CIVIL CODE.

AN ACT to provide a Civil Code for the Territory of Dakota.

§ 1. TITLE OF CODE.] *Be it enacted by the Legislative Assembly of the Territory of Dakota.* This act shall be known as the civil code of the territory of Dakota.

§ 2. ORIGIN OF LAW.] Law is a rule of property and of conduct prescribed by the sovereign power.

§ 3. EXPRESSION OF LAW.] The will of the sovereign power is expressed:

One—By the organic act passed by congress, creating a temporary government in this territory, and vesting the legislative power in the governor and a legislative assembly, and extending it to all rightful subjects of legislation consistent with the constitution of the United States and that act.

Two—By other statutes enacted by congress, or by the legislative assembly.

Three—By the ordinances of other and subordinate legislative bodies.

§ 4. COMMON LAW DIVIDED.] The common law is divided into:

One—Public law, or the law of nations.

Two—Domestic, or municipal law.

§ 5. EVIDENCE OF SAME.] The evidence of the common law is found in the decisions of the tribunals.

§ 6. CODES EXCLUDE COMMON LAW.] In this territory there is no common law in any case where the law is declared by the codes.

§ 7. TWO CLASSES CIVIL RIGHTS.] All original civil rights are either:

One—Rights of person; or

Two—Rights of property.

§ 8. RIGHTS—HOW WAIVED.] Rights of property and of person may be waived, surrendered, or lost by neglect, in the cases provided by law.

§ 9. CODE DIVISIONS.] This code has four general divisions:

One—The first relates to persons;

Two—The second to property;

Three—The third to obligations;

Four—The fourth contains general provisions relating to persons, property and obligations.

DIVISION FIRST.

PERSONS.

PART 1.

PERSONS.

§ 10. MINORITY DEFINED.] Minors are:

One—Males under twenty-one years of age.

Two—Females under eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born, to the same minute of the corresponding day completing the period of minority.

§ 11. ADULTS.] All other persons are adults.

§ 12. UNBORN CHILD.] A child conceived but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth.

§ 13. UNSOUND MIND.] Persons of unsound mind, within the meaning of this code, are idiots, lunatics and imbeciles.

§ 14. CUSTODY OF MINORS.] The custody of minors and persons of unsound mind is regulated by part 3 of this division.

§ 15. MINORS' DISABILITY.] A minor cannot give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

§ 16. POWERS—CONDITIONAL.] A minor may make any other contract, than as above specified, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this title, and subject to the provisions of the titles on marriage, and on master and servant.

§ 17. MINORS' CONTRACTS.] In all cases other than those specified in sections 18 and 19, the contract of a minor, if made whilst he is under the

age of eighteen, may be disaffirmed by the minor himself, either before his majority or within one year's time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest.

§ 18. NECESSARIES OF MINOR.] A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

§ 19. STATUTORY CONTRACTS.] A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

§ 20. IDIOTS' POWERS.] A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

§ 21. RESCISSION.] A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission as provided in the chapter of rescission of this code.

§ 22. INCAPACITY DETERMINED.] After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor designate any power, nor waive any right, until his restoration to capacity is judicially determined. But if actually restored to capacity, he may make a will, though his restoration is not thus determined.

§ 23. MINORS' WRONGS.] A minor, or a person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, in like manner as any other person.

§ 24. DAMAGES.] A minor, or person of unsound mind, cannot be subjected to exemplary damages, unless at the time of the act he was capable of knowing that it was wrongful.

§ 25. RIGHTS OF ACTION.] A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must be appointed to conduct the same.

§ 26. INDIAN RIGHTS—DISABILITIES.] Indians resident within this territory have the same rights and duties as other persons, except that:

1. They cannot vote or hold office, and that:

2. They cannot grant, lease or incumber Indian lands, except in the cases provided by special laws:

PART 2.

PERSONAL RIGHTS.

§ 27. GENERAL PERSONAL RIGHTS.] Besides the personal rights mentioned or recognized in the political code, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

§ 28. DEFAMATION.] Defamation is effected by:

1. Libel, or,
2. Slander.

§ 29. LIBEL DEFINED.] Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

§ 30. SLANDER.] Slander is a false and unprivileged publication, other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted or punished for crime.
2. Imputes in him the present existence of an infectious, contagious or loathsome disease.
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business that has a natural tendency to lessen its profit.
4. Imputes to him impotence or want of chastity, or,
5. Which, by natural consequence, causes actual damage.

§ 31. PRIVILIGED COMMUNICATIONS.] A privileged communication is one made:

One—In the proper discharge of an official duty.

Two—In any legislative or judicial proceeding, or in any other official proceeding authorized by law.

