereinafter contained.

473. The following order is observed as regards ranking of judicial costs :

1. Costs of seizure and of sale ;

2. The percentage payable to the Crown upon monies levied or paid into Court ;

3. The fees of the officer receiving monies levied or paid in ;

4. The fees upon the report of distribution ;

5. The fees of the solicitor prosecuting the distribution ;

6. Costs, subsequent to judgment, incurred in order to effect the seizure and sale, and according to the priority of date or of privilege when there are several seizing creditors ;

The costs of a prior seizing party have a preference over those of a subsequent one.

Nevertheless, if two or more writs of execution issue upon judgments rendered on the same day against the same debtor, the costs thereon are paid concurrently.

7. Costs of affixing seals, or of inventories, when ordered by the Court.

The plaintiff is paid his costs of suit taxed as in an uncontested case.

474. The Crown has a preference over all other creditors upon the proceeds of executions against movable property which, under peculiar statutes, is subject to any duties or dues.

475. The owner of a thing, who has lent, leased, or pledged it, and who has not prevented its sale, has a right to be paid the proceeds of its sale, after the claims mentioned in articles 1890 and 1891 in the Civil Code, and the privileged rights of the Crown mentioned in the preceding article, and the claim of the lessor have been ranked.

476. The same rule applies to the owner of a thing which has been stolen, who would not have lost his right to revendicate it, had it not been judicially sold.

477. Persons who have preserved the right of being ranked upon the price of the thing sold, by reason of a right of pledge or retention which they had upon such thing, rank according to the nature of the pledge or of their claim.

The following is the order amongst them :

Carriers ;

Hotel-keepers ;

Agents and consignees ;

Borrowers, in loan for use ;

Depositaries ;

Pledgees ;

Workmen, upon things repaired by them ;

Purchasers, against whom the right of redemption is exercised, for the reimbursement of the price and the monies laid out upon the property.

478. In the absence of any special privilege, the Crown has a preference over chirographic creditors for sums due to it by the defendant.

SECTION IV.

SEIZURE BY GARNISHMENT.

479. Execution upon the movable effects of a debtor, which are in the possession of a third party, may, in all cases, and must, when such third party does not consent to their immediate seizure, be effected by means of seizure by garnishment.

The same means must be adopted in executing upon debts due to the debtor other than those mentioned in article 434.

480. Seizure by garnishment is made by means of a writ issuing from the Court which rendered the judgment, ordering the garnishees not to dispossess themselves of the movable effects belonging to the debtor which are in their possession, nor of such monies or other things as they owe him or will have to pay him, until the Court has pronounced upon the matter, and to appear on the day mentioned in the writ, to declare under oath what effects they have belonging to the debtor, and what sums of money or other things they owe him or will have to pay him.

481. This writ also summons the debtor to show cause why the seizure should not be declared valid, and mentions the date and amount of the judgment in satisfaction of which it is issued ; and is moreover clothed with the formalities of ordinary writs of summons.

482. The delay for service is eight days. The other rules concerning the service of ordinary writs of summons apply to seizures by garnishment.

Nevertheless, the garnishee cannot be condemned by default, unless the writ of summons or other order to appear has been served upon him personally.

Upon satisfactory proof that a garnishee conceals himself in order to avoid such personal service, service at his domicile is held to be sufficient.

If the defendant upon the principal demand has been summoned as an absentee, the summons upon the garnishment may be served upon him at the Registrar's office, but if he did not leave the Colony until after service of the principal demand, he must be summoned upon the garnishment according to the provisions of article 66, unless the Judge order substituted service.

The defendant is bound to answer the proceedings by garnishment within the same delays as upon a principal demand.

483. The effect of seizure by garnishment is to place the effects and debts of which the garnishee is debtor, under judicial control, and to sequestrate in his hands all corporeal things, in the same manner as if he had been specially appointed guardian.

484. The garnishee is bound to make his declaration before the Registrar, who is authorised to administer to him the necessary oath.

When a seizure by garnishment is made in the hands of a corporation, the declaration is made by an attorney authorised in the same manner as for answering interrogatories, as provided in article 208.

485. The garnishee's declaration must be made on the day appointed by the writ, or on the next following juridical day.

It may be made at any time before the return day, at the Registrar's office, but in such case it cannot be received unless it is accompanied with the Sheriff's return, certifying that previous notice of at least twenty-four hours has been given to the plaintiff of the garnishee's intention to make his

declaration before the return of his writ. But the Court or Judge may grant the garnishee a further delay to make his declaration.

486. The garnishee must declare in what he was indebted at the time of the service of the writ upon him, in what he has become indebted since that time, the cause of debt, and any other seizures made in his hands.

If the debt is not yet payable, he must declare when it will be.

If his indebtedness is conditional or suspended by any hindrance, he must also declare it.

He must furnish a detailed statement of the movable effects in his possession, belonging to the debtor, and declare by what title he holds them.

The judgment creditor may be present when the garnishee makes his declaration, and to put him any questions tending to prove any obligation of the garnishee towards the judgment debtor, saving all objections which a Judge, if present, may decide at once, or which, otherwise, the Registrar must note down for subsequent decision thereon by the Court.

487. The garnishee is entitled to his expenses, which must be taxed by the Judge or by the Registrar, and he may retain the amount thereof out of the sums in which he is indebted ; and, if he owes nothing, such taxation may be enforced against the party suing out the writ, by execution.

488. If the garnishee declares that he is indebted to the judgment debtor, or has movables in his care or custody belonging to him, or if upon the contestation of the declaration it be adjudged that the garnishee is indebted or has movables in his care belonging to the judgment debtor, the garnishee must pay the amount he has acknowledged to owe or has been condemned to pay, as the case may be, into Court upon a receivable order on account of or to the extent of his debt.

If the garnishee is only bound to pay upon a future day, the Court condemns him to pay on that day.

The judgment against the garnishee must be served upon him. The delay for execution in default of payment by the garnishee is fifteen days after the service of the judgment.

489. The amount paid into Court is distributed among the creditors, as in sales of execution against movables.

490. If the monies or other things due by the garnishee are only payable at a future time, he may be condemned to pay them when such time arrives, and if they are due under conditions which are not yet fulfilled, the Court may, upon motion of the seizing party, maintain the seizure until such conditions are fulfilled.

491. Garnishees who do not make their declaration in the manner hereinabove prescribed are condemned as personal debtors of the seizing party, to the payment of his claim.

They may, however, obtain leave to make their declaration at any time, even after judgment, upon payment of all costs incurred upon the seizure.

492. The seizing party must declare within eight days whether he intends contesting the garnishee's declaration, unless a further delay be granted to him by the Court or Judge, and he must at the same time file his grounds of contestation, after serving them upon the garnishee. The latter to answer the same within eight days.

He cannot, however, forfeit his right to contest without an order of the Court to that effect.

493. In other respects, contestations of garnishee's declarations are subject to the same rules as those of ordinary suits.

494. Besides the things enumerated in articles 427 and 428, the following are also exempt from seizure :

Pay and pensions of persons belonging to the Army or to the Navy ;

The salary of school teachers and wages of artisans and labourers.

495. If a garnishee declares that he has in his possession movable effects, negotiable paper, or titles of debt payable to bearer, the judgment orders that they shall be sold, and the garnishee is bound to deliver them to the Sheriff.

496. The proceeds of such movable effects are afterwards distributed in the same manner as other monies levied under execution against movables.

497. If a garnishee declares that he is not indebted, and he cannot be proved to be so, the Court orders him to be discharged from the seizure, and condemns the seizing party to pay the costs.

SECTION V.

EXECUTION UPON IMMOVABLES.

§ 1. *The Seizure of Immovables in Execution.*

498. The seizure of immovables can only be made against the judgment debtor.

No seizure can be made of immovables declared by the donor or testator thereof, or by law, to be exempt from seizure.

499. The seizure of immovables can only be made in virtue of a writ, clothed with the same formalities as writs of execution against movables, ordering the Sheriff to seize the immovables of the defendant and to sell them in satisfaction of the judgment pronounced against him for principal, interest, and costs.

The date of the judgment must be inserted in or written and certified upon the writ, under the signature of the Registrar.

Exceptional provisions regulate the sale of immovables for the payment of municipal taxes and assessments.

500. The writ is addressed to the Sheriff and is executed by the Sheriff himself or by one of his officers. It must be made returnable on a day certain within four months from its date, except in cases where the immovable is of no greater value than two hundred and eighty-eight dollars.

501. Before proceeding to seize immovables, the seizing officer calls upon the defendant to declare and specify his immovable property, and upon his failure so to declare and specify, or if he be absent, the executing officer may seize the property in possession of the defendant, at the risk and peril of the latter.

502. The seizure of immovables is recorded by minutes, which must contain :

1. Mention of the title under which the seizure is made ;

2. Mention of the defendant having been called upon, as required by the preceding article ;

3. A description of the immovables seized, indicating the town, village, or parish, as well as the street (when in a town or village) in which they are situated, and the coterminous lands ;

4. The number and description of the cattle used in the cultivation of the estate must also be given ;

If the property to be seized consists of incorporeal rights, such as rents, leases, or other real charges, mention must be made of the title under which they are due, with a description, as above mentioned, of the real property charged with the same ;

5. Mention that the minutes are made in duplicate, and that one duplicate thereof has been delivered to the judgment debtor, either personally or at his actual or legal domicile.

503. The seizing party's domicile is elected at the Sheriff's office, without its being necessary to elect another or to mention it in the minutes.

504. The judgment debtor, as well as his seizing creditor, may cause the ground rents and charges upon the immovables seized to be mentioned in the minutes.

505. The alienation of immovables which are under seizure is null and void.

The alienation avails, however, if the seizure is declared null, or if, before the day fixed for the sale, the purchaser or the debtor pays into the hands of the Sheriff upon a receivable order a sufficient sum to discharge the claims of the creditor in whose name the seizure was effected, as well as the claims of any creditors whose writs of execution have been noted, and the amount thus deposited is forthwith paid by the Sheriff by cheque to the creditors entitled to it.

506. The judgment debtor may remain in possession of the immovables until the adjudication. If he does so remain, he has all the responsibility of a guardian to movables. The Sheriff may, however, appoint any other person guardian.

507. Any creditor may, if the Court or Judge think fit, obtain the appointment of a sequestrator to receive the rents, issues, and profits of the immovables, and to expend the advances made for the cultivation of the estate while under execution. The Court or Judge may also authorise the sequestrator to take possession of all the property movable and immovable of the judgment debtor.

508. The advances mentioned in the preceding article can only be made upon the order of the Judge, upon the application of a creditor, notice of the application having been given to the plaintiff, the defendant, and to the opposants if any there be. These advances, with the interest thereon, rank immediately after the funeral expenses upon the proceeds of the crop for the cultivation of which the advances are made, and if there be sufficient upon the immovables in the same rank.

509. The judgment debtor cannot, nor can any other person, cut timber on the property seized, or in any manner

deteriorate the same, on pain of being imprisoned for a term not exceeding six months, under a rule of Court or the order of the Judge.

510. The Sheriff may, before seizing immovables, exact from the party who places the writ in his hands the sum of nine dollars and sixty cents, to meet the first expenses.

§ 2. *Advertisements.*

511. (Am. 7-1913 ; 3-1954.) The Sheriff is bound to advertise in the *Gazette*, three separate times within the space of two months from the date of the first publication, the sale of immovables seized.

The advertisement must contain :

1. The number of the cause and the date of the judgment under which the execution takes place ;

2. The names and surname of the plaintiff in the suit, or if there are several plaintiffs, a designation of the first named in the writ, with an indication that there are others ;

3. The names and surname of the defendant in the suit, or if there are several defendants, a designation of the one first named in the writ, with an indication that there are others ;

If the plaintiff or defendant is acting as a tutor to minors, it is sufficient to state that he is acting as tutor to the minor children of the deceased person, without designating the minors by name ;

4. A designation of the immovables, or of the rents, as the case may be, as inserted in the minutes of the charges therein mentioned and of those also which the seizing party has requested in writing to have inserted, and mentioning upon which of the defendants the property is seized ;

5. The time and place at which the immovables or rents will be put up for sale and adjudged ;

6. The date at which the writ of execution is returnable into Court ;

7. The conditions of payment of the purchase money ;

8. The upset price, if one has been fixed in accordance with the following articles.

511A. (Ad. 3-1954.) The Judge or the Registrar may on an application made by the judgment creditor, notice of which shall be served on the judgment debtor, fix an upset price for the sale of immovables seized by the Sheriff by virtue of a writ of execution.

511B. (Ad. 3-1954.) The judgment creditor shall file as an exhibit to his application a certificate by the Registrar showing all claims registered against the immovable.

511C. (Ad. 3-1954.) On the hearing of the application if the parties agree on the upset price to be fixed, the Judge or Registrar shall make an order accordingly, but if the parties fail to agree the Judge or Registrar may fix an upset price after hearing the parties and their witnesses or may order that the matter be referred to experts in accordance with the provisions of articles 287 to 304.

511D. (Ad. 3-1954.) If the upset price is not reached when the immovable is put up for sale, the Sheriff shall make a return to the Registrar to that effect, and the Judge or the Registrar shall fix a new upset price for the immovable which price shall be the original upset price reduced by not more than twenty-five per cent., shall order the immovable to be re-advertised for sale for a further period of one month, and shall extend the time for return of the writ for such further period as the circumstances may require.

511E. (Ad. 3-1954.) The judgment creditor may, if he is dissatisfied with an order made by the Registrar fixing the upset price, appeal therefrom to a Judge in Chambers, in accordance with the provisions of Rule 3 of the Supreme Court of the Windward Islands and Leeward Islands (Powers of Registrars) Rules, (Statutory Rules and Orders, 1957 Revision, Chapter I, Part I.), but no appeal shall lie where the upset price has been fixed with the consent of the parties.

512. (Subst. 3-1954.) The purchase money shall be payable as follows :—

1. If it does not exceed two hundred and forty dollars it shall be payable in cash at the time of sale.

2. If it exceeds two hundred and forty dollars but does not exceed nine hundred and sixty dollars, one-half of the amount at least shall be payable at the time of sale and the balance one year thereafter with interest at six *per centum* per annum.

3. If it exceeds nine hundred and sixty dollars it shall be payable by three equal instalments, the first to be payable at the time of sale and the others annually thereafter with interest at six *per centum* per annum from the time of sale.

§ 3. *Oppositions to the Seizure and Sale of Immovables.*

513. The Sheriff, in the absence of any consent on the part of the seizing creditors, cannot stop the sale of immovables, except upon the Judge's order permitting the filing of an opposition, accompanied with an affidavit on the part of the opposant, or of his attorney in the absence of the opposant, that all the allegations in the opposition are true, to the best of the deponent's knowledge and belief, and that the opposition is not made with intent unjustly to retard the sale, but solely to obtain justice.

514. Every opposition to the seizure and sale of immovables or rents must be filed in the Sheriff's office at the latest on the tenth day before that fixed for the sale.

No opposition filed after this period can stop the sale, unless the special order of the Judge be obtained on good cause shown, and upon such terms and conditions as he may think just. If the object of the opposition not allowed by the Judge is to withdraw, in whole or in part, the immovable or the rent under seizure, or to impose upon the purchaser some charge which would be destroyed by a Sheriff's sale, such opposition has the effect of an opposition for payment out of the monies levied.

The Sheriff in all cases is bound to return such oppositions into Court.

515. Notwithstanding the filing of any opposition to the seizure or sale of immovables or rents, the Sheriff is bound to continue the publications hereinabove prescribed, but he cannot in such case proceed with the sale without an order from the Court or Judge.

Nevertheless when the opposition is founded upon grounds which only go to reduce the amount claimed, the plaintiff, upon giving the opposant notice that he admits his opposition, may proceed to the sale in conformity with the conclusions of such opposition.

516. Every opposition must be delivered to the Sheriff, and the return of its service upon him, if it is required, must be made at the foot of a copy thereof.

517. Saving the provisions of article 514 respecting oppositions not allowed by the Judge, the Sheriff is bound to return into Court, within twenty-four hours, any oppositions to the seizure and sale duly served upon him, together with the writ of execution, all his proceedings, including a duplicate of the advertisement published in the *Gazette*.

518. Every party who opposes unsuccessfully the sale of an immovable or of a rent under seizure, is liable towards the party seizing and the defendant, not only for the costs incurred upon his opposition, but also for all damages incurred upon his opposition, but also for all damages resulting therefrom, including interest upon the amount due to the plaintiff, for the time during which the sale was stopped.

OPPOSITIONS TO ANNUL.

519. The party whose immovables or rents are seized may oppose the seizure or the sale thereof, whether his opposition be founded on matters of form or on matters of substance.

Third parties may likewise file similar oppositions when they have an actual interest therein.

OPPOSITIONS TO WITHDRAW.

520. Oppositions to withdraw may be filed by third parties who claim as their property part of any immovable or rent under seizure.

When the property is undivisible the Judge may order the sale of the whole property upon the petition of a creditor of the defendant, such petition having been previously served upon the opposant and the other known proprietors of the property seized. If the sale be so ordered, each undivided proprietor has a claim on the proceeds, according to his share in the property.

OPPOSITIONS TO SECURE CHARGES.

521. Oppositions to secure charges may be filed by a third party when an immovable under seizure is advertised to be sold without mention being made of some charge with which the immovable is burthened in his favour, and from which it might be discharged by a Sheriff's sale. But such oppositions are unnecessary and cannot be received for the purpose of securing servitudes other than conventional.

OPPOSITIONS TO CHARGES UPON IMMOVABLES UNDER SEIZURE.

522. Any person aggrieved by reason of an immovable being advertised as subject to a charge posterior to his claim which prejudices his claim, may file an opposition to the end that the property be not sold subject to such charge, unless good and sufficient sureties be given him that it will be sold at a sufficient price to ensure payment of the amount due him.

This opposition may likewise be made either by the seizing creditor, or by the judgment debtor, when the mention of such charge has been made without the participation of the opposant.

§ 4. *Venditioni exponas.*

523. When oppositions are decided before the day fixed for sale, if the seizure is not set aside, and if no new notice

of sale be required, the Sheriff on the day of sale may proceed upon the writ in accordance with the judgment of the Court.

But if the oppositions are not decided until after the day fixed for the sale, the Sheriff can only proceed to sell under a writ of *venditioni exponas*, and in conformity thereto, and after three further consecutive publications in the *Gazette*.

524. The execution of a writ of *venditioni exponas* cannot be stopped by opposition, unless for reasons subsequent to the proceedings by which the sale was suspended in the first instance and upon the order of the Judge.

§ 5. *Bidding and Sale.*

525. On the day and at the place appointed for the sale, the officer conducting the same, after reading the notice, the charges and conditions of the sale, offers the immovable for sale.

526. No bid can be received unless the bidder, if required, declares his names, quality, or occupation, and residence. Minutes are taken of the bids received.

Every bid implies an undertaking to buy the property at the price of such bid, subject to the condition that no higher valid bid will be given.

527. The conditions of the Sheriff's sale must express all those contained in the advertisements.

528. The party upon whom the property is sold, if personally liable for the debt, cannot be purchaser nor bid, nor can the Sheriff or other officer entrusted with the sale.

529. Verbal bids may be made by proxy.

530. The officer conducting the sale must require from every bidder, before he receives his bid, a deposit of a sum of money equal to the costs then due to the seizing party upon the judgment and seizure, in the following cases :

1. In all cases wherein the sale has been stopped by an opposition ;

2. In cases of resale upon false bidding, if the Court has imposed that condition at the instance of some party to the suit.

531. The Court or Judge may also order such deposit or payment in any case where the party seizing, or his attorney, declares upon oath that he is credibly informed, and believes that the defendant, with a view to delay the sale, will cause the immovable to be adjudged to some insolvent or unknown person.

532. In any case wherein two resales upon false bidding have taken place, the Court may, upon application of any interested party, order that every bidder shall be required to or pay a sum equal to one-third of the debt due to the seizing party, in principal, interest and costs, but not in any case exceeding four hundred and eighty dollars.

533. In the cases mentioned in the three preceding articles, the officer conducting the sale may, with the consent of the plaintiff, or of any person authorised by him, receive the bid of any bidder without requiring the prescribed deposit ; and such consent must be in writing or given in presence of two competent witnesses whose names such officer must enter in his return.

534. If the bidder fails to deposit forthwith the amount required, his bid is disregarded, and the proceedings are resumed upon the previous bid.

535. The Sheriff, or other officer conducting the sale, is bound, immediately after the adjudication, to refund to every bidder except the purchaser, the amount deposited by each, and the deposit made by the purchaser is retained as part of the purchase money.

536. The adjudication of an immovable cannot be made before the expiration of an hour from the time at which it

was put up for sale, and after that delay, the officer before adjudging it must receive all other bids offered.

537. (Am. 3-1954.) The property must be adjudged to the highest and last bidder : provided however that in cases where the property is sold subject to an upset price the property shall not be adjudged to the highest and last bidder unless the upset price is attained or exceeded.

538. A person who has purchased as proxy for another, is bound to furnish the Sheriff, within three days, with the names, quality and residence of his principal, and his power of attorney, or a ratification of his bid and purchase ; in default whereof he is held to have purchased in his own name.

He is likewise held to have purchased in his own name, if the person for whom he acted is not known, cannot be found, is notoriously insolvent, or is incapable of being purchaser.

539. The purchaser is bound to pay to the Sheriff so much of the purchase money as may be due by him within three days of the times fixed for payment, and is bound to pay interest annually from the day of sale. He is also bound to furnish the Sheriff with security upon real property within three days for the payment of the second instalment unless he prefer to pay the same, or unless he prefer to pay the whole amount of the purchase money. All payments must be made upon receivable orders.

540. Nevertheless, the plaintiff or any other creditor who has filed an opposition in the hands of the Sheriff, may, on becoming purchaser, retain the purchase money to the extent of his claim, until the scheme of ranking, provided he pay the Sheriff the costs of sale and furnish him with good and sufficient security for all damages that might result to any party interested, in the event of the non-payment of such sum as the Court or Judge may order such purchaser to pay into the hands of the Sheriff.

541. Upon payment by the purchaser of the first instalment of the price of the adjudication, or, if he is a creditor, of so much thereof as he is not entitled to retain, and security having been given for the payment of the second instalment, the Sheriff is bound to give such purchaser a deed of the sale made to him.

Such deed must contain :

1. A designation of the writ under which the sale took place ;

2. The number of the cause, and the names, surnames, additions and residence of the parties ;

3. A description of the immovable seized ;

4. A statement that all the formalities prescribed by law have been observed ;

5. The time and place at which the property was adjudged ;

6. The conditions of the sale including those mentioned in articles 552 and 553 ;

7. A statement of the price at which the property was adjudged and the amount paid and remaining unpaid. The amount unpaid is a charge or mortgage upon the property, and is due and payable to the parties mentioned in the scheme of ranking according to their priority ;

8. A conveyance of all the rights of the judgment debtor upon the immovable.

§ 6. *Resale.*

542. Upon the Sheriff's return that a purchaser has not paid any instalment of the purchase money due by him, nor given security when he may lawfully do so in virtue of article 540, nor given security for the payment of the second instalment, the plaintiff may demand that the immovable of which the purchase money thus remains due be resold for false bidding at the risk of the purchaser thus in default.

This is done by a notice served upon the latter with the delays required for ordinary summonses : and if the purchaser does not reside or has no domicile in the Colony, the service may be effected at the office of the Registrar. When the delay has expired the Sheriff may proceed with the sale if there be no contestation.

543. Any creditor whose claim appears upon the record, or the defendant, may demand the resale ; but the purchaser cannot be held liable for the costs of more than one of such proceedings, and that of the seizing party, or, in his default, the one first served, has the preference over the others, provided the creditor follows it up with proper diligence.

544. The proceedings upon an application for resale are summary, and are made before the Court or Judge. No written contestations can be had thereon without leave.

545. In all cases the bidder is liable for all damages and interest accruing to the judgment creditors or to the defendant, from his failure or delay to pay the purchase money, or from his default in not giving security, and he is moreover bound to pay the difference between the amount of his bid and the price brought by the actual sale, if such price be less. If the price be greater, and if the bidder have paid nothing upon the property, he has no right to the excess, which goes to the benefit of the judgment debtor and his creditors.

546. The purchaser may prevent the resale for false bidding by paying into the hands of the Sheriff, upon a receivable order before such sale, the instalment due, with the interest accrued thereon, and giving security, if any be required, and for all costs incurred by reason of his default.

547. If the price of the resale is not sufficient to cover the amount of the first purchase, with interest thereon, and the costs incurred on the resale, the bidder may be held, even by imprisonment, to pay the difference, upon an application to

that effect, made by any party to the suit, in the same form and manner and under the same conditions as that for a resale.

548. (Am. 7-1913.) Resale for false bidding can only take place after three publications as prescribed in article 511.

The surety for an instalment of the purchase money of property judicially sold, who has paid such instalment, shall be entitled to be collocated, in respect of such payment, on the proceeds of a resale of such property only after the unpaid collocations charged on the proceeds of a prior sale, or resale, of such property.

§ 7. *The return of writs of execution.*

549. The Sheriff in whose hands a writ has been placed for the sale of the immovables of a debtor, is bound, on pain of being liable for all costs and damages, to return such writ on the day appointed, together with a certificate of his proceedings, the minutes of seizure, copies of the *Gazette* containing the advertisements, the minutes of the bidding, a statement of his fees and disbursements taxed in conformity with article 550, and all oppositions and claims placed in his hands, or writs of execution which he has noted as oppositions.

If there be a return of *nulla bona* it must be made forthwith without waiting until the day fixed for the return of the writ.

550. The Sheriff is allowed, out of the monies which he has levied, all costs incurred by him to effect the sale, and all fees belonging to his office, after they have been taxed by the Judge or the Registrar. He holds the amount levied subject to the order of the Court or Judge.

§ 8. *The effect of the Sheriff's sales.*

551. No adjudication is perfect until the price is paid.

552. The purchaser takes the immovable in the condition in which it is at the time of the adjudication, without regard to deteriorations or improvements subsequent to the seizure.

553. The adjudication is always with warranty as to the contents of the immovable, and it conveys all rights which belong to it, and which the judgment debtor might have exercised, and also all active servitudes attached to it, even though they are not mentioned in the minutes of seizure.

554. A Sheriff's sale discharges immovables from all servitudes with which they are charged, except those established by law.

A Sheriff's sale discharges property from all other real rights not mentioned in the condition of sale.

555. A purchaser who buys an immovable advertised as having a certain building thereon, may demand a diminution of the price if the building be found to be on a neighbouring lot.

556. A purchaser who cannot obtain the delivery of the property from the judgment debtor, must demand it of the Sheriff, and upon the Sheriff's return or certificate of the refusal to deliver, the purchaser may apply to the Court or Judge by petition, of which the debtor has received notice, and obtain an order commanding the Sheriff to dispossess the debtor, and to put the purchaser in possession, without prejudice to the recourse of the latter against the debtor for all damages and costs resulting from his refusal.

557. The proceedings upon this application are the same as upon that for a resale.

§ 9. *The vacating of Sheriff's sales.*

558. Sheriff's sales may be annulled :

1. At the instance of the judgment debtor, or of any creditor or other interested person :

If fraud or artifice was employed, with the knowledge of the purchaser, to keep persons from bidding ;

If the essential conditions and formalities prescribed for the sale have not been observed ; but the seizing party cannot

annul the sale for any want of formalities attributable to himself or his solicitor ;

2. At the suit of the purchaser :

If the immovable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference.

559. The application by any other than the judgment debtor, must be made in the suit by a special petition, within three months from the date of adjudication, it must be served upon the seizing party and upon all other interested parties in the suit, and in other respects is subject to the rules of ordinary procedure.

The party who prosecuted the seizure and sale has a preferable right to contest any suit brought to annul such sale ; and if he fails to do so within the prescribed delays any other party may take up the contestation ; but the purchaser cannot, in any case, be condemned to pay the costs of more than one contestation.

560. An application on behalf of the judgment debtor must be made within fifteen days from the date of the adjudication.

561. The nullity of the sale may be pleaded by the purchaser against whom an application is made for a resale for the non-payment of the first instalment.

§ 10. *Oppositions for payment.*

562. The Registrar is bound to keep a register in which are entered all returns by the Sheriff to writs of execution issued by the Court, with mention of the amounts levied, of the oppositions made to the distribution thereof, and of all claims filed as well in the hands of the Sheriff as in the Registrar's office.

563. Oppositions for payment may be filed with the Sheriff, if he has not yet made his return, or in the office of

the Registrar after the return is made. When the return is made the Registrar notifies the creditors to file their oppositions within eight days after the first publication in the *Gazette*.

After this delay, they cannot be filed without permission of the Judge or Court, and upon such conditions as may be imposed.

564. When there is no opposition, a judgment may be rendered by the Registrar in the name of the Court, ordering the monies to be paid by the Sheriff by cheque to the seizing party, according to their sufficiency and to the amount of his claim.

§ 11. *Collocation and the distribution of monies.*

565. After the delay for filing oppositions has expired the Registrar prepares a scheme of ranking without delay.

566. The scheme of ranking must mention the names of the parties plaintiff, defendant and opposant, and the amount levied.

567. Each collocation must form a separate article, in numerical order.

568. In preparing the scheme of ranking the Registrar must act according to the apparent rights of the parties, as shown by the oppositions, claims and the other documents forming part of the record, and in conformity with the rules contained in the Civil Code, in the Book respecting *Privileges and Hypothecs,* and *Registration of Real Rights*, and with those hereinafter declared.

Law costs must, however, be collocated in the following order :

1. Costs of the report ;

2. Tax upon the amount levied, and costs of seizure and sale ;

3. Costs incurred upon the writ of execution against immovables, and such as may remain due upon the discussion of the movables ;

4. Costs of affixing seals, and of making any inventory required by law ;

5. Costs incurred either in the Court below or in appeal, upon proceedings incidental to the seizure and necessary to effect the sale of the immovables ;

6. Costs of suit, as provided in article 473.

569. After law costs, those claimants must be collocated in their respective order who had some right of property in the immovable sold, and who failed to set up their rights in due time by opposition to annul, opposition to withdraw, or opposition to secure charges, but have filed claims for payment ; after, however, deducting such debts as they may be bound to pay and as have become payable in consequence of the sale of the immovable, and the costs mentioned in the preceding article.

570. Conditional hypothecs are collocated in the report according to their rank, but the amounts thereof are made payable to subsequent creditors whose claims are due or, in default of these, to the defendant, upon good and sufficient sureties being given for the return of the money, in the event of the condition being fulfilled ; and upon failure of the latter to give such security, within the delay fixed by the Court, the amounts may be paid to the conditional creditors, upon their giving good and sufficient sureties to return the monies in the event of the condition failing, or becoming impossible and paying interest, when the case requires it to such persons as the Court may order.

571. In the case of neither party furnishing the requisite security, the amount of the conditional claim may be placed in the hands of a sequestrator or depositary upon whom the parties agree, or whom the Court or Judge appoints.

572. When a prior claim is undetermined and unliquidated, the Registrar, out of the disposable monies, must reserve a sufficient sum to cover it ; and such sum remains in the Sheriff's hands until the claim is liquidated, or until the Court otherwise orders.

573. Hypothecary claims due with a term of payment become payable in consequence of the discussion and sale of the immovable subject to them, and are beneficially collocated, but if they do not bear interest, the creditor is then collocated and receives the amount of his collocation on condition that he shall give and after he has given security to pay interest, until the term expires, to the subsequent made payable to the party collocated so long as the principal creditors mentioned in the report ; and if he is collocated for a part only of his claim, he is not liable for interest towards such subsequent creditors until the full amount of his claim is completed. The amount of the conventional dower, if any, may remain as a mortgage upon the property sold until it becomes payable. The interest of the amount is remains unpaid.

574. Claims for the capital of life-rents are determined and collocated according to articles 1809, 1810, 1811 and 1812 in the Civil Code.

575. Interest and arrears of rents preserved by registration of a claim are placed in the same rank with such claim, up to the day on which the immovable was adjudged.

A creditor whose claim is registered is collocated, in the same rank, for the costs as in a default action in the Court of first instance. His costs in appeal rank only according to the date of their registration.

576. When several immovables, or pieces or parcels of land separately charged with different claims are sold for one and the same price ;

When a vendor's claim comes in concurrence with a builder's privilege ; or,

When a creditor has some preferential claim upon part of an immovable, by reason of improvements or other cause ;

And the disposable monies are insufficient ;

The Registrar, if the record does not afford him sufficient data to perform the relative valuation himself, must suspend the distribution and report the facts to the Court or Judge.

577. Upon the application of one of the parties interested, after notice given to the others, the Court or Judge orders experts to be named in the ordinary manner, in order to establish the respective values of the immovables, pieces of land, or improvements and the proportion which should be allotted to each out of the monies to be distributed.

578. The relative valuation being established upon the report of the experts, the case is sent back to the Registrar, in order that he may proceed to determine the order of collocation and the distribution of the monies.

579. The parties are allowed eight days to contest the scheme of ranking, reckoning from the day on which notice is posted in the Registrar's office of the scheme having been made.

580. The contestation may relate to the scheme itself and to the order or rank of the collocations, or it may go to the merits or substance of any of the claims collocated, and in this case the scheme becomes impliedly contested and stayed, to the extent of such contestation, without its being necessary to file a special contestation of the scheme to that end.

The contestation in all cases must be accompanied with the reasons and documents in support thereof, if there are any, and a copy of such contestation must be left with the party interested, either at his elected domicile or at the Registrar's office, if there is no such domicile.

581. Contestations of the scheme or of the order of collocation may be inscribed forthwith upon the roll for hearing, after notice given to the parties interested, without the necessity of any written answer to such contestation.

582. When a contestation of the scheme, or of a collocated claim is maintained, it is so maintained for the benefit of the mass of the creditors, and the Registrar prepares a new scheme according to the rights of the parties.

583. The right of contesting claims, oppositions or collocations belongs to whichever of the interested parties is first to use it.

A party whose claim or collocation is contested is not bound to answer more than one of several contestations founded on the same grounds, and he may apply to have such contestations united and the proceedings thereon conducted between him and the first contesting party, all notices required being served upon the other contesting parties, who have a right to watch the proceedings and even to be put in the place of the party who has taken up the contestation, in the event of his withdrawal or of his neglect or refusal to proceed.

584. Contestations upon the merits of oppositions or claims are subject to the rules of procedure which apply in ordinary suits. Different opposants may join together and make a single contestation upon the same grounds.

585. After the delay for contesting the scheme has expired, the prosecuting party, or upon his failure to do so within two days, any other party interested may move for the homologation of the whole scheme, if there is no contestation, or of the part which is not contested or is not affected by the contestations, when these are only to a part.

Such motion cannot, however, be made until after notice thereof has been posted up in the Registrar's office during at least four days.

586. The homologation may be granted either by the Court or Judge, or by the Registrar, in term or in vacation, unless there is a counter application or a contestation, in which case the Court alone can decide. When the scheme is homologated, the Registrar draws up and transmits to the Sheriff the schedule of payments without delay.

587. When no opposition for payment has been filed, or when all the parties consent, the monies levied may, without the formality of a scheme of ranking, be adjudged by the Registrar to the parties entitled to them, upon a motion to that effect made either in term or in vacation.