Three—In a communication, without malice, to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for suppos-

ing the motive for the communication innocent, or who is requested by the person interested to give the information.

Four—By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof.

Five—In the cases provided for in subdivisions three and four of this section, malice is not inferred from the communication or publication.

§ 32. OFFENSES AGAINST PERSONAL RELATION.] The rights of personal relation forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody, or of a servant from his master.

3. The seduction of a wife, daughter, orphan sister, or servant, and,

4. Any injury to a servant, which affects his liability to serve his master.

§ 33. FORCE TO PROTECT.] Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

PART 3.

PERSONAL RELATIONS.

TITLE I.

MARRIAGE.

CHAPTER I.

THE CONTRACT OF MARRIAGE.

ARTICLE I.—VALIDITY.

§ 34. MARRIAGE CONTRACT DEFINED.] Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital rights, duties, or obligations.

§ 35. PROOF OF.] Consent to and subsequent consummation of marriage may be manifested in any form, and may be proved under the same general rules of evidence as facts in other cases.

§ 36.] LAWFUL AGE.] Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage.

§ 37. PRESENT CONSENT.] The consent to a marriage must be to one commencing instantly, and not to an agreement to marry afterwards,

§ 38. INCESTUOUS MARRIAGES.] Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, or aunts and nephews, and between cousins of the half, as well as of the whole blood, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.

§ 39. VOIDABLE MARRIAGES.] If either party to a marriage be incapable from physical causes of entering into the marriage state, or if the consent of either be obtained by fraud or force, the marriage is voidable. Every marriage of a step-father with a step-daughter, or of a step-mother with a step-son, is illegal and void.

§ 40. ILLEGAL MARRIAGE.] A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning, unless:

One—The former marriage has been annulled or dissolved.

Two—Unless such former husband or wife was absent and not known to such person to be living for the space of five successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

§ 41. PARDON DOES NOT RESTORE.] No pardon granted after the approval of this act, to any person sentenced to imprisonment for life in this territory restores such person to the rights of any previous marriage, or to the guardianship of any issue of such marriage.

§ 42. INDIAN MARRIAGE.] Indians contracting marriage according to the Indian custom, and cohabiting as husband and wife, are lawfully married.

§ 43. OTHER LAW DOES NOT APPLY.] The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them, have no application to the contract of marriage.

§ 44. PROMISE—LIMITATIONS.] A promise of marriage is subject to the same rules as contracts in general, but neither party to a promise, or contract to marry, is bound by a promise made in ignorance of the other's want of personal chastity; and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein. All marriages contracted without this territory, which would be valid by the laws of the country in which the same were contracted, are valid in this territory.

§ 45. SOLEMNIZATION.] Marriage must be solemnized, authenticated and recorded as provided in this article; but non-compliance with its provisions does not invalidate any lawful marriage. It may be solemnized by either a justice of the supreme court, a judge of the probate court, or justice of the peace, a mayor, or by a minister of the gospel, or priest of any denomination; and in case of Indians by the peacemakers, their agents, or superintendent of Indian affairs.

§ 46. FORM OF DECLARATION—RECORD.] No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, and of at least one witness, that they take each other as husband and wife. Persons married without the solemnization provided for in this and the preceding section must, for the purpose of authentication, jointly make a written declaration of marriage, substantially showing:

One—The names, ages and residence of the parties.

Two—The fact of the marriage.

Three—The time of the marriage.

Four—That the marriage has not been solemnized.

If no record of the solemnization of a marriage heretofore contracted be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

One—The names, ages and residences of the parties.

Two—The fact of marriage.

Three—That no record of such marriage is known to exist.

Such declaration must be subscribed by the parties, and attested by at least three witnesses. Declarations of marriage must be acknowledged and recorded in like manner as grants of real property. And if either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed by action in the district court to have the validity of the marriage determined and declared.

§ 47. PREREQUISITES OF.] The person solemnizing a marriage must ascertain to his satisfaction:

One—The identity of the parties.

Two—Their real and full names, and places of residence.

Three—That they are of sufficient age to be capable of contracting marriage; and

Four—The name and place of residence of the witness, or of two witnesses, if more than one is present.

§ 48. RECORD OF SAME.] The person solemnizing a marriage must enter the facts ascertained by him, pursuant to the last section, and the date of the solemnization, in a book to be kept by him for that purpose.

§ 49. CELEBRANT'S CERTIFICATE.] The person solemnizing a marriage must furnish to either party, on request, a certificate thereof, signed by him, specifying:

One—The names and places of residence of the parties married.

Two—That they were known to him, or were satisfactorily proved by the oath of a person known to him, to be the persons described in such certificate.

Three—That he had ascertained that they were of sufficient age to contract marriage.