§ 12. *Sub-collocation.*

588. Any creditor of a person who is entitled to be collocated, or is beneficially collocated upon monies levied, has a right to file a sub-opposition, demanding that, to the extent of his claim, the sum accruing to his debtor be not paid to such debtor, but to him.

The sub-opposition must be supported by an affidavit that the amount claimed is due.

589. Sub-opposition must be served upon the party whose monies are thus attached.

590. The sub-collocation may follow the collocation, and be included in the general scheme, or it may form a separate scheme, and is subject to the same rules and formalities ; but the costs thereof are borne by the creditor whose collocation is thus opposed.

591. If a debtor fails to exercise his rights and claims, his creditor may intervene in the distribution in order to exercise the rights of such debtor, in the same manner and with as little expense as the debtor himself could have done.

§ 13. *The payment of monies levied.*

592. At the expiration of eight days after the date of the judgment homologating a scheme of ranking the Sheriff is bound to pay by cheque, to the parties entitled thereto, the monies which he has received.

593. The Sheriff, or other officer performing his functions, may be held by imprisonment to the payment of the monies by him levied or received.

594. Any party aggrieved by a scheme of ranking may seek redress by means of an appeal, or a petition in revocation, if there are grounds for it.

595. When a scheme of ranking is reformed or the adjudication is set aside, or if a reduction be made upon the price of sale owing to a deficiency in the quantity of land sold or other cause, whatever sums have been unduly paid must be returned to the Sheriff upon a receivable order, and the parties collocated are bound to refund such monies upon an order of the Court to that effect.

§ 14. *General provisions in respect of sales of movables and immovables.*

596. When the Sheriff has seized movables or immovables upon a judgment debtor he cannot seize them again at the suit of another creditor, or of the same creditor for another debt as long as the first seizure subsists : but he is bound to note any subsequent writ of execution as an opposition for payment upon the first writ ; and in such case the first seizure cannot be abandoned nor suspended, except in consequence of oppositions applicable as well to the seizing creditor as to those whose writs of execution have been noted as oppositions or with their consent, or by an order of the Judge.

597. In the event of the seizing creditor abandoning the seizure or receiving payment of his claim, the Sheriff is bound to continue the proceedings in the name of the seizing creditor and at the cost of the judgment creditors whose writs have been noted, in order to satisfy the claims specified in the subsequent writs of execution, provided that the seizure was made with all requisite formalities.

598. Any creditor whose writ has been noted may apply to the Court or Judge to have his name substituted for that of the seizing creditor upon showing due cause therefor, such as delay on the part of the seizing creditor.

599. Neither the Sheriff nor any of his officers can either directly or indirectly bid upon property put up for sale, nor become purchaser thereof.

600. (Am. 3-1954.) No sale can take place unless there be three persons present and bidding exclusive of the Sheriff and his officers.

601. The sale must not proceed beyond the sum necessary to pay the amount the Sheriff is required to levy in virtue of the writs in his hands in principal, interest, and costs, and percentage due to the Crown; to this end the judgment debtor has the right to fix the order in which the things are to be put up for sale.

602. The proceedings upon oppositions to the seizure and sale of immovables or rents are the same as those upon oppositions to the seizure or sale of movables.

603. The proceedings, upon contestations of schemes of ranking and of claims collocated, upon the homologation of a scheme of ranking, in whole or in part, upon sub-collocation, and upon the payment of monies levied, are the same in the case of movables as in the case of immovables.

604. A party contesting an opposition may pray the Court that a deed upon which such opposition is founded, or which is produced in support thereof, may be declared fraudulent, null, or void, as the case may be, without having recourse to a direct action.

The Court may order that any party not of record be served with a copy of the contestation. Any party having an interest in the contestation may intervene as in ordinary cases. The contestants may serve the contestation upon any one interested, and thereby make him a party of record.

605. The proceedings upon a contestation are carried on *ex parte* with regard to any party who does not reply to the contestation within eight days after its service upon him.

SECTION VI.

ABANDONMENT OF PROPERTY.

606. Any debtor arrested under a writ of *capias ad respondendum*, may make a judicial abandonment of his property for the benefit of his creditors.

607. This abandonment is effected by filing in the Registrar's office a statement, sworn to by the defendant, and making known :

1. All the movable and immovable property of which he is possessed ;

2. The names and addresses of all and each of his creditors, the amount of their claims, and the nature of each claim, whether privileged, hypothecary, or otherwise.

Such statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors.

608. The debtor must give the plaintiff notice of the filing of the statement and of his declaration of abandonment.

609. A debtor who has been admitted to bail is bound to file this statement and declaration within thirty days from the date of the judgment rendered in the suit in which he was arrested.

Any person condemned to pay a sum exceeding forty-eight dollars exclusive of interest from service of process and costs, is likewise, after such movable and immovable property as he appears possessed of have been discussed, bound, upon being required to do so, to file a similar statement.

610. If the debtor is in gaol he may file such statement and declaration at any time.

611. If the defendant on bail neglect or refuse to file a statement within one month after his discharge on bail, the Court or Judge may order that he be imprisoned until he

furnishes the statement, but such imprisonment shall not exceed two years.

612. Upon the filing of the statement and declaration of abandonment by the debtor, his property vests in the Administrator General as curator. The Court or Judge on the application of any creditor may appoint another curator in the place of the Administrator General. Notice of such application, and of the day and hour at which it is to be made, must be given by advertisement in two numbers of the *Gazette.*

The Administrator General and the curator so appointed by the Court or Judge have respectively the same rights and duties as the Administrator General and trustee have with regard to bankrupts, as set forth in the Title on *Bankruptcy* in the Commercial Code, and dispose of the property abandoned, and distribute the proceeds, as set forth in the said Title with regard to the property of bankrupts.

613. The curator appointed by the Court or Judge must give security to the satisfaction of the Judge. He gives notice of his appointment by two advertisements in the *Gazette.*

614. The curator has likewise a right to receive, collect, and recover any other property belonging to the debtor, and which the latter has failed to include in his statement.

615. Within one month after the filing of the statement, when the debtor is in prison, and within six months after the filing of such statement when the debtor is at large under bail, it may be contested by any creditor, by reason :

1. Of the omission to mention property of the value of forty-eight dollars.

2. Of any secreting by the debtor within the thirty days 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, in respect of the number of his creditors or the nature or amount of their claims.

616. The contesting party is bound to proceed as in an ordinary case.

617. The debtor is bound to attend before the Court or before the Judge, under the penalty hereinafter imposed, in order to answer all questions which may be put to him concerning such statement.

618. If the contesting party establishes any one of the offences mentioned in article 615, or if the defendant refuses to attend or to answer, as required under the preceding article, the Court or Judge may condemn him to be imprisoned for a term not exceeding two years.

If the debtor so ordered to be imprisoned, does not surrender himself, or is not surrendered for that purpose according to such order, then the sureties are liable to pay the plaintiff the debt, together with interest and all costs.

619. If the allegations of the contestation are not proved, within the delays above mentioned, the Court or Judge may order the discharge of the debtor; and the latter cannot again be imprisoned for any debt due the plaintiff, or any other creditor, by reason of any cause of action anterior to his statement and declaration of abandonment; and in case of such imprisonment he may obtain his discharge either from the Court or Judge, upon petition and sufficient proof.

620. The abandonment of his property deprives the debtor of the enjoyment of such property.

621. The abandonment of his property discharges the debtor from his debts to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property.

622. Special provisions concerning insolvent traders are contained in the Commercial Code.

SECTION VII.

IMPRISONMENT.

623. Imprisonment cannot be carried into execution before twenty-four hours after the service of a copy of the judgment authorising the arrest of the party, unless such party absconds in order to avoid it.

624. In all cases of resistance to the orders of the Court respecting the execution of the judgment by seizure and sale of the property of the debtor, as well as in all cases in which the defendant conveys away or secretes his effects, or uses violence or shuts his doors to prevent the seizure, the Judge may exercise all the powers of the Court, and order the defendant to be imprisoned until he satisfies the judgment.

625. Imprisonment cannot be granted against tutors or curators for any balance of account due by them, until after the expiration of four months from the service upon them of the judgment establishing such balance.

626. Imprisonment can only be effected in the time during which summonses may be served.

627. The debtor cannot be arrested :

1. On a legal holiday ;

2. In a place of public worship, during divine service ;

3. In a Court of justice when the Court is sitting, or before any privileged tribunal.

628. Notwithstanding what is contained in the two preceding articles, the Court or Judge may order the arrest to be made on a holiday, or at any time, if it is established that the defendant is acting in such a manner as to escape it.

629. Imprisonment can only be executed in virtue of a writ or order from the Court or Judge, which may be addressed to the same officer, and is clothed with the same formalities, and contains the same matters of recital as those required in writs of execution.

630. Imprisonment is effected by arresting the debtor and placing him in custody of the keeper of the Royal gaol.

631. Any person thus imprisoned, may, upon petition to the Court or Judge, previously served upon the creditor, and accompanied with an affidavit that he is not worth twenty-four dollars, obtain an order commanding the creditor to pay him, as an alimentary allowance, during the period of his imprisonment, a sum not less than ninety-six cents per week.

632. If however the debtor afterwards becomes owner of property exceeding in value the amount above mentioned, the creditor may be relieved from paying the weekly allowance.

633. The debtor may petition the Court or Judge and apply to be liberated upon grounds showing that he is unjustly imprisoned. The petition must be served upon the creditors.

634. The debtor may obtain his discharge :

1. By paying into the hands of the Sheriff or of the Registrar, the amount of the condemnation, in principal, interest, and costs upon a receivable order ;

2. With the consent of or a release from the creditor ;

3. Upon the failure of the creditor to pay in advance into the hands of the gaoler the alimentary allowance granted to him ;

4. By the abandonment of his property, as mentioned in the preceding section ;

5. By means of the discharge from liability, obtained under the provisions of the Title concerning *Bankruptcy* in the Commercial Code.

6. If he has completed his seventieth year.

635. Such discharge must, however, be ordered by the Judge upon application, of which notice has been given to the prosecuting creditor.

636. When the debtor has been discharged by reason of default of payment of the alimentary allowance, he is no longer liable to imprisonment for the same debt.

PART THIRD.

PROVISIONAL AND SPECIAL PROCEEDINGS.

BOOK FIRST.

PROVISIONAL PROCEEDINGS WHICH ACCOMPANY SUMMONS IN CERTAIN CASES.

GENERAL PROVISION.

637. A plaintiff may, in certain cases, simultaneously with the summons, or pending the suit and before judgment, have the person or the property of his debtor, or the object in dispute, placed in judicial custody, as explained in the following Chapter ; subject to a right of action by the latter to recover damages, upon establishing by proof against the creditor a want of probable cause.

CHAPTER FIRST.

CAPIAS AD RESPONDENDUM.

SECTION I.

THE ISSUING OF THE CAPIAS.

637A. (Ad. 3-1957.) The Supreme Court only has jurisdiction in matters of capias.

638. When the amount claimed exceeds forty-eight dollars, the plaintiff may obtain from the Registrar a writ of summons and arrest against the defendant, if the latter is about to leave the Colony immediately, or if he secretes or is immediately about to secrete his property with intent to defraud his creditors.

639. This writ is obtained upon an affidavit of the plaintiff, his bookeeper, clerk, or attorney *ad negotium* declaring that the defendant is personally indebted to the plaintiff in a sum amounting to or exceeding forty-eight dollars, and that the deponent has reason to believe and verily believes, for reasons specially stated in the affidavit, that the defendant is about to leave the Colony immediately, with intent to defraud his creditors in general, or the plaintiff in particular, and that such departure will deprive the plaintiff of his recourse against the defendant ; or upon an affidavit establishing, besides the existence of the debt as above mentioned, that the defendant has secreted or made away with, or is about immediately to secrete or make away with his property and effects with such intent.

640. The writ may also be obtained if the affidavit establishes besides the debt, that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors or to make an assignment of his property to them or for their benefit, and that he still carries on his trade.

641. The writ of capias may likewise be obtained by any creditor having an hypothecary or privileged claim upon an immovable, upon an affidavit establishing that his claim exceeds forty-eight dollars, and that the defendant, whether he is the original hypothecary debtor or simply the holder of the property, is, with the intent of defrauding the plaintiff, damaging, deteriorating or diminishing the value of the immovable, or is about to do so himself or by others, so as to prevent the creditor from recovering the whole or any part of his claim, to the amount of forty-eight dollars.

642. If the demand be founded upon a claim for unliquidated damages, the writ of capias cannot issue without the Judge's order, after examining into the sufficiency of the affidavit; and the affidavit in such case must state the nature and, moreover, amount of the damages sought, and the facts which gave rise to them, and the Judge may in his discretion either grant or refuse the capias, and may fix the amount of the bail, upon giving which the defendant may be released.

643. The writ of capias may be joined with the writ of summons, or may be issued afterwards as an incident in the cause. In the latter case it must be accompanied by a summons for a fixed day to show cause why the writ should not be declared valid and joined with the principal demand.

The writ may also issue after judgment has been obtained for the recovery of the debt.

644. The amount for which the writ of capias has issued and the name of the person who made the affidavit must be endorsed upon the writ.

645. It is not necessary that the declaration or statement of the demand should be served upon the defendant at the time of his arrest, but it suffices to leave a copy of it either with him, or at the office of the Registrar, within the three days which follow the service.

646. Saving the exceptions contained in article 2134 in the Civil Code, a writ of capias cannot issue:

1. Against ministers of any religious denomination whatever;

2. Against septuagenarians;

3. Against females.

647. (Am. 3-1957). It cannot issue for any debt created out of the Colony, nor for any debt under forty-eight dollars.

648. The affidavit required in the above articles may be made by one person only, or by several persons swearing

each to a portion of the necessary facts, and it may be received and sworn to before the Judge, or a commissioner for taking affidavits, or the Registrar.

649. When the capias is issued by the Registrar it is addressed to the Sheriff.

650. It may be issued by a commissioner of the Supreme Court, in which case it is addressed to any Sheriff's officer.

651. In all cases in which a writ of capias may issue, a warrant of arrest may be granted by a commissioner, and be addressed by him either to the Sheriff or a Sheriff's officer.

652. Such warrant is in the name of the commissioner who grants it; it orders the arrest of the person therein designated and his delivery over to the keeper of the Royal gaol, who is commanded to keep him in his custody during twenty-four hours, and no longer, unless before the expiration of that time the plaintiff has obtained and caused to be executed against such defendant a writ of capias in the ordinary course.

653. The debtor cannot be detained in prison in virtue of such warrant any longer than twenty-four hours.

654. The commissioner granting such warrant must, without delay, transmit a duplicate of it, together with the original affidavit upon which it was granted and a certificate of his proceedings, to the Registrar, who must file the same and keep them as part of the record in the case.

SECTION II.

THE EXECUTION OF WRITS OF CAPIAS.

655. If the writ of capias is addressed to the Sheriff's officer who is charged with it, he arrests the defendant and delivers him over, together with the writ, to the Sheriff, who thereupon becomes responsible.

656. If the writ of capias is addressed to the Sheriff he is then bound to execute it or to cause it to be executed by his officers.

657. The Sheriff is bound to keep the defendant in the Royal gaol, until the latter gives security or is discharged as hereinafter provided. But no person can be detained in the Royal gaol in virtue of a writ of capias for a longer period than one year.

SECTION III.

THE CONTESTATION OF WRITS OF CAPIAS.

658. Upon a petition presented to the Court, or Judge, at any time before judgment, the defendant may obtain his discharge by establishing that he is not liable to be imprisoned, or by showing that the essential allegations of the affidavit upon which the capias is founded are false or insufficient.

659. In order to decide upon this incidental proceeding the Court or Judge may order the immediate return of the said writ of capias and of the proceedings had upon it, although the day fixed for the return should not yet be arrived.

660. If the contestation is merely as to the sufficiency of the allegations of the affidavit, the Court or Judge may dispose of it after hearing the parties.

But if the contestation is founded upon the falsity of the allegations, issue must be joined upon the petition of the defendant, within two days, and independently of the contestation upon the principal demand, unless the exigibility of the debt depends upon the truth of the allegations of the affidavit, in which case the writ may be contested together with the merits of the case.

661. The Court or Judge may disallow the petition, or, if satisfied that the defendant cannot obtain sureties, may order that the defendant be discharged upon some future day.

662. A defendant whose application to be discharged is rejected may appeal from the decision.

663. When the Court or Judge orders a defendant to be discharged, an appeal by the plaintiff has not the effect of staying the execution of the judgment. If the Court of Appeal reverse the judgment discharging the defendant, the plaintiff may have him re-arrested by means of a writ addressed to the Sheriff directing him to convey the defendant to the Royal gaol.

SECTION IV.

DISCHARGE UPON BAIL.

664. The defendant may obtain his discharge upon giving two good and sufficient sureties to the Sheriff, who undertakes to the satisfaction of the latter that he will not leave the Colony, and that, in case he does so, such sureties will pay the amount of the judgment that may be rendered, in principal, interest, and costs, or the amount fixed by the Judge in the case of article 642.

665. The defendant may also obtain his discharge at any time before judgment, by giving good and sufficient sureties who undertake to the satisfaction of the Court, or Judge, or Registrar, that he will surrender himself into the hands of the Sheriff, when required to do so by an order of the Court or Judge, within one month from the service of such order upon him or upon his sureties, and that in default they will pay the amount of the judgment in principal, interest, and costs, or the amount fixed by the Judge in the case of article 642.

666. This bail is offered after a notice served upon the plaintiff or his solicitor, with one intermediate day's delay.

667. The sureties offered must, if required, justify their sufficiency upon oath, but need not justify upon real estate in any case set forth in this section.

668. A defendant arrested upon a capias may obtain his provisional discharge by giving good and sufficient sureties to the Sheriff to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest, and costs, if he fails to give bail pursuant to article 664 or to article 665.

669. The Sheriff in such case is responsible only for the sufficiency of the sureties at the time when bail was given.

670. He may free himself by offering an assignment of the bail-bond he has taken.

This assignment may be effected by simply endorsing his name upon the bail-bond.

671. The sureties may at any time arrest the defendant and surrender him into the hands of the Sheriff and thus discharge themselves from their bond.

672. The Sheriff, however, is not bound to receive the defendant without a written requisition to that effect, signed by the sureties or by one of them, or by their authorised attorney.

The requisition must contain the title of the Court, the names of the parties to the suit, and of the sureties, and must require the Sheriff to take the debtor into his custody ; and it is the duty of the Sheriff to give the sureties a certificate of such surrender.

673. If the sureties apprehend resistance, then upon an affidavit of one of them, alleging their suretyship, sworn to before the Judge, the Registrar, or a commissioner of the Supreme Court, and upon a requisition to that effect written upon the back of the affidavit, any Sheriff's officer may arrest the debtor with such forcible assistance as may be necessary, and hand him over to the Sheriff.

CHAPTER SECOND.

ATTACHMENT BEFORE JUDGMENT.

SECTION I.

SIMPLE ATTACHMENT.

674. A creditor has a right, before obtaining judgment, to attach the goods and effects of his debtor :

In all cases where, as plaintiff, he produces an affidavit establishing : that the defendant is personally indebted to him in a sum exceeding ninety-six dollars, that the defendant absconds or is about immediately to leave the Colony, or is about immediately to secrete, or is secreting his property, with the intent to defraud his creditors and the plaintiff in particular ; or that the defendant is a trader, that he is notoriously insolvent, that he has refused to arrange with his creditors or to make an assignment of his property to them or for their benefit, and that he still carries on his business ; and, in either case, that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage.

675. If the claim is founded on unliquidated damages, the writ of attachment cannot issue without an order of the Judge after examining into the sufficiency of the affidavits, which, moreover, must state the nature and amount of the damages claimed and the facts which gave rise to them, and the Judge may in his discretion either grant or refuse the writ, and fix the amount of the bail upon giving which the property may be released.

676. Simple attachment is effected by means of a writ addressed to the Sheriff, or to any Sheriff's officer, requiring such Sheriff or officer to seize the movables and effects of the defendant, and to summon him to appear on a day fixed at the office of the Registrar, to answer the demand and show cause why the attachment should not be declared valid.

677. The amount of the plaintiff's claim must be endorsed upon the writ, or the sum for which security may be given.

678. The writ is issued by the Registrar, upon a written requisition from the plaintiff.

It is tested in the same manner as writs of summons.

679. The writ may also be issued for the Supreme Court, according to the amount claimed, by any clerk of the District Court, who, in such case, may likewise receive the necessary affidavit.

680. The provisions contained in articles 650 and 651 concerning writs of capias, apply likewise to simple attachment.

681. The seizure of the goods of the defendant is effected in the same manner as upon the execution of a judgment.

682. A warrant of attachment may also be issued, in the case of article 674, by any Commissioner of the Supreme Court, addressed to the Sheriff, or to the Sheriff's officer nearest to his residence, commanding him to seize and detain the effects of the debtor.

683. This warrant of attachment is in the name of the commissioner who issues it ; it orders the movables and effects of the defendant to be attached, with the ordinary formalities of seizures, and that they be kept and detained for the period of three days from the seizure, and no longer, unless before the expiration of such three days a writ of attachment, pursuant to the above provisions, issues from the proper Court.

684. The effects so seized cannot be detained for a longer period than three days under such warrant of a commissioner.

685. The commissioner who granted such warrant must, without delay, transmit a duplicate thereof, together with the original affidavit upon which the warrant was granted, and a certificate of his proceedings, to the Registrar, who must file and keep the same as part of the record in the case.

686. When in the Supreme Court the writ or the warrant is addressed to a Sheriff's officer, such officer is bound to make a return of his proceedings to the Sheriff, and to deliver to him the effects seized, in order that they may be disposed of by the Court according to law.

687. The Sheriff or his officer may also demand in advance from the party suing out the writ or his solicitor, such sum as may be deemed sufficient by the Judge or Registrar, for the safe keeping of the effects seized.

688. The Sheriff may renew such demand as often as the sum so advanced is expended, by presenting a petition, of which notice has been given to the party seizing or his solicitor ; and if the amount fixed by the Judge or Registrar is not paid within twenty-four hours, the seizure is discharged, and the Sheriff or his officer is exonerated from any liability whatever.

689. The writ of attachment must be returned with an inventory of the seizure, and a certificate of service both of the writ and of the declaration, in the same manner as upon a writ of capias.

690. A copy of the writ of attachment must be left with the defendant, as well as a duplicate of the inventory of the seizure, as soon as it is completed. As regards the declaration, it may either be served at the same time as the writ, or within the three days which follow the seizure, by leaving a copy thereof either with the defendant or at the Registrar's office.

691. The effects seized must, in every case, be placed in the custody of a responsible person offered by the defendant, or, in default of such offer, in the custody of a responsible person appointed by the Sheriff or other officer making the seizure, subject to the provisions respecting guardians and depositaries in cases of execution against movables.

692. If the defendant is absent from the Colony, or conceals himself so as to prevent the service of the writ of attachment, the Court, or Judge, upon proof of the fact by one credible witness, may dispense with the service, and order the defendant to be summoned in the manner provided in article 66, or may order substituted service.

693. A defendant whose effects have been seized may get them restored to him by the Sheriff at any time within the period allowed for appearance :

1. By depositing with the Sheriff, or other officer charged with the writ, the amount endorsed on the writ and costs upon a receivable order ; or

2. By giving the Sheriff, or other officer charged with the writ, who is bound to accept them, good and sufficient sureties, who justify under oath to the amount endorsed upon the writ with interest and costs, that he will satisfy the judgment that may be rendered.

In default of his doing so within the specified delay the effects remain under seizure to satisfy the judgment, unless the Court or Judge orders otherwise.

694. Simple attachment may be contested in the same manner as writs of capias.

SECTION II.

ATTACHMENT BY GARNISHMENT.

695. In all the cases where a writ of simple attachment may be granted as hereinabove explained, a creditor may also attach any movable property belonging to his debtor which may be in the hands of third persons, and also whatever sums they may owe him, subject to the restrictions mentioned in articles 428 and 494.

696. This attachment is effected by means of a writ commanding the attachment in the hands of the garnishees of whatever sums of money, things or effects they have or may

have belonging or due to the defendant, ordering the garnishees not to dispossess themselves thereof without an order of the Court, and to appear at the office of the Registrar to make their declaration, and summoning the defendant to answer the demand of the plaintiff.

697. It is clothed with all the formalities required for ordinary writs of summons, and is subject to the provisions of articles 678, 679, 680, 682, 685, and 686, in so far as they can be applied.

698. A statement of the amount for which the attachment is made or authorised is, moreover, endorsed upon the writ.

699. The provisions contained in articles 481 to 491, both inclusively, and articles 495, 496, and 497, are also applicable to cases of attachment by garnishment before judgment.

700. If the declaration of the garnishee is not contested, the Court or Judge, in rendering judgment upon the principal demand, adjudicates also upon the attachment and the declaration of the garnishee.

701. The plaintiff or the defendant may contest the declaration of the garnishee.

Such contestation is served upon the garnishee, together with a notice to appear on a day fixed to answer the same, the ordinary delays for summoning being observed.

702. In other respects the contestation is subject to the rules of ordinary procedure.

703. If the plaintiff fails to contest the declaration of the garnishee within eight days after the principal judgment, he is foreclosed from doing so, unless the delay is extended by the Court.

704. The defendant may contest the attachment made upon him or in the hands of a garnishee, in the manner provided for cases of capias.

CHAPTER THIRD.

ATTACHMENT IN REVENDICATION.

705. Whoever has a right to revendicate a movable may obtain a writ for the purpose of having it attached, upon production of an affidavit setting forth his right and describing the movable so as to identify it.

This right of attachment in revendication may be exercised by the owner, the pledgee, the depositary, the usufructuary, the institute in substitutions and the substitute.

706. The writ of attachment in revendication orders the seizure of the effects revendicated, and that they be placed in the hands of a guardian until judgment is rendered upon the revendication.

The name of the person upon whose affidavit the writ issues is mentioned upon the back of the writ.

707. The formalities prescribed in articles 649, 676, 678, 687, 688, 689, 690 and 691, are observed in attachments in revendication in so far as they can apply.

708. The defendant upon a demand in revendication may have the effects returned into his possession upon giving good and sufficient sureties that he will produce them when required, which he is in such case bound to do in the same manner as any judicial sequestrator.

Nevertheless the Court or Judge may, according to circumstances, grant possession of the effects to the plaintiff, subject to the same conditions.

709. Before the effects are delivered to the party applying for them, the other party may require an inventory thereof to be made, establishing the condition of the effects, their description and their value, in order to settle the amount of the security to be given ; and this is done by experts named in the ordinary course of procedure.

710. If neither of the parties applies for the effects seized they remain in custody of the guardian appointed ; or else, at the request of either of the parties, the Court or the Judge may, if they are of a nature to produce fruits, order them to be placed in the hands of a sequestrator.

CHAPTER FOURTH.

ATTACHMENT FOR RENT.

711. The owner or lessor may cause the effects and fruits in or upon the house, premises or land leased and subject to his privilege, to be seized for the rent, farm dues, or other sums payable in virtue of the lease.

He may likewise follow and seize in recaption, even for amounts not yet payable, the movables and effects which were in the house or premises leased, when they have been removed without his consent ; but he must do so within eight days after their removal.

An attachment in recaption must be served upon the new lessor, who must also be summoned to show cause against its execution.

712. The provisions contained in article 681 apply likewise to attachments for rent or farm dues.

713. Effects attached for rent or for farm dues cannot, without the consent of the plaintiff, be left in the custody of the defendant, unless he gives sureties to the satisfaction of the Sheriff or Sheriff's officer for the production of the effects, and such sureties incur the same obligations and are liable to the same penalties as judicial guardians.

CHAPTER FIFTH.

JUDICIAL SEQUESTRATION.

714. All demands for sequestration are made by petition to the Court or Judge. It may also, according to circumstances, be ordered by the Court without being demanded by the parties.

715. The judgment ordering sequestration commands the parties to appear before the Court or Judge, on a day fixed, to name a sequestrator ; and if the parties cannot agree, or if one of them be absent, the Court, or Judge, names one.

No one can be compelled to accept the office of sequestrator.

716. The sequestrator must be sworn before the Judge or the Registrar to administer well and faithfully the duties of his office.

He is put into possession by the Sheriff or his officer, who draws up a statement containing a description of the property sequestrated. This statement must be signed by the Sheriff or his officer, and also by the sequestrator, if he can sign ; if he cannot, mention should be made that he declared he could not sign, after he was called upon to do so, and the statement had been read to him.

717. If among the things sequestrated some are consumable or perishable, the sequestrator may cause them to be sold, observing the formalities prescribed for the sale of movables under execution.

718. If the thing sequestrated consists in a right of enjoyment, the sequestrator, if there is no conventional lease, is bound to sell the lease by auction, notice having been given by two advertisements in the *Gazette*.

719. Neither party can, directly or indirectly, become lessee of the things sequestrated.

720. Repairs or other necessary expenditures cannot be made upon the premises sequestrated without the authorisation of the Court or Judge, upon petition, of which the parties have received notice.

721. Sequestrators are subject to the duties and obligations imposed upon guardians in seizures under execution.

They are, moreover, bound to render an account of their administration when judgment has been given upon the contestation, and also whenever, pending the suit, the Judge orders them to do so, at the instance of either of the parties and upon cause shown.

Whenever monies have been paid into Court, or are in the hands of the Sheriff or the Registrar, and their adjudication happens to be delayed for an indefinite time, either by contestation in the suit, or for other reasons, the Court or Judge may upon the application of one of the parties, and after the others have been heard or duly notified, order that the monies be placed in the hands of the sequestrator charged with investing them until judgment, so that they shall bear interest or profits in favour of the party who eventually will be entitled to receive them, or may order the first sequestrator to invest them in like manner.

722. The sequestrator appointed in virtue of article 507 must file with the Registrar within eight days after service of notice served upon him that the proceedings under the writ of execution have been discontinued, and within the same delay, after the sale has taken place, an account of his receipts and expenditure and a general statement of his administration of the property.

723. A sequestrator is discharged by law upon his delivering the property sequestrated to the party named in the judgment of the Court, and also in the manner stated in the Book respecting *Deposit* in the Civil Code.

724. Orders of sequestration are executed provisionally, notwithstanding and without prejudice to any appeal.

725. If either party, by violent means, hinders the appointment or the administration of the sequestrator, the other party may apply to be put provisionally in possession of the things in dispute, under the same conditions as a sequestrator.

GENERAL PROVISIONS WITH REGARD TO ALL JUDICIAL SEIZURES SPECIFIED IN PARTS II AND III.

726. If the things seized or attached are of a perishable nature or liable to deteriorate during the pendency of the suit, the Court or Judge may order them to be sold by the Sheriff.

BOOK SECOND.

SPECIAL PROCEEDINGS.

CHAPTER FIRST.

(Subst. 7-1913).

SUMMARY PROCEEDINGS.

727. The following matters may be treated as summary for purposes of procedure :—

1. Actions arising from the relations of lessor and lessee.

The lessor may join with his action a demand for such rent as he is entitled to, with or without an attachment for rent, an attachment in recaption, and attachment before judgment in hands of the lessee or of garnishees, or an attachment in revendication of the property leased.

2. Actions for the recovery of a debt or liquidated demand, with or without interest, founded on either (*a*) notarial documents, negotiable instruments, policies of insurance, bonds, private writings, or enactments, or (*b*) any agreement, express or implied for the payment or reimbursement of money, including detailed accounts for goods sold, work done and materials provided.

3. Actions for the recovery of damages where the amount claimed does not exceed four hundred and eighty dollars.

728. Subject to the special provisions in this Chapter contained, the rules governing ordinary procedure apply likewise to summary matters.

729. All proceedings in summary matters shall be entitled "In the Supreme Court of the Windward Islands and Leeward Islands (St. Lucia), Summary Procedure."

730. 1. Applications for security for costs and preliminary exceptions shall be made and urged in Chambers within two days after appearance.

2. Either party may at any time before trial apply in Chambers for further time, further particulars or other incidental relief; and the Judge shall thereupon give such directions as he may deem just with respect to all the proceedings to be taken in the action.

3. Two days' notice of any such application must be given to the other side.

731. 1. Subject to any such application as in the last preceding article mentioned, the defence shall be filed within two days after appearance or after the decision on a preliminary exception, or after the expiration of such other delay as may legally arise.

2. No further pleadings shall be delivered unless the same be ordered, but issue shall be deemed to be joined two days after the filing of the defence, and the action may be forthwith inscribed for proof and hearing. Three days' notice of the inscription shall be given to the other side.

732. 1. The Court takes down, or causes to be taken down under its direction, notes of the material parts of the evidence, and of all objections insisted upon by either party, with the decisions thereon.

2. It shall not be necessary to read to a witness the notes of his or her evidence, nor for the witness to sign the same, nor for the Judge to sign any such notes.

733. It shall not be necessary for the Judge to give his judgment or the reasons therefor in writing : Provided that on an appeal from his decision the Judge may, if he think fit, append his reasons to the notes of the evidence, and thereupon both together shall form part of the case in appeal and shall be transmitted as part of the record to the Judges of the Court of Appeal.

734. Judgment may be given in vacation. Unless otherwise ordered, or there be any enactment to the contrary, it shall be executory eight days after it is pronounced.

735. The delays respecting summons and pleadings also apply to all interventions, oppositions or other incidental proceedings of the same nature.

CHAPTER SECOND.

HYPOTHECARY RECOURSE AGAINST IMMOVABLES OF WHICH THE OWNERS ARE UNKNOWN OR UNCERTAIN.

736. When the owner of an hypothecated immovable is unknown or uncertain, the creditor to whom the capital or two years of the interest, or two years of arrears of any constituted or other rent, secured by such hypothec is due, may present a petition to the Supreme Court, praying for the sale of such immovable.

737. Such petition must contain :

1. All allegations necessary to establish the debt and the hypothec ;

2. A description of the immovable ;

3. The name of the occupier, if the immovable is occupied, and if it is not, the name of the last known occupier, the period for which it has remained unoccupied, the names of all the known owners since the hypothec was created, and a declaration that the petitioner has in good faith made due search and used due diligence to discover the owner ;

4. Conclusions praying that public notice be given to the actual owner to appear and answer the petition, and that in default of his doing so the immovable be brought to sale.

738. The petition must be accompanied with an affidavit of the petitioner or of a competent person attesting the truth of the facts therein alleged.

739. The Court, upon this petition, orders such proof as it deems necessary; and if the proof offered is sufficient, it orders the publication of a notice in accordance with form number 19 in the Appendix to this Code.

740. The notice must be inserted once a week during four consecutive weeks in the *Gazette*, and during such time must be posted in the Sheriff's office.

741. If, within the delay of two months from the last insertion in the *Gazette*, no person appears as hereinafter provided, the petitioner proceeds as in any other suit in which the defendant fails to appear; and upon proof that the required formalities have been observed, the Court declares the immovable hypothecated, and orders that it be sold for the payment of the petitioner's claim.

742. Service of this judgment is not necessary.

743. Upon the judgment thus rendered, a writ issues, after the expiration of fifteen days, commanding the Sheriff to seize and sell the immovable hypothecated, observing the formalities required for ordinary seizures and sales of immovables, except that minutes of seizure are not required.