Four—The name and place of residence of the attesting witness, or of two witnesses.

Five—The time and place of such marriage; and

Six—That after due inquiry made, there appeared to be no lawful impediment to such marriage.

§ 50. REGISTRY.] The certificate mentioned in the last section may, within six months after the marriage, be filed with the clerk of the city or town where the marriage was solemnized, or where either of the parties reside, or the register of deeds of such county, and, when thus filed, must be entered in a book to be provided by such officer, in the alphabetical order of the name of each party, and in the order of time in which it is filed.

§ 51. FACTS IN REGISTRY.] The entry required by the last section must specify:

One—The name and place of residence of each party.

Two—The time and place of marriage.

Three—The name and official station of the person signing the certificate; and

Four—The time when the certificate was filed.

§ 52. PROOF AND ACKNOWLEDGEMENT.] If a certificate of marriage is signed by a minister or priest, there must be indorsed or annexed, before filing, a certificate of a magistrate residing in the same county with the clerk, that the person by whom it is signed is personally known to such magistrate, and has acknowledged the execution of the certificate, in his presence, or that the execution of the certificate by a minister or priest of some religious denomination has been proved to the magistrate by the oath of a person known to him and who saw the certificate executed.

§ 53. RECORD EVIDENCE.] A certificate or declaration of marriage, or the entry thereof made as above directed, or a copy of the certificate or declaration or entry, duly certified, is presumptive evidence of the fact of the marriage.

§ 54. CAUSES FOR ANNULLING MARRIAGE.] A marriage may be annulled by an action in the district court to obtain a decree of nullity, for any of the following causes existing at the time of the marriage:

One—That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her, unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.

Two—That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force.

Three—That either party was of unsound mind, unless such party, after coming to reason, freely cohabited with the other as husband or wife.

Four—That the consent of either party was obtained by fraud, unless such party afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

Five—That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Six—That either party was, at the time of the marriage, physically incapable of entering into the marriage state, and such incapacity continues and appears to be incurable.

Every minister or magistrate who solemnizes any marriage where either of the parties is known to him to be under the age of legal consent, and without the consent of his or her parents or guardian, or persons having charge of him or her, or where either of the parties is known to him to be of unsound mind, or any marriage to which, within his knowledge, any legal impediment exists, is guilty of a misdemeanor.

§ 55. LIMITATION OF ACTION.] An action to obtain a decree of nullity of marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties, as follows:

One—For causes mentioned in subdivision one; by the party to the

marriage who was married under the age of legal consent, within four years after arriving at the age of consent, or by a parent, guardian or other person having charge of such non-aged male or female, at any time before such married minor has arrived at the age of legal consent.

Two—For causes mentioned in subdivision two; by either party during the life of the other, or by such former husband or wife.

Three—For causes mentioned in subdivision three; by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party.

Four—For causes mentioned in subdivision four; by the party injured, within four years after the discovery of the facts constituting the fraud.

Five—For causes mentioned in subdivision five; by the injured party, within four years after the marriage.

Six—For causes mentioned in subdivision six; by the injured party, within four years after the marriage.

§ 56. CHILDREN LEGITIMATE.] Where a marriage is annulled on the ground that a former husband or wife was living, or on the ground of insanity, children begotten before the judgment are legitimate, and succeed to the estate of both parents.

§ 57. CUSTODY OF.] The court must award the custody of the children of a marriage annulled on the ground of fraud or force, to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

§ 58. EFFECT OF JUDGMENT.] A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

ARTICLE II.—DISSOLUTION.

§ 59. DISSOLVED—HOW.] Marriage is dissolved only:

One—By the death of one of the parties; or,

Two—By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. The district court in each county or subdivision, has such jurisdiction, in an action according to the code of civil procedure.

§ 60. CAUSES FOR DIVORCE—DEFINITIONS—RESTRICTIONS.] Divorces may be granted for any of the following causes:

One—Adultery.

Two—Extreme cruelty.

Three—Willful desertion.

Four—Willful neglect.

Five—Habitual intemperance.

Six—Conviction for felony.

1. Adultery, as to its definition as here used, is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

2. Extreme cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party to the marriage.

3. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

When one party is induced by the stratagem or fraud of the other party, to leave the family dwelling place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfil the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

4. Willful neglect is the neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

5. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Willful desertion, willful neglect, or habitual intemperance, must continue for two years before either is a ground for divorce.

§ 61. DENIAL OF DIVORCE—CAUSES—DEFINITIONS.] Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

One—Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce. Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

Two—Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Three—Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce.
2. Reconciliation and remission of the offense by the injured party.
3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness. Where the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from excessive acts of ill treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases, condonation can be made only after the cause of divorce has become complete, as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,
2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Four—Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as above provided, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

§ 62. ADULTERY BY HUSBAND.] When a divorce is granted for the adul-

tery of the husband, the legitimacy of children of the marriage, begotten of the wife before the commencement of the action, is not affected.