744. Any proprietor, or any holder entitled to exercise rights of ownership, may, at any time before the rendering of the judgment ordering the sale, enter an appearance, specifying his title and the extent of his right of property, and at the expiration of a delay of two months, the petitioner is then bound to file in the Registrar's office a demand

against the party appearing, for the recognition of the hypothec, and to serve it upon such party; and the same proceedings are had upon such demand as upon ordinary suits for the recognition of hypothecs.

745. If several persons appear, claiming to be owners, each one in opposition to the others, the petitioner cannot be prevented from proceeding by such opposite claimants, unless his application is contested by one of them, who must previously established an ostensible right of property, or unless one of them pays the amount of his claim and costs.

746. In the case of there being opposite claimants to the property, without any contestation of the petition, the Court may, reserving its decision upon the opposite claims, grant the prayer of the petitioner, saving to the parties appearing, and to those who have not appeared, their claims upon the balance of the monies levied, the distribution of which is made in the ordinary course.

747. If one or more known owners are in possession, jointly with others who are unknown or uncertain, the creditor may, in the ordinary manner, sue the known owners, as possessing jointly with others unknown, and proceed in the same suit, in the manner hereinabove provided, against those who are unknown or uncertain, modifying the notice which is to be published, so as to meet the circumstances.

CHAPTER THIRD.

COMPULSORY PARTITION AND LICITATION.

748. When coheirs or co-proprietors cannot agree upon a partition of their common property, the action at law to obtain such partition belongs to the one who is first to institute it.

749. (Rep. 3-1957.)

750. A special tutor must be named to each minor whose interests are opposed to those of any other minor.

751. The Court before rendering judgment upon the suit for partition, orders that the immovables shall be viewed and valued by experts appointed according to the ordinary rules, in order to ascertain whether the whole of the immovables can be conveniently divided, and in such case to form the shares according to the provisions of articles 644, 645, and 646 of the Civil Code.

752. If all the parties have attained full age they may agree upon one expert.

753. The same proceedings are had upon the report of such expert as upon any other report of experts.

754. After the report of the experts has been homologated, the Court sends the parties before the Registrar or some other person, to proceed with the allotment of shares, minutes of which are taken.

755. If the suit is for an account and a partition, the lots are not formed until after the accounts, the returns, the formation of the mass, and the pretakings have been determined by a practitioner, who is named by the parties or by the Court, and whose report must also be homologated.

756. When immovables cannot be advantageously divided or when there are not as many lots of land as co-partitioners, the Court or Judge may order that such immovables be sold by the Sheriff, with the formalities to be observed in cases of execution, and such sale has all the effects of a judicial sale.

757. (Am. 3-1957.) Rules concerning voluntary licitation are contained in the Sixth Part of this Code. The provisions of this Chapter apply to licitations judicially ordered upon actions for partition and shall be read and construed subject to the provisions of articles 653A to 653L of the Civil Code.

CHAPTER FOURTH.

ACTIONS OF BOUNDARY, OR TO VERIFY OR RECTIFY ANCIENT BOUNDARIES.

758. Whenever two contiguous lands have never been bounded, or the boundaries have disappeared, or the fences or boundary works have been wrongly placed, and one of the neighbours refuses to agree upon a surveyor to determine the boundaries, or to verify or to rectify the division line, as the case may be, the other party may bring an action against him to compel him to do so.

759. If the parties do not agree, the Court names a sworn surveyor, whom it charges with making a plan of the locality, showing the respective pretensions of the parties, and with making such other operations as it may deem necessary.

760. The surveyor thus named is bound, under his oath of office, to proceed in the same manner as experts.

761. If the parties desire it, more than one surveyor may be appointed.

762. The fixing of bounds, the verifying of ancient boundaries, or rectifying of division lines, is ordered in conformity with the rights and titles of the parties, and is done by the person named by the Court, who proceeds in accordance with the judgment, and if necessary, places boundary marks in presence of witnesses, and must draw up a statement of his operations, and return the original of such statement to the Court.

CHAPTER FIFTH.

POSSESSORY ACTIONS.

763. The possessor of any immovable or real right, other than a farmer on shares, or a holder by sufferance, who is disturbed in his possession, may bring an action on disturbance against the person who prevents his enjoyment, in order

to put an end to the disturbance and to be maintained in his possession.

764. The action for repossession may be brought by anyone who was in actual possession and has been dispossessed. But no person who has not been in possession for a year and a day before the disturbance can institute the action against a previous possessor who has dispossessed him, and who was in possession for a year and a day.

765. Possessory actions must be brought within a year from the disturbance.

766. The Court or Judge may order the defendant to give security to satisfy any damage which may be awarded against him, such security may be given before the Judge or Registrar. In default of such security being given, the Court or Judge may appoint a sequestrator.

767. Actions on disturbance or for repossession, cannot be joined with the petitory claim.

CHAPTER SIXTH.

PETITORY ACTIONS, OR ACTIONS FOR RECOVERY OF LAND.

768. The proprietor of any immovable or real right may bring a petitory action against any one in possession of his property or rights. If he have brought a possessory action he cannot institute a petitory one before the possessory one has been discontinued or adjudicated upon.

769. The plaintiff may demand in addition to the restoration of the land, that the rents, issues, and profits of the property, and any damages he may have suffered be awarded him.

770. The defendant in a possessory action may bring a petitory action upon giving security that he will conform to the judgment and pay all damages and costs which may be awarded against him in the possessory action.

771. The defendant in a petitory action may claim by his plea whatever amounts he may be entitled to for improvements. He, however, has no claim for improvements made after the institution of the action, unless they were of absolute necessity.

CHAPTER SEVENTH.

DISCHARGE FROM HYPOTHECS, OR CONFIRMATION OF TITLE.

772. Any person who has acquired immovable property by purchase, exchange, or other title of a nature to transfer ownership, may free such property from any mortgages with which it is charged, by following the formalities prescribed.

773. Such person must lodge the title which he seeks to have confirmed in the office of the Registrar, and obtain from the Registrar a notice mentioning that the deed has been so lodged, containing a designation of the deed and of the parties thereto, a description of the immovable, the date at which the application for confirmation will be presented to the Court, an indication of the persons who possessed the immovables during the three years next before such notice, and calling upon all creditors who claim to have any privilege or hypothec upon the immovable to file their oppositions at least eight days before the day fixed for presenting the application. The notice must be inserted six times in the course of six months in the *Gazette*.

774. Upon the day mentioned in the notice, the applicant is bound to present his application for confirmation to the Court, together with copies of the *Gazette* containing the advertisement.

775. All hypothecary creditors, whose rights are not made known by the deed of which confirmation is sought, are bound to file their oppositions on or before the eighth day next preceding the day fixed for presenting the application.

776. During the six months prescribed for the publication of the notice, any creditor of the vendor or assignor or of

his authors, may appear at the Registrar's office and bid an increase over the sum, price, or other consideration or value, if any, mentioned in the title, and have his bid received, provided the increase be equal to at least one-tenth of the whole price, sum or other consideration, and the bidder offers, besides, to refund to the applicant all his costs and lawful disbursements, giving him security to that effect in the ordinary manner, or depositing for that purpose a sufficient sum, according to the discretion of the Court or Judge, reserving the subsequent completion of the precise amount.

777. Any other creditor of the vendor or assignor may, in like manner, and under the same conditions, outbid such creditor; and all such creditors may continue outbidding each other, provided each outbidder offers an increase of at least one-twentieth of the price, purchase money, or other consideration, over and above the costs and lawful expenses.

778. The applicant may, however, retain the immovables at the amount of the highest bid legally offered.

779. If no such outbidding takes place within the delay above mentioned, the value of the immovable remains definitely fixed at the price and sum mentioned in the title deed, subject to the provisions hereinafter made.

780. If the applicant desires to discharge the property from hypothecs, he must deposit in the hands of the Registrar, the price mentioned in his title deed, or the amount which such price has reached by the outbidding; and if there are no oppositions or claims, or if the amount deposited is sufficient to pay all the charges which appear, then judgment of confirmation is pronounced purely and simply.

781. But if the sum deposited is not sufficient to pay all the charges and hypothecs which appear, or if no price is mentioned in the deed, the Court or Judge may, at the instance of the applicant, name two experts, and the applicant names a third, in order to determine the value of the property

and to report thereon ; the whole according to the ordinary formalities.

782. If the value determined by the experts does not exceed the price paid in by the applicant, the judgment of confirmation is pronounced purely and simply.

If the value determined by the experts exceeds the price thus paid in, or if no price is mentioned in the title deed, the applicant cannot obtain a confirmation, unless he deposits the difference between the value thus ascertained and the price, or the whole of such value, if no price has been agreed upon.

783. The provisions of the last two preceding articles do not apply to cases of expropriation of property by competent authority for public purposes, when the compensation or indemnity has been settled by arbitration or by experts, according to law.

784. Upon proof of the observance of all the formalities hereinabove prescribed, judgment is pronounced, confirming the title deed as free from all hypothecs.

785. If the applicant is willing, and files a written declaration to that effect, judgment may be rendered subject to the hypothecs mentioned in the oppositions and claims filed ; and in such case the immovable is discharged from such hypothecs only as are not mentioned in such judgment.

786. The price deposited is distributed under an order of the Court, like monies levied upon the seizure and sale of immovables under execution.

787. The Registrar, before delivering to any person whatever a copy of the judgment of confirmation of title, is bound to cause such judgment to be registered as prescribed in the Book respecting *Registration of Real Rights* in the Civil Code, and has a right to demand from the applicant the

cost and expenses of such registration, and of the cancellings which it occasions.

788. The word "hypothec" in this Chapter includes all privileges affecting real estate.

CHAPTER EIGHTH.

SEPARATION BETWEEN SPOUSES.

SECTION I.

SEPARATION OF PROPERTY.

789. (Rep. 3-1957.)

790. Suits for separation of property must be brought only in the cases mentioned in article 1229 of the Civil Code.

791. A wife suing for separation may attach the movable property of the community by means of a conservatory seizure *(saisie gagerie conservatoire),* if authorised by the Judge. The attachment is effected in the same manner as attachment for rent, but the husband remains judicial guardian of the property attached, unless otherwise ordered by the Court or Judge.

The wife may also have her own movables attached by a writ of revendication.

792. The formalities required for summons in ordinary cases must be strictly observed in such suits. The spouse summoned has no power to dispense with the same, either directly or indirectly, even as regards the delay upon the summons.

793. Notice of such suit must be given and published during one month in the *Gazette.*

No proceedings except filing the return and exhibits and appearance can be had in such suit until after the last publication of such notice.

794. Any creditor of the person sued for separation of property has a right to intervene in the suit, in order either to watch the proceedings or to contest the plaintiff's claim, and he may for this purpose set up whatever grounds and exercise whatever rights his debtor might.

795. Separation of property thus sued for cannot be granted upon the confession or the admissions of the defendant. The allegations of the declaration must be established by other proof.

796. The judgment pronouncing separation of property may at the same time determine the reprises of the plaintiff, or order that they shall be determined by a practitioner or by experts, if there be occasion for it.

797. The judgment of separation must be executed and published in accordance with the provisions contained in articles 1230 and 1231 in the Civil Code.

798. The wife who sues for separation may accept or renounce the community. If the husband fails to make an inventory, she may, upon being authorised, have one made, if she has not renounced.

If she accepts, the partition is effected in the manner provided in the Civil Code, in the title relating to marriage covenants.

799. The wife's renunciation of the community must be registered in the Registry office before any subsequent proceedings can be taken by her.

800. (Am. 3-1957). The judgment of separation may be executed voluntarily or by legal means, as provided in article 1230 of the Civil Code, but without prejudice to the rights of third parties.

801. (Rep. 3-1957).

802. If the husband gives immovables to his wife in payment of her reprises, she must apply for and obtain a judgment of confirmation of the deed by which he does so, according to the formalities prescribed in the preceding Chapter.

803. If the amount at which the rights of the wife have been determined is not voluntarily paid, execution may be enforced as in ordinary cases.

Nevertheless, the husband may compel the wife to receive immovables in payment, at a valuation by experts, provided such immovables are available and do not prejudice her interests.

SECTION II.

SEPARATION FROM BED AND BOARD.

804. Besides the provisions contained in the Civil Code on the subject of separation from bed and board, those of the present section also apply.

805. (Rep. 3-1957.)

806. Writ of attachment and revendication issued on the application of the wife, the trial and hearing of the case, the judgment, its execution, and its publication are subject to the provisions contained in the preceding section.

CHAPTER NINTH.

OPPOSITIONS TO MARRIAGE.

(Subst. 3-1957).

807. An appeal to the Court or Judge against the refusal of the Registrar to allow a certificate for marriage to be issued or the marriage to be celebrated shall be made within fifteen days from the date of such decision.

808. If the Judge is of opinion that no legal ground has been disclosed in the opposition for forbidding the issue of

the certificate he may dismiss the opposition without requiring any of the parties to appear.

809. (1) In other cases the Court or Judge shall summon the parties to the intended marriage and the person by whom the opposition has been entered, and shall require such last-named person to show cause why the district registrar, or the Magistrate, or the minister of religion, as the case may be, should not in due course issue his certificate.

(2) Every such matter shall be heard and determined in a summary manner, and the Court or Judge may award compensation and costs to the party against whom the opposition was entered, if it appear that such opposition was entered on insufficient grounds.

810. The Court or Judge, before rendering judgment upon the opposition may, if he think fit, summon the parents, or in default of parents, the friends of the parties to the intended marriage, in order that they may give their opinion upon the intended marriage.

811. If the Court or Judge shall decide that the certificate ought to issue, he shall dismiss the opposition and shall make a declaration under his hand that the intended marriage is proper and may be solemnized ; and a certified copy of such declaration shall be forwarded to the district registrar, or the Magistrate, or the minister of religion, as the case may be, by whom the opposition was referred to the Registrar.

812. On the dismissal of the opposition, the district registrar, or the Magistrate, or the minister of religion, as the case may be, may issue his certificate in due course, and the marriage may proceed as if the opposition had not been entered, but the time which has lapsed between the entering and dismissal of the opposition shall not be computed in the period of three months specified in article 104 of the Civil Code.

CHAPTER TENTH.

PROCEEDINGS AFFECTING CORPORATIONS OR PUBLIC OFFICES.

SECTION I.

CORPORATIONS ILLEGALLY FORMED, OR VIOLATING OR EXCEEDING THEIR POWERS.

813. In the following cases :

1. Whenever any association or number of persons acts as a corporation without being legally incorporated or recognized ;

2. Whenever any corporation, public body or board, violates any of the provisions of the acts by which it is governed, or becomes liable to a forfeiture of its rights, or does or omits to do acts the doing or omission of which amounts to a surrender of its corporate rights, privileges and franchises, or exercises any power, franchise or privilege which does not belong to it or is not conferred upon it by law :

It is the duty of the Crown Attorney to prosecute, in Her Majesty's name, such violations of the law whenever he has good reason to believe that such facts can be established by proof, in every case of public general interest ; but he is not bound to do so in any other case unless sufficient security is given to indemnify the Government against all costs to be incurred upon such proceeding.

814. The summons for that purpose must be preceded by the presenting to the Supreme Court, or the Judge, a special information, containing conclusions adapted to the nature of the contravention, and supported by affidavit to the satisfaction of the Court or Judge ; and the writ of summons cannot issue upon such information without the authorisation of the Court or Judge.

815. The writ of summons commands the persons acting illegally as a corporation, or the corporation complained of, to appear on a day fixed by the Court or Judge.

It is served, in the first case, upon some one of the persons usurping corporate rights, or at the principal office or place of business of the association, speaking to a reasonable person ; and, in the second case, according to the provisions contained in articles 61, 65, and 74.

816. The delay upon summons is eight days.

817. The defendants are bound to appear on the day fixed, and if they fail to do so the prosecutor proceeds with his case by default.

818. If the defendants appear, they must, within four days, plead specially to the information ; and the prosecutor is bound to answer within three days.

819. As soon as issue is joined, the case may be inscribed for the trial and hearing, one day's notice having been given.

820. The parties proceed to trial as in ordinary cases.

821. (Rep. 3-1957.)

822. If the judgment declares the association to have been illegally formed, it may condemn the persons composing it as personally bound to pay the costs ; and if it be rendered against a corporation, public body or board, the costs may be levied either upon the property of such corporation or upon the private property of the directors or other officers thereof.

823. Whenever any corporation, public body or board, has forfeited its rights, privileges and franchises, the judgment declares it to be dissolved and to be deprived of its rights. The Administrator General represents the corporation.

824. A curator, if appointed by the Judge, as set forth in article 331 of the Civil Code, is bound to give notice of his appointment by an advertisement to be inserted twice at least in the *Gazette*.

825. The curator is bound to account to the Court or Judge as in other cases.

SECTION II.

USURPATION OF PUBLIC OR CORPORATE OFFICES.

826. Any person interested may bring a complaint whenever another person usurps, intrudes into, or unlawfully holds or exercises :

1. Any public office or any franchise or privilege in the Colony.

2. Any office in any corporation or other public body or board.

827. Such complaint is brought before the Supreme Court or Judge. The writ of summons cannot issue without leave of the Court or Judge, obtained in the manner mentioned in article 814 ; and the same delays and formalities are observed in the proceedings as in the preceding section.

828. The complainant, in addition to the allegations concerning the usurpation and illegal detention of the office, may, in his petition, declare the name of the person who has a right to such office or franchise, and allege such facts as are necessary to show such right, and the Court may in such case adjudicate upon the claims of both parties.

829. If the complaint is well founded, the judgment orders the defendant to be ousted and excluded from the office, franchise or privilege ; the Court or Judge may also condemn the defendant to pay a fine not exceeding the sum of four hundred and eighty dollars, which must be paid to the Treasurer.

830. Any person whom the judgment declares to be entitled to the office, or the franchise, may, after taking the oath of office, and giving such security as may be required by law, take upon himself the exercise of such office or franchise, and may demand of the defendant all keys, books, papers and insignia, in the possession or custody of such

defendant and belonging to such office or franchise, and in the case of neglect or refusal to deliver up the same, the Court or Judge may order the Sheriff to take possession of such keys, books, papers and insignia, and to deliver over the same to the person adjudged to be entitled thereto, without prejudice to any criminal proceedings to which such defendant may be liable.

SECTION III.

MANDAMUS.

831. In the following cases :

1. Whenever any corporation neglects or refuses to make any election which by law it is bound to make, or to recognize such of its members as have been legally chosen or elected, or to reinstate such of its members as may have been removed without lawful cause ;

2. Whenever any person holding any office in any corporation, public body, or Court of inferior jurisdiction, omits, neglects or refuses to perform any duty belonging to such office, or any act which by the law he is bound to perform ;

3. Whenever any heir or representative of a public officer or notary royal omits, refuses or neglects to do any act which, as such heir or representative, he is by law obliged to do ;

4. In all cases where a writ of mandamus would lie in England ;

Any person interested may apply to the Supreme Court or to the Judge and obtain a writ, commanding the defendant to perform the act or duty required, or to show cause to the contrary on a day fixed.

832. The application is made by a petition, supported by affidavit setting forth the facts of the case, and presented to the Court or Judge, who may thereupon order the writ to issue to be returned on a fixed day. The writ is served in the same manner as any other writ of summons.

833. The proceedings subsequent to the service are had in accordance with the provisions contained in the first section of this Chapter.

834. If the petition is well founded, the Court or Judge may order the issuing of a peremptory writ, commanding the defendant to do the thing demanded of him ; and if he fails to comply he may be held by imprisonment to do it, unless the defendant is a corporation, in which case it may be condemned to pay a fine not exceeding one thousand nine hundred and twenty dollars, which is levied by execution in the ordinary manner against its movable and immovable property.

835. Any person to whom, or the person representing any corporation to whom, the peremptory writ is directed, is bound to return such writ on the day specified, together with a certificate thereon of its execution.

836. If the matter relates to the making by a corporation of any election to an office which is vacant by reason of such election not having taken place within the time required, or being or having been declared null, the proceedings are the same as above mentioned ; and the writ commands the proper officer, or, in his absence, such person as is appointed by the Court or Judge, to proceed to such election, at the place and time fixed, and to do every act to be done in order to carry out such election, or show cause to the contrary.

837. The person to whom such writ or peremptory writ is addressed cannot, however, proceed to such election without giving public notice thereof in writing, and such notice must be published in the *Gazette* at least ten days previous to the day fixed for such election.

838. Nevertheless, every such election and every act done in order thereto is void, unless as great a number of voters are present and vote thereat as would have been required if the election had taken place at the usual time and under ordinary circumstances.

839. The peremptory writ is served in the same manner as other writs.

SECTION IV.

PROHIBITIONS.

840. Writs of prohibition are addressed to courts of inferior jurisdiction whenever they exceed their jurisdiction. They are issued in all cases where they would be in England.

They are applied for, obtained and executed in the same manner as writs of mandamus, and with the same formalities.

SECTION V.

INJUNCTIONS.

841. The application for a writ of injunction is made by petition to the Supreme Court or Judge, supported by affidavit setting forth the facts of the case and containing the necessary conclusions. It may be granted unconditionally, or upon such terms as the Court or Judge may think fit.

842. The Court or Judge may order the issue of the writ *ex parte,* or may order that the petition be served upon the adverse party before giving judgment thereon. But no injunction shall be granted unless the plaintiff gives an undertaking or security to the satisfaction of the Court or Judge for the payment of any damages which may be caused by the issuing of the writ.

843. The injunction may be granted *ad interim* or until the further order of the Court or without limitation of time.

844. An additional injunction may be granted upon petitions for such time, and upon such terms as may be deemed reasonable.

845. An injunction may be issued simultaneously with a suit when the conclusions of the action are not inconsistent with the demand for the writ. It may also be granted

incidentally in a pending action, without the formality of a writ, upon such terms and conditions as to the Court or Judge may seem fit.

846. The Judge upon the application of the party enjoined may order that the writ or order in the way of injunction be returned forthwith.

847. The writ or order in a pending action may be contested in a summary way and independently of the contestation of the principal action.

848. The writ is served as in ordinary cases.

849. The party upon whom the writ is served must be served five days before the day upon which the writ is made returnable by the Judge.

850. The writ may issue to restrain :—

(1) Any person unlawfully in possession of any land from doing any work, or causing any property to be demolished or destroyed, on the property of others, or who enters upon property without having fulfilled the formalities prescribed by law.

(2) Any corporation from undertaking anything which it is not authorised by law or its charter of incorporation to do.

(3) Any person from committing waste upon substituted property.

(4) Any person from selling, mortgaging, or deteriorating real property while a possessory or petitory action is pending.

(5) Any person unable to pay his debts from selling property to defraud his creditors.

(6) Any person from deteriorating or diminishing the value of a property mortgaged.

(7) Any person from selling, mortgaging, or deteriorating any property devised or bequeathed to another.

(8) Any person from conveying a title to real estate pending a suit for the specific performance of a contract for the sale or exchange of that real estate.

(9) Any party to an action of boundary from cutting down trees in the disputed territory or to take possession of any portion of the same.

(10) Any tenant from committing waste or breaking the covenants of the lease or making unauthorised alterations in the property.

(11) The transfer of shares in any corporation or company when such shares belong to minors, interdicted persons, persons legally incapable, or when the ownership of such shares is in dispute.

(12) One or more members of a partnership firm either during the existence of the partnership or after its dissolution from doing any thing inconsistent with the terms of the partnership agreement, or with the duties of a partner.

(13) A partner from disposing of the joint stock of the company, or from drawing bills in the name of the firm, or from excluding another partner from his share of the management.

(14) A surviving partner from selling the property and collecting the debts of the partnership when he is in embarrassed circumstances, or when it would be dangerous to entrust him with the sale or collection.

(15) A renunciation to a partnership existing during pleasure, unless done under fair and reasonable circumstances.

(16) In all cases relating to nuisance, copyright, patents, trade mark, shipping, partnerships and fraud in which a writ of injunction would issue in England.

(17) In all cases in which it shall appear to the Court or Judge to be just or proper that such writ should issue.

851. Upon a motion made before the Court or Judge, the person enjoined may have the injunction dissolved, by proving that the essential allegations of the petition are false or

insufficient. The proof and counter-proof may be made by affidavit unless otherwise ordered by the Court or Judge.

852. The breach of the injunction is a contempt of Court.

CHAPTER ELEVENTH.

THE ANNULLING OF CROWN GRANTS.

853. Any grants of land by the Crown may be declared null by the Supreme Court :

1. When the grant was obtained by means of some fraudulent suggestion, or where some material fact has been concealed by the grantor, or with his knowledge or consent ;

2. When it has been granted by mistake or in ignorance of some material fact ;

3. When the grantee, or those claiming under him, have done or omitted to do some act, in violation of the terms and conditions upon which such grant was made, or for any other reason have forfeited their rights and interests in the grant.

854. All demands for annulling grants may be made by suits in the ordinary form.

855. The action is served upon the person who has received or relies upon such grant, and is heard, tried, and determined in the same manner as ordinary suits.

CHAPTER TWELFTH.

HABEAS CORPUS AD SUBJICIENDUM IN CIVIL MATTERS.

856. Any person who is confined or restrained of his liberty, otherwise than for some criminal or supposed criminal matter, or any other person on his behalf, may apply to the Judge of the Supreme Court, for a writ addressed to the person under whose custody he is so confined or restrained, ordering the latter person to bring him before the Court or Judge, together with the cause of his detention, in order to examine whether such detention is justifiable.

857. The application must be supported by an affidavit, showing that there are probable and reasonable grounds for the application.

858. The writ issues in the name of the Sovereign, is sealed with the seal of the Court, and is attested in the same manner as any other writ. It is returnable without delay.

859. The writ is served personally, or at the place where the person is confined or restrained, upon a domestic servant or an agent of the person to whom it is addressed, and the return of service is made upon a certified copy. The Judge may order substituted service.

860. In default of compliance with the writ of *habeas corpus,* the person upon whom it was served is held to be guilty of a contempt of court, and the Judge may grant a rule under the seal of the Court, returnable before the Court or Judge, for his imprisonment.

861. Upon the return of the writ of *habeas corpus,* or of the rule mentioned in article 860, the Judge proceeds, as soon as he conveniently can, to examine, by means of depositions under oath, into the truth of the facts alleged, and decides accordingly.

862. If the Judge before whom the writ is returned is in doubt as to the truth of the facts alleged in the return, he may admit to bail the person so confined or restrained, upon his entering into recognizance with one or more sureties, or, in the case of infancy or coverture, upon security being given by recognizance in a reasonable sum, for his appearance before the Court, on a fixed day during the next term, and from day to day, to abide such order as the Court may make.

863. The writ of *habeas corpus* is thereupon transmitted to the Court, together with the recognizance and all the papers connected with the application, and the Court thereupon makes such orders as to justice may appertain.

864. The Court or the Judge may pronounce upon all costs incurred in the issuing, contestation, or execution of the writ of *habeas corpus*.

865. Whenever a writ of *habeas corpus* has been once refused by the Judge, the application for it cannot be renewed unless new facts are alleged; but the application may be renewed before the Court of Appeal for the Windward Islands and Leeward Islands.

PART FOURTH.

THE DISTRICT COURT.

BOOK FIRST.

POWERS AND JURISDICTION OF THE DISTRICT COURT.

866—870. (Rep. 1889 Ed. No. 99, s. 52.)

871. (Am. 3-1957.) The District Court has jurisdiction in all suits wherein the amount or value of the property or damages demanded does not exceed two hundred and fifty dollars, and in actions between lessors and lessees when the annual value of the property does not exceed two hundred and fifty dollars, and in possessory actions when the annual value of the property in dispute does not exceed one hundred and twenty dollars, except

(1) In actions in which the title to any real property is *bona fide* disputed.

(2) In actions for malicious arrest or prosecution, illegal execution (in any other than the District Court), libel, criminal conversation, seduction, and breach of promise of marriage.

(3) In hypothecary actions.

(4) In purely Admiralty actions.

872. The clerk of the Court enters in a book the names and places of abode of the plaintiff and defendant and the nature of the action brought. The suits are numbered according to the order in which they are lodged, and thereupon he issues a writ of summons stating the cause of the action in the writ, if no declaration be annexed. The clerk enters up the judgments in a separate book. He also keeps a register of the writs of attachment and execution.

873. The Court held in the chief place of the district has jurisdiction over the whole of that district.

874. No misnomer or inaccurate description of any person or place in any writ vitiates the same, if the person or place be described as commonly known.

875. The delay for service of writs of summons is three days when the distance from the defendant's domicile to the place where the Court is held does not exceed five leagues, a further delay of one day is given for every five leagues.

876. When a writ other than a writ of execution or attachment or any document requires to be served out of the district, the service may be made either by a bailiff of the district in which the Court is held, or by a bailiff of the district in which such service is to be made, but no more costs can be allowed in the former case than in the latter.

877. In any action founded upon a notarial deed, written acknowledgment, verbal agreement to pay a specific sum of money, goods sold and delivered, or for money lent, in which the defendant does not appear, the Court upon the oath or affidavit of the plaintiff or of any credible person that the amount demanded is due by the defendant to the plaintiff, may give judgment for the amount claimed.

878. A defendant may be summoned before the Court within the limits of the jurisdiction of which the cause of action arose.

879. If upon the day fixed for the sitting of the Court or any adjournment of the same the plaintiff shall not appear when the suit is called, the Court may adjourn the case or nonsuit the plaintiff. If he shall appear but shall not prove his claim, the Court may adjourn the case or nonsuit the plaintiff, or give judgment for the defendant.

880. Written pleadings are not required, but may be made. In the absence of written pleadings the Magistrate puts on record the nature of the defence.

881. When the defendant appears on the return day and has witnesses to produce, he may apply that the case be adjourned to some other day for the trial and hearing. The plaintiff may also apply for the adjournment of the case after hearing the plea of the defendant.

882. A witness shall be heard though not summoned. He may also be called even if summoned by the adverse party.

883. A witness residing in a district can be summoned to appear before the Court sitting in another district by means of a *subpoena,* issued by the Magistrate holding the Court in the district in which the action is instituted, when he has satisfied himself that such witness is a necessary one. The Magistrate fixes the delay for service of the *subpoena.*

884. Notes of evidence are taken by the Court. The cases are heard in a summary manner.

885. No plaintiff can divide a cause of action so as to bring it in the District Court. He may reduce the amount of his claim, and thereby abandons the right to recover any further sum.

886. (Am. 3-1957.) In cases of leases of land for agricultural purposes, when there is no written lease fixing the day upon which the lease is to terminate, and in the cases in which land is held by permission of the proprietor without lease, the plaintiff must serve upon the defendant

a notice to quit and deliver possession on the first day of May then ensuing. If the defendant has no known residence in the Colony, the bailiff posts on the dwelling house or other conspicuous place on the property leased, having previously notified one of the neighbours of his intention to do so, a notice to quit and deliver possession. The notice must be served or posted as the case may be one month at least previous to the institution of an action to annul the lease or to give up possession. The lessor may sue by the same action for the rent due him.

887. If not otherwise agreed upon by the parties, the Court may grant compensation for the growing crop to a defendant ordered to give up possession to the owner or lessor, unless the owner or lessor allow the occupier or tenant to take away such crop, in which last case the Court gives a reasonable time for its removal.

888. The Court may appoint appraisers and experts, and may, with the consent of the parties, order any case to be referred to arbitrators.

889. The Court may stay execution for such time and on such terms as it thinks fit, and all monies so ordered to be paid are paid into Court unless it be otherwise ordered.

890. If it at any time appears to the satisfaction of the Magistrate by the oath or affidavit of any person or otherwise, that any defendant is unable, from illness or other sufficient cause, to pay and discharge the amount recovered against him, or any instalment thereon ordered to be paid, the Magistrate in his discretion may stay execution for such time and on such terms as he think fit, and so from time to time, until it appears by the like proof that such temporary cause of disability has ceased.

891. Whenever the Court gives judgment for the payment of money, the amount shall be recoverable forthwith, or at the time and in the manner directed by the Court, by

execution against the goods and chattels of the party against whom such judgment has been rendered.

892. The clerk, upon application by the judgment creditor, shall issue a writ of execution to the bailiff, who shall levy on the goods and chattels of the debtor such sum as shall be so ordered, and the cost of execution.

893. It is not necessary to advertise the sale of the movables seized in the *Gazette,* but the Magistrate may issue an order to that effect if he think fit.

894. Whenever a writ of execution against goods and chattels, or a warrant for the commitment of any person has issued, and the goods and chattels or person are not to be found within the district in which the writ or warrant has issued, the Court which has issued the same may send such writ or warrant of commitment to the clerk of the Court of the district in which the goods and chattels or person are then, or believed to be, requiring execution of the same, and the clerk to which the same is sent signs the same and stamps it with the seal of his Court, and issues the same to the bailiff of his Court, who acts in all respects as if the original writ of execution or warrant of commitment had been directed to him by the Court of which he is bailiff.

When a levy is made the bailiff pays over all monies received in pursuance of the writ to the clerk of his Court, less the amount of his fees. The clerk forwards the amount paid to him to the clerk of the Court from which execution issued. Where any order of commitment is made, and the person apprehended, he is forthwith conveyed by the bailiff to the Royal Gaol and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by competent authority.

The bailiff may call upon all constables and police officers to assist him in the execution of the warrant.

895. (Rep. 3-1957.)

896. (Rep. 3-1957.)

897. All oppositions to seizures must be made and filed before the day fixed for the sale, unless the Magistrate suspends the sale and grants further delay.

898. All claims or oppositions for monies must be filed with the bailiff on or before the day of sale, if no further delay have been granted by the Magistrate.

899. No sale of goods and chattels in virtue of a writ of execution can take place until five days after the seizure, except in the case of perishable goods under an order of the Magistrate.

900. No writ of execution can issue against immovables before the sale of the movables has taken place or there be a return of *nulla bona.* The writ against immovables is addressed to the Sheriff by the clerk of the Court, and made returnable in the Supreme Court. Upon the return of the writ into the Supreme Court the Judge may order the clerk of the District Court to transmit to the Supreme Court the original record in the case.

901. A garnishee must make his declaration before the Court on the return day of the writ unless the Court grants him further delay or permits him to make his declaration before any Magistrate.

902. If the declaration of the garnishee is not contested, and if no demand be made by any creditor that the amount due by the garnishee be paid into Court, the garnishee may pay the seizing creditor.

903. The Court may, in cases of fraudulent nature, give judgment for the amount due, and order that the record be transmitted to the Crown Attorney for such action as he may think advisable to take, instead of condemning the debtor to imprisonment.

904. Petitions to set aside judgments are heard in the same manner as in the Supreme Court.

905. The Court cannot award imprisonment for any cause other than those mentioned in articles 2134 and 2135 of the Civil Code, and for no longer time than six months.

906. (Rep. 1889 Ed. No. 99, s. 52.)

907. (Am. 4-1939.) The rules contained in the foregoing parts of this Code apply in like manner to the District Court, except such as are inconsistent with the present part, and such as can only apply to the Supreme Court. The rules with respect to payment in of money upon receivable order and payment out of such money do not apply to the officers of the District Court.

908. All powers conferred upon the Supreme Court, or upon the Judge or officers thereof respectively, relatively to matters within their jurisdiction, are also conferred upon the District Court within the limits of its cognizance, and upon the Magistrates, or persons specially appointed by the Governor, holding such Courts and upon the officers of the said Court respectively with regard to the same, and other matters which form the subject of the present part, or with regard to any other subject concerning the manner of conducting suits or proceedings in the District Court. But no clerk of any District Court can pronounce any interlocutory or final judgment.

BOOK SECOND.

APPEALS FROM DISTRICT COURTS.

909. Any person aggrieved by a final judgment of the District Court or final order of the Magistrate may appeal to the Supreme Court. The judgment of the Supreme Court is without appeal.

910. (Am. 3-1957.) Notice of appeal must be in writing, and signed with the name or mark of the intending appellant or his solicitor, and must be served upon the clerk of the

District Court within fifteen days of the date of the decision appealed from. The clerk is bound to write the notice when the Court is not sitting, in which case no notice need be served upon him.

911. (Am. 3-1957.) The appellant must give security within the said fifteen days of the rendering of the judgment before the Magistrate, or in his absence the clerk, that he will pay and satisfy the judgment and all costs incurred and to be incurred in appeal.

911A. (Ad. 3-1957.) (1) The appellant shall also, within twenty-one days after the pronouncing of the decision, serve upon the clerk of the Court notice in writing of the reasons for his appeal.

(2) A notice of reasons for appeal may be served either at the time of serving notice of appeal, or at some other time within the time hereinbefore specified in the preceding paragraph, and may be embodied in the notice of appeal.

(3) Every notice of reasons for appeal may be signed, either by the appellant, or by his counsel or solicitor.

912. (Subst. 3-1957.) The Supreme Court sits for the hearing of appeals at such times as shall be fixed by proclamation of the Governor, or by Rules of Court, and may adjourn from one day to another.

913. (Am. 3-1957.) No appeal is heard until after the expiration of twenty-eight days from the date of the judgment appealed from.

914. On or before the last Thursday of each month, the clerk of each District Court forwards to the Registrar the records of the cases appealed from, with a list containing the names of the appellant and respondent, the names of the witnesses, distinguishing those examined on behalf of the plaintiff and those examined on behalf of the defendant.

915. The clerk of the District Court notifies the parties to attend the sitting of the Supreme Court at which the case may be heard.

916. A witness may be examined in appeal, with the leave of the Court upon cause shown, although he was not examined in the District Court.

917. When notice of appeal and security have been given, proceedings in execution are stayed until the judgment of the Supreme Court has been rendered on the appeal.

918. The Supreme Court may, upon special grounds, permit an appeal after delays hereinbefore allowed for giving notice of appeal and putting in security. It may allow fresh security to be given, but no application for leave to appeal shall prevent the execution of the judgment of the District Court, unless the Magistrate so direct.

919. The Supreme Court has full discretionary power to order the District Court to receive evidence upon any question or questions of fact, and to require it to adjudicate upon the case after the reception of such evidence.

920. The Registrar upon the rendering of a final judgment in the Supreme Court, whether the decision of the District Court be confirmed, reversed or modified, transmits a copy thereof forthwith, with the record to the clerk of the Court appealed from. When the judgment appealed from is modified or reversed, the Judge gives his reasons in writing for such modification or reversal.

921. The judgments of the Supreme Court are put into execution by the bailiff in the same manner as judgments of the District Court.

PART FIFTH.

APPEALS TO HER MAJESTY.

922 — 966. (Rep. 17-1953.)

967. (Subst. 11-1909, s. 2 as am. 17-1953, s. 8.) Subject the provisions of such Rules and Regulations as Her Majesty in Council shall think fit to establish by Order in Council or otherwise, an Appeal shall lie to Her Majesty in Council, —

1. As of right from any final judgment, decree, order, ruling, sentence or decision of the Supreme Court, or of the Court of Appeal for the Windward Islands and Leeward Islands, where the matter in dispute on the appeal amounts to or is of the value of one thousand four hundred and forty dollars sterling or upwards, or where the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of one thousand four hundred and forty dollars ; and

2. At the discretion of the Supreme Court or the Court of Appeal for the Windward Islands and Leeward Islands from any other judgment, decree, order, ruling, sentence or decision of the Supreme Court or of the said Court of Appeal. whether final or interlocutory, if in the opinion of the Court whose judgment, decree, order, ruling, sentence or decision is sought to be appealed from, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to Her Majesty in Council for decision.

968. (Revised 1916 Ed. Vol. II p. 1060, as am. 17-1953, s. 8.) Nothing in this Code shall be deemed to interfere with the right of Her Majesty, upon the humble petition of any person aggrieved by any judgment of the Supreme Court or the Court of Appeal for the Windward Islands and Leeward Islands, to admit his appeal therefrom upon such conditions as Her Majesty in Council shall think fit to impose.

PART SIXTH.

NON-CONTENTIOUS PROCEEDINGS.

BOOK FIRST.

REGISTERS AND THEIR AUTHENTICATION.

CHAPTER FIRST.

REGISTERS OF CIVIL STATUS.

969. Any register intended to record births, marriages, and deaths must be in duplicate, and before being used must be numbered upon the first and every subsequent leaf, and be sealed with the seal of the Court, the same being affixed upon the two extremities of a ribbon or other such fastening, passing through all the leaves of the register and secured inside of its cover, and upon the first leaf must be written an attestation under the signature of the Judge or Registrar, specifying the number of leaves contained in the register, the purpose for which it is intended and the date of such attestation.

970. A copy of the Book respecting *Acts of Civil Status,* in the Civil Code, and of the first, second, and third Chapters of the Book respecting *Marriage* in the same Code, furnished at the public expense, must be attached to the register, which is to remain in the hands of the minister of religion or status officer. The register must be bound in a substantial and durable manner.

971. One of the duplicate registers must be deposited with the Registrar of Civil Status, as required by article 32 of the Civil Code.

972. Any person who desires to have any register rectified must present to the Court or Judge a petition for that purpose, stating the error or omission of which he complains, and praying that the register may be rectified accordingly.

The petition must be served upon the depositary of such register.

973. The Court or Judge may also order any person to be called in whom it deems interested in the application.

Such person is thereupon summoned in the ordinary manner.

974. Any judgment ordering a rectification must contain an order for the inscription of such judgment upon the two registers, and no copy of the act rectified can thereafter be delivered without the corrections thus ordered to be made.

CHAPTER SECOND.

REGISTERS OF REGISTRY OFFICES.

975. Every register for registration must, before any entry is made therein, be authenticated by a memorandum written on the first page thereof and certifying the purpose for which the register is intended, the number of pages therein, and the day, month, and year in which the memorandum is made, and such memorandum shall be signed at length, and, the first and last page being numbered, shall be initialled by the Judge.

CHAPTER THIRD.

REGISTERS OF SHERIFFS.

976. The Sheriff must keep a register for transcribing and registering therein all deeds of sale made by him of real property.

977. Such registers must be authenticated in the same manner as those of the registry offices mentioned in article 975.

BOOK SECOND.

INSPECTION OF DOCUMENTS.

978. Notaries are bound, upon payment of their lawful fees and dues and without any Judge's order, to grant permission to inspect or to give copies or extracts of any deed forming part of their official records, either to the parties or their heirs or legal representatives.

979. They are not bound to grant such inspection or to give copies or extracts to other parties without an order from the Judge, unless it is of such nature that it should be registered.

980. If the notary refuses to grant such inspection, or to give copies or extracts as required, the person demanding the same may, by petition duly served upon such notary, apply to a Judge for an order for inspection, which is granted upon proof of his right or interest.

981. If inspection only be demanded, the order fixes the day and hour when the inspection must be granted.

If a copy or extract be demanded, the order fixes the time at which it must be furnished.

982. The service of the order of the Judge upon the notary must give a sufficient delay for a compliance with such order.

983. The copy or extract must be certified to have been delivered in compliance with the order; and the notary mentions the fact at the foot of the copy of the order that was left with him.

984. If the notary fails to comply with the order of the Judge, he is liable for all consequent damages and to imprisonment.

985. When the original of any authentic act or a public register has been lost, destroyed, or carried away, and any authentic copy or extract thereof exists, the holder of such copy or extract may apply to the Court or Judge for leave to

deposit the same with such public officer as the Court or Judge may name, to be there used and considered as an original, the copies of which will be deemed authentic.

986. A similar application may be made by any party to a deed, in order to oblige any other party to the same, who is in possession of an authentic copy thereof, to deposit such copy for the same purpose, and such other party is bound to comply with the order of the Court or Judge in that behalf, under pain of all damages. The whole nevertheless at the cost and expenses of the party requiring such deposit, who is obliged to furnish with a copy of the deed the person of whom it has been required, and to indemnify him for all travelling and other expenses.

987. The petition must be served upon all other interested parties mentioned in the deed.

988. Upon satisfactory proof, the Court or Judge orders the document produced to be deposited in the Registrar's or notary's office or other public office in which the original was ; or if it is a notarial act, forming part of the records of a notary who is dead or has ceased to practise, then in the Registrar's office, or with the notary in possession of the originals of the notary who passed the deed ; and every regular copy of the document thus deposited is received in evidence in the same manner as if such document was the original.

BOOK THIRD.

FAMILY COUNCILS.

989 — 994. (Rep. 3-1957.)

BOOK FOURTH.

TUTORSHIPS AND CURATORSHIPS.

995. (Subst. 3-1957.) The appointment of tutors to minors and curators to interdicted persons and absentees is

regulated in the different Books of the Civil Code which treat of such matters respectively.

996. (Am. 3-1957.) The appointment of curators to successions that are vacant, or to property judicially abandoned by insolvent debtors, is regulated in the respective Books in the Civil Code and in this Code relating to such matters.

997. The appointment of curators to the property of corporations that have been dissolved or declared illegal, is regulated in the Civil Code, in the Book respecting Corporations, and in the Third Part of this Code.

998. The proceedings for the appointment of curators to substitutions are the same as those for the appointment of tutors to minors.

999. Every curator other than the Administrator General is bound, before acting as such, to make oath that he will well and truly perform the duties devolving upon him.

999A. (Ad. 23-1916.) Where a minor is without a tutor, or where his interests and those of his tutor conflict, the Court may appoint a tutor for any special purpose, such as consenting to a marriage, giving a receipt for a legacy, or the conduct of legal proceedings, or may itself give the necessary consent or authority.

999B. (Ad. 23-1916.) The like provisions apply in cases of curatorship or when a person who should be represented by a curator is without one.

999C. (Ad. 23-1916.) The Court may, either upon request or without request, give to a tutor or curator, any general or special directions in regard to the care of the person represented by him or the management of the property of such person.

999D. (Ad. 23-1916.) The Court, on being satisfied that there is just cause for so doing, may displace any tutor or curator and appoint another person in his place.

999E. (Ad. 23-1916.) Proceedings for the removal of tutors and curators may be commenced by application in Chambers instead of by action.

999F. (Ad. 23-1916.) In proceedings relating to Successions and Family Law, the Court may dispense with any formal requirements, whenever their observance would seem to involve disproportionate expense, or for other sufficient reason and in so dispensing may give such directions, if any, as it may think fit.

BOOK FIFTH.

SALE OF PROPERTY OF MINORS.

1000 — 1011. (Rep. 3-1957.)

BOOK SIXTH.

PROCEEDINGS RELATING TO SUCCESSIONS.

CHAPTER FIRST.

(Subst. 3-1957.)

GENERAL PROVISIONS.

1012. Provisions relating to the probate of wills are contained in the Civil Code.

1013. In common form business grants of probate and letters of administration may be made by the Registrar but the Registrar may refer to the Judge any matter which he thinks fit.

1014. The Registrar is not to allow probate or letters of administration to issue until all the inquiries which he may

see fit to institute have been answered to his satisfaction. The Registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with due regard to the prevention of error or fraud.

CHAPTER SECOND.

(Subst. 3-1957.)

LETTERS OF ADMINISTRATION.

1015. (1) The application for letters of administration shall be made in the Registry by petition and shall be accompanied by the following documents :—

(*a*) a certified copy of the will of the deceased, if it is a notarial will, or the original will, if it is not a notarial will, (where the grant is to be annexed to a will),

(*b*) the affidavit or affidavits of proof of due execution in the case of a non-notarial will (where the grant is to be annexed to a will),

(*c*) an affidavit setting out the names and addresses of the persons entitled to the grant in order of priority and containing the administrator's oath,

(*d*) an affidavit of the assets and liabilities of the deceased, and

(*e*) a certificate of the death of the intestate or any other proof in lieu thereof.

(2) The letters of administration shall not be handed out until there has been produced to the Registrar a certificate in writing under the hand of the Accountant General showing that the Accountant General does not object to such grant.

1016. (1) Letters of administration shall be granted to the persons entitled in the following order of priority —

(*a*) to the persons within the heritable degree in order of their right to succeed the deceased, or

(*b*) failing such persons, to the surviving wife or husband of the deceased, as the case may be, or

(*c*) failing such surviving wife or husband to the person nominated by the Crown to apply for administration.

(2) Where administration is applied for by one or some of the heirs only, there being another or other heirs equally entitled thereto, the Registrar may require proof by affidavit or statutory declaration that notice of such application has been given to such other heirs.

1017. (1) Limited administrations shall not be granted unless every person entitled to the general grant has consented or renounced or has been cited and failed to appear, except under the direction of a Judge.

(2) For the purpose of giving effect to subsection (4) of article 586 of the Civil Code, the practice and procedure relating to limited grants in force in the principal registry of the Probate, Divorce and Admiralty Division of the High Court of Justice in England shall, so far as the same is not inconsistent with the law of the Colony and is applicable in local circumstances, apply and have effect in the Colony.

1018. Save as in the Fourth Chapter of Part Third of the Civil Code expressly provided, no person entitled to a general grant in respect of the succession of a deceased person shall be permitted to take a limited grant, except under the direction of a Judge.

1019. In the case of a person residing out of the Colony, administration or administration with the will annexed, may be granted to his attorney acting under a power of attorney.

1020. Grants of administration may be made to tutors of minors for their use and benefit.

1021. In case of a minor not having a testamentary tutor or a tutor appointed by the Court, a tutor shall be assigned by order of a Judge founded on an affidavit showing that the proposed tutor is a fit and proper person to be appointed for the purpose of taking the administration, that he is

consenting to the assignment as such tutor and is ready to undertake the tutorship and that he has no interest adverse to the minor in the succession of the deceased.

1022. (1) The oath to lead to a grant of administration or of administration with the will annexed shall be so worded as to clear off all persons having a prior right to the grant, and the grant shall show on the face of it how the prior interests have been cleared off.

(2) In all administrations of a special character the recitals in the oath and in the letters of administration shall be framed in accordance with the facts of the case.

1023. When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a person of unsound mind, unless he be a curator appointed by the Court, a declaration of all the property of the deceased shall be filed in the Registry, and the sureties to the the administration bond (if ordered by the Court) shall justify.

1024. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless under the direction of a Judge.

1025. Except where otherwise provided in this Book, no person who renounces administration (with or without the will) of the succession of a deceased person in one character shall be allowed to take representation to the same deceased in another character.

CHAPTER THIRD.

(Subst. 3-1957.)

CAVEATS.

1026. (1) The Registrar shall provide and keep at a convenient place in the Registry a Caveat Book in which all caveats filed under these provisions shall be entered.

(2) Any person intending to oppose the issuing of a grant of probate or letters of administration or to commence any proceedings under these provisions shall, either personally or by his solicitor or attorney, enter a caveat in the Caveat Book.

1027. (1) Every caveat shall bear the date of the day on which it is entered, the name and address of the person entering it and an address within one mile from the Registry at which any documents may be left for him.

(2) A caveat shall remain in force for the space of six months only and then expire and be of no effect ; but it may be renewed from time to time before the issue of the probate or letters of administration.

1028. No grant of probate or letters of administration shall be sealed at any time if the Registrar has knowledge of an effective caveat.

1029. (1) The person whose application for a grant is stopped by a caveat shall, if he desires to contest the caveat, issue a warning giving notice to the person entering the caveat to enter an appearance at the Registry within six days.

(2) A warning to a caveat may be issued whether papers to lead to a grant have been lodged or not.

(3) The warning to a caveat shall state :

(*a*) the name and interest of the party on whose behalf the same is issued, (and if such person claims under a will or codicil, the date of the will or codicil,) and

(*b*) an address within one mile of the Registry at which any notice requiring service may be left.

(4) It shall be sufficient for the warning of a caveat that the Registrar send by the public post a warning signed by himself and directed to the person who entered the caveat at the address mentioned in it.

1030. (1) In order to clear off a caveat when no appearance has been entered to a warning duly served, —

(*a*) an affidavit of the service of the warning, stating the manner of service, and an affidavit of search for appearance and of non-appearance, shall be filed, and

(*b*) the applicant for probate of a will or for letters of administration shall obtain from the Registrar a certificate of non-appearance and apply to a Judge for an order that he be at liberty to proceed with his application and that the person entering the caveat be debarred from entering any further caveat in respect of that application.

(2) Upon such order being granted the applicant for probate or letters of administration shall be at liberty to proceed with his application as if such caveat had not been entered.

(3) The Judge may, upon making such order, direct that the person entering such caveat pay to the applicant all reasonable costs incurred by him by reason of the caveat having been entered and such costs shall be recoverable by means of a writ of execution.

1031 — 1061. (Rep. 3-1957).

CHAPTER FOURTH.

PROVISIONAL POSSESSION.

1062. Provisional possession, whenever it may be demanded, must be applied for by petition to the Court or Judge.

1063. The petition in the case of absentees must be accompanied by the affidavit of three persons as to the absence, and one or more affidavits establishing the facts upon which the petition is based, and also by such other proof as the Court or Judge may deem necessary.

1064. Provisional possession cannot be granted until after notice has been given and published, in the manner required for the summoning of absentees, calling upon all persons who may have any rights against the succession or the property in question to bring their claims before the Court or Judge.

1065. The proceedings upon such claims and upon the petition for provisional possession are the same as upon ordinary suits.

CHAPTER FIFTH.

VACANT SUCCESSIONS.

1066. The curator to a vacant succession appointed in virtue of article 628 of the Civil Code is bound to give security for the faithful discharge of his duties, and is also bound to give notice of his appointment by two advertisements in the *Gazette.*

1067. The Administrator General or curator disposes of the movables if not considered to be above the value of ninety-six dollars ; if above that value, he obtains their sale by the Sheriff, who pays over to him the net proceeds of the sale by cheque.

1068. He cannot sell the immovables, nor shares or stock in manufacturing or financial associations, without the consent of all the parties interested. If this consent cannot be had, the Court or Judge may order that the property be sold by the Sheriff.

1069. He is bound to render an account of his administration, in the same manner as any other curator, and also from time to time whenever required to do so by the Court or Judge.

BOOK SEVENTH.

GENERAL PROVISIONS APPLYING TO THE DIFFERENT TITLES OF THE SIXTH PART OF THIS CODE.

1070. In all proceedings under the different Books of the Sixth Part of this Code, the delay upon summons is one day when the place or service is within a distance of ten miles, and with an additional delay of one day for every additional ten miles.

1071. All applications made or proceedings brought before the Judge must remain in the records of the Court and form part thereof.

1072. The Registrar may exercise all the powers conferred upon the Court or Judge ; but any decision by such Registrar is subject to be revised by the Judge, upon application being made to that effect, after notice given to the persons interested.

1073 — 1085. (Rep. 29-1955.)

FINAL PROVISIONS.

1086. The forms contained in the Appendix to this Code, whether in connection with this Code or with the Civil Code, or others to the same effect, may be used in the cases to which they are intended to apply.

1087. The laws concerning procedure in force at the time of the coming into force of this Code, are abrogated :

1. In all cases in which this Code contains any provision indicating that effect either expressly or by implication ;

2. In all cases in which such laws are contrary to or inconsistent with any provision of this Code or in which

express provision is made by this Code upon the particular matter to which such laws relate ;

Except always that as regards proceedings, matters, and things anterior to the coming into force of this Code, and to which its provisions could not apply without having a retroactive effect, the provisions of law which without this Code would apply to such proceedings, matters, and things remain in force and apply to them, and this Code applies to them only so far as it coincides with such provisions.

APPENDIX.

PART FIRST.

FORMS CONNECTED WITH THE CIVIL CODE.

No. 1.

In connection with articles 1998, 2020.

Memorial of the Appointment of a Tutor to Minors and for the Preservation of the legal or tacit Hypothec, Resulting from such Appointment.

A memorial to be registered of the appointment of *A. B.* of, &c., (*insert the place of abode and description of the tutor*) to be tutor to *C. D., E. F.* &c., minors, which appointment was made by and under the authority of *L. M.* (*insert the name of the Judge or Registrar by whom the appointment has been made*), at Castries, on the day of in the year of Our Lord : And the said appointment is hereby required to be registered, for the preservation of the mortgage resulting therefrom, on the real estate of the said *A. B.* (*state the amount of, if it has been limited*), by *N. O.* of, &c., (*insert the name and description of the person requiring the registration*). As witness my hand, this day of

Signed in the presence of

O. P.

R. S.

No. 2.

In connection with articles 2002, 2020.

Memorial of a Judgment.

A memorial to be registered of a judgment in the Supreme or District Court sitting at , in the year of Our Lord , between *A. B.*, of , &c., plaintiff, and *C. D.*, of , &c., defendant, for with interest from, &c., and costs taxed at ; which said

judgment was rendered on the day of the said month of and is hereby required to be registered by (the said *A. B.*) As witness my hand, this day of &c.

Signed in the presence of

J. F.

T. P.

No. 3.

In connection with article 2031.

Certificate of Discharge from a Judgment which has been Registered.

To the Registrar

I, *A. B.*, of, &c., do hereby certify that *C. D.*, of, &c., hath paid me the amount due upon a judgment recovered in the Court of at in the year of Our Lord by me the said A. B., against the said C. D., for debt, and , and costs, which judgment was registered, on the day of , in the year of Our Lord, ; And I do hereby require an entry of such payment to be made, in the register wherein the same is registered, pursuant to law. As witness my hand, this day of in the year of Our Lord, &c.

A. B.

Signed in the presence of

J. K. of, &c.

L. M. of, &c.

No. 4.

In connection with article 2031.

A Certificate to Discharge a Mortgage.

To the Registrar of

I, *A. B.*, of, &c., (*the mortgagee in the deed or his heirs, executors, curators, or administrators*), do hereby certify that *C. D.*, of, &c., hath paid the amount due upon a deed or mortgage, bearing date

the day of in the year of Our Lord made between the said *C. D.*, of the one part; and me the said *A. B.* (*or E. F., as the case may be*), of the other part; which was registered on the day of in the year of Our Lord ; And I hereby require an entry of such payment to be made in the register wherein the same is registered, pursuant to law.

As witness my hand, this day of in the year of Our Lord,

A. B.

Signed in the presence of

O. P. of, &c.

R. S. of, &c.

No. 5.

In connection with article 2031.

A Certificate to Discharge a Notarial Obligation, and Extinguish the Hypothec thereby Constituted.

To the Registrar of

I, *A. B.*, of &c., (*the hypothecary creditor, his heirs, executors, curators, or administrators*), do hereby certify that *C. D.*, of &c., hath paid the amount due upon a notarial obligation bearing date the day of in the year of Our Lord , made by the said *C. D.*, to me and in my favour, (*or in favour of* G. H. *as the case may be*) as the obligee therein named, before *E. F.*, notary royal and witnesses (or before *E. F.* and another, notaries royal, *as the case may be*), which was registered on the day of in the year of Our Lord ; And I do hereby require an entry of such payment to be made in the Register wherein the same is registered, pursuant to law. As witness my hand, this day of in the year of Our Lord .

A. B.

Signed in the presence of

J. K. of, etc.

L. M. of, etc.

PART SECOND.

FORMS CONNECTED WITH CIVIL PROCEDURE.

No. 6.

In connection with article 85.

Affidavit of the Plaintiff (or one of the Plaintiffs).

St. Lucia. In the Supreme Court.

A. B., Plaintiff, *vs. C. D.*, Defendant.

A. B., of , the plaintiff (*or* one of the plaintiffs) in this cause, being duly sworn, doth depose and say, that the sum of , being the amount demanded of the defendant in this cause, is justly due by him to the plaintiff (*or* plaintiffs) herein, for the causes in his (*or* their) declaration mentioned: and the said deponent hath signed (*or* hath declared himself unable to sign, being thereunto duly required).

Signature, *A. B.*

Sworn before me, at , this day of 19 .

J. S. P.

Signature of the Judge, Registrar or Commissioner.

No. 7.

In connection with article 85.

Affidavit of a Person other than a Plaintiff.

St. Lucia. In the Supreme Court.

A. B., Plaintiff, *vs. C. D.*, Defendant.

E. F., of , being duly sworn, doth depose and say, that to his personal knowledge, the sum of being the whole (*or* part *as the case may be*) of the amount demanded of the defendant

in this cause, is justly due by him to the plaintiff (*or* plaintiffs) for the causes in his (*or* their) declaration mentioned; and the said deponent hath signed (*or* hath declared himself unable to sign, being thereunto duly required).

Signature, *A. B.*

Sworn before me, at , this day of 19 .

J. S. P.

Signature of the Judge, Registrar or Commissioner.

No. 8.

In connection with articles 295 and 296.

The Oath to be Administered to Experts.

I, *A. B.*, of , (*if there be two or more persons to be sworn, say,* I, *A. B.*, of and I, *C. D.*, of) do make oath and swear, that in the presence of *E. F.*, the plaintiff, and *G. H.*, the defendant, named in an interlocutory judgment pronounced in (*here insert the name of the Court*), bearing date the day of , or in their absence, after due notification shall have been given them, to attend at a place to be designated, and on a day and hour to be specifically named to them respectively, I will faithfully proceed as an expert to the view and examination required by the said interlocutory sentence; and that I will truly report my opinion in the premises, without favour or partiality towards either of the said parties: So help me God.

No. 9.

In connection with articles 295 and 296.

Certificate to be Made and Signed by the Commissioner, of the due Administration of the Oath.

Sworn before me, , a Commissioner of the Supreme Court, (*or* sub-delegate authorised by the commission *or* the judgment *as the case may be*, hereunto annexed *as the case may be*) at , on the day of the month of , in the year .

No. 10.

In connection with article 299.

The Oath to be Administered to Witnesses.

I , (*insert the name, profession or quality and place of residence of the witnesses*), do make oath and swear that I am not related or allied to, or employed by any of the parties in the suit, and I am not interested in the event of the cause depending between them (*or, if witness says he is, state in what degree he declares himself to be related or allied to either and which of the parties, or what situation he holds in the family of either of them*), and I do also swear that the evidence which I shall give between the said parties before the experts (*or* arbiters *or* arbitrators, *as the case may be*), named in the interlocutory judgment pronounced by (*here insert the name of the Court*), in the said cause, shall be the truth, the whole truth, and nothing but the truth : So help me God.

No. 11.

In connection with article 367.

Affidavit of an Opposant or of some other Person.

St. Lucia. In the Court.

A. B., Plaintiff, *vs. C. D.*, Defendant,

and

G. H., Opposant.

G. H., of , the opposant (*or* one of the opposants) in this cause (*or other person, as the case may be*), being duly sworn doth depose and say, that the facts set forth in the annexed opposition, and each and every of them, is and are true ; and that the said opposition is not made with any intent unjustly to delay the execution of the judgment rendered in this cause, but that the same is made in good faith for the sole purpose of obtaining justice, and the said deponent hath signed (*or* hath declared himself unable to sign), being thereunto duly required.

Signature, *G. H.*

Sworn before me, at this day of 19

J. P.

Signature of the Judge,
Registrar, Clerk, or Commissioner.

No. 12.

In connection with article 609.

To C. D., of (*state here the address and calling of the party*), Defendant in the cause wherein the Judgment, an authentic copy whereof is hereunto affixed, has been rendered.

Take Notice that the undersigned, *A. B.*, Plaintiff in the said cause, hereby demands of you, under and by virtue of the provisions contained in article 607 of the Code of Civil Procedure, a copy of which article is hereunto subjoined for your further information in the premises—that within thirty days from the personal service to be made upon you of the foregoing certified copy of the said Judgment, together with this Notice, you do make and file the statement prescribed in the said article, in the manner and under the penalties therein set forth.

Done at , this day of , 19 .

A. B., Plaintiff.

(*Here insert a copy of the said article*).

No. 13.

In connection with article 612.

St. Lucia. In the Supreme Court.

No. (*here state the number of the action.*)

A. B., Plaintiff ;

vs.

C. D., Defendant.

Public Notice is hereby given, in pursuance of the provisions of article 612 of the Code of Civil Procedure, that at the hour of in the noon of the day of next (*or* instant, *as the case may be*), or as soon after that hour as may be, at the Chambers of the Judge, the undersigned a creditor of the defendant will apply to the Judge for the appointment of a fit and proper person to be Curator to the property, real and personal, of the said *C. D.*, Defendant in this cause, who has made and filed in the Office of the Registrar, a statement under oath of the same, and also of his creditors and their claims, together with a declaration that he is willing to abandon his property for the benefit of his creditors—the whole as by the said Code required.

And all persons, creditors of the said *C. D.*, are hereby notified then and there to attend, to make to the said Judge such representation or statement in the premises as they may see fit to make.

Given at , this day of 19 .

A. B., Plaintiff.

No. 14.

In connection with article 612.

St. Lucia. In the Supreme Court.

No. (*here state the number of the action.*)

A. B., Plaintiff ;

vs.

C. D., Defendant.

and

E. F., Curator to the property and effects of the said Defendant.

Public Notice is hereby given, in pursuance of the provisions of article 612 of the Code of Civil Procedure, that on the day of instant (or last past, *as the case may be*), the said *E. F.*, of (*state here the address and calling of the Curator*), was by order of the Judge, appointed to be Curator to the property and effects, of every kind, real and personal, of the said *C. D.*, Defendant in this cause, abandoned by the said *C. D.*, for the benefit of his creditors—the whole as by the said Code provided.

And all persons, creditors or debtors of the said *C. D.*, are hereby notified and required to govern themselves in the premises accordingly.

Given at , this day of 19 .

E. F., Curator.

(*Or A. B.*, Plaintiff, or *C. D.*, Defendant, *as the case may be.*)

No. 15.

In connection with article 639.

Affidavit for Warrant of Arrest of the Person.

A. B., of &c., being duly sworn, doth depose and say, that *C. D.*, of is personally indebted to , in the sum of .

that this deponent is credibly informed, hath every reason to believe, and doth verily and in his conscience believe, that the said is immediately about to leave the Colony (*allege specially the reasons which lead to the belief that the Defendant is about to leave the Colony,* and embody the requirements

of the article), whereby the said , without the benefit of a warrant of attachment against the body of the said , may be deprived of remedy against the said ; and this deponent hath

Sworn before me, this day of .

No. 16.

In connection with articles 651 and 652.

Warrant to Arrest the Person.

St. Lucia.

A. B., Esquire, Commissioner of the Supreme Court in the town (*or parish*) of

To and to the keeper of the Royal Gaol of the said district, greeting :

I command you, that you take of , if he be found, and him, with all due diligence, convey to the Royal Gaol, and deliver to the keeper thereof, together with this warrant ; and I do hereby command you, the said keeper, to receive the said , and him safely keep for the space of twenty-four hours, and no longer, unless, before the expiration of that time, a writ of *capias ad respondendum* be duly served upon him, to compel him to be and appear personally in the Supreme Court on the day of the return of such writ, to answer of of a certain debt, interest and costs, amounting to the sum of .

Given under my hand and seal, this day of in the year 19 .

No. 17.

In connection with articles 682 and 683.

Affidavit to Obtain Warrant of Attachment.

A. B., of being duly sworn, doth depose and say that *C. D.*, of is indebted to of in the sum of

That this deponent is credibly informed and hath every reason to believe, and doth verily and in his conscience believe, that the said is secreting or is now about immediately to

secrete estate, debt, and effects, or is about to abscond and doth intend suddenly to depart from the Colony, with intent to defraud the said and creditors.

This deponent further saith, that he doth verily believe, that without the benefit of a warrant of attachment against the said to seize his goods and chattels, the said may lose his debt and sustain damage, and hath .

Sworn before me, at this .

No. 18.

In connection with article 683.

Warrant of Attachment.

A. B., Esquire, Commissioner of the Supreme Court,

To greeting :

I command you, at the instance of , to attach of and belonging to and the said keep and detain in your charge and custody, for the period of three days from the date hereof, and no longer, unless before the expiration of three days the said shall be seized by writ of attachment issuing from the Supreme Court at at the suit of the said

Given under my hand and seal, at this day of in the year 19 .

No. 19.

In connection with article 739.

Form of Notice in the Gazette.

St. Lucia.

day of

Know all men that *A. B.* of of , by his petition filed in the Supreme Court under No. , prays for the sale of an immovable, to wit : A land

(or estate) containing in the Parish of , bounded as follows, to wit : which land is now occupied by *D. C.* (*or* has not been occupied for years, and was last occupied by *N.*) and the said *A. B.*, alleging that by Deed of (entered into by *D. E.* of) before *F. G.* Notary, (*or* as the case may be) at on the a hypothec was constituted upon the said immovable hereinabove described, for the sum of claims from the present proprietor of the said immovable the sum of due to him for

The said *A. B.* further alleges that the present proprietor of the said immovable is unknown (*or* uncertain) and that the known proprietors since the date of the said Deed of have been *N. G.* and *F.* ,

Notice is therefore given to the proprietor of the immovable to appear before the said Court at Castries within two months, to be reckoned from the fourth publication of this present notice, to answer to the demand of the said *A. B.*, failing which, the Court will order that the said immovable be sold by the Sheriff.

First insertion , (date) .

H. P.

Registrar.

No. 20.

In connection with article 743.

Form of Writ for the Sale of the Immovable.

To the Sheriff.

Whereas the following notice hath been given in conformity with article 739 of the Code of Civil Procedure (*recite the notice*) ; and whereas judgment was rendered on the day of , ordering the sale of the immovable described in the said notice, you are hereby to sell the said immovable in order to the payment to the said *A. B.*, of the sum of with interest from and costs, and you are required to make a return of this Writ and of the oppositions which have then been placed in your hands, on the

H. P.

No. 21.

In connection with article 744.

Form of Appearance.

I, *B. C.*, appear to answer to the petition of *A. B.*, as proprietor of the immovable described in the said petition, by virtue of (*state by virtue of what title you are proprietor, and give the date of the Deeds by virtue of which you are such proprietor*).

No. 22.

In connection with article 773.

Public Notice is hereby given that there has been lodged in the office of the Registrar a deed made and executed before *A. B.* and colleague, Notaries Royal, on the day of between *C. D.* of , of the one part; and *E. F.* of , of the other part; being a (*sale*) by the said *C. D.* to the said *E. F.*, of (*a lot or parcel of land*) situate, &c., and possessed by as proprietor, for the three years now last past; And all persons who have or claim to have any privilege or hypothec under any title or by any means whatsoever in or upon the said (*lot of land*), immediately previous to and at the time the same were acquired by the said *C. D.*, are hereby notified that application will be made to the said Court on the day of , for a judgment of confirmation, and that they are hereby required to file their oppositions in the office of the said Registrar eight days at least before the said day, in default of which they will be forever precluded from the right of so doing.

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