§ 63. BY WIFE—LEGITIMACY.] When a divorce is granted for the adultery of the wife, the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court, upon the evidence in the case. In every such case all children begotten before the commencement of the action, are to be presumed legitimate until the contrary is shown.

§ 64. GUILTY CANNOT MARRY.] When a divorce is granted for adultery, the innocent party may marry again during the life of the other; but the guilty party cannot marry any person except the innocent party, until the death of the other.

ARTICLE III.—OTHER CAUSES FOR DENYING DIVORCE.

§ 65. TIME LIMITED.] A divorce must be denied:

One—When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

Two—When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

Three—In all other cases when there is an unreasonable lapse of time before the commencement of the action.

Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense. The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

§ 66. ONLY STATUTORY LIMITATIONS.] There are no limitations of time for commencing actions for divorce, except such as are contained in the foregoing section, 65.

§ 67. TERM OF RESIDENCE.] A divorce must not be granted unless the plaintiff has, in good faith, been a resident of the territory ninety days next preceding the commencement of the action.

§ 68. PRESUMPTION OF DOMICILE.] In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife, does not apply. After separation, each party may have a separate domicile, depending for proof upon actual residence, and not upon legal presumptions.

§ 69. AFFIRMATIVE PROOF REQUIRED.] No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission, or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must, in addition to any statement or finding of the referee, require proof of the facts alleged, and such proof, if not taken before the court, must be upon written questions and answers.

ARTICLE IV.—GENERAL PROVISIONS.

§ 70. MAINTENANCE.] Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance of a wife and her children, or any of them, by the husband.

§ 71. ALIMONY PENDING ACTION.] While an action for divorce is pending, the court may, in its discretion, require the husband to pay as alimony any money necessary to enable the wife to support herself or her children, or to prosecute or defend the action.

§ 72. CUSTODY OF CHILDREN.] In an action for divorce, the court may, before or after judgment, give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper, and may at any time vacate or modify the same.

§ 73. SUPPORT.] Where a divorce is granted for an offense of the husband, the court may compel him to provide for the maintenance of the children of the marriage, and to make such suitable allowance to the wife for her support during her life, or for a shorter period, as the court may deem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

§ 74. SECURITY—SEPARATE ESTATE—HOMESTEAD.] The court may require the husband to give reasonable security for providing maintenance, or making any payments required under the provisions of this chapter, and may enforce the same by the appointment of a receiver, or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband. The court, in rendering a decree of divorce, may assign the homestead to the innocent party, either absolutely or for a limited period, according to the facts of the case, and in consonance with the law relating to homesteads. The disposition of the homestead by the court, and all orders and decrees touching the alimony and maintenance of the wife, and for the custody, education and support of the children, as above provided, are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court.

CHAPTER III.

HUSBAND AND WIFE.

§ 75. MUTUAL RELATIONS.] Husband and wife contract toward each other obligations of mutual respect, fidelity and support.

§ 76. HEAD OF FAMILY.] The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

§ 77. DUTY TO SUPPORT.] The husband must support himself and his wife out of his property or by his labor. The wife must support the husband, when he has not deserted her, out of her separate property, when he has no separate property, and he is unable, from infirmity, to support himself.

§ 78. SEPARATE PROPERTY—DWELLING.] Except as mentioned in section 77, neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

§ 79. CONTRACTS.] Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried, subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the title on trusts.

§ 80. CANNOT ALTER RELATIONS.] A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 81. SEPARATION.] The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 82. JOINT TENANTS—WIFE'S CONVEYANCE.] A husband and wife may hold real or personal property together, as joint tenants, or tenants in common. The wife may, without the consent of her husband, convey her separate property. A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner provided by law for the acknowledgment or proof of a grant of real property by an unmarried woman, and recorded in the office of the register of deeds of the county or subdivision in which the parties reside. The filing of the inventory in the register's office is notice and prima facie evidence of the title of the wife.

§ 83. SEPARATE AND MUTUAL RIGHTS.] Neither husband nor wife, as such, is answerable for the acts of the other.

Two—The earnings of the wife are not liable for the debts of the husband, and the earnings and accumulations of the wife, and of her minor children living with her or in her custody, while she is living separate from her husband, are the separate property of the wife.

Three—The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Four—The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts, contracted before or after marriage.

Five—No estate is allowed the husband as tenant by courtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 84. WIFE'S NECESSARIES.] If the husband neglect to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may, in good faith, supply her with articles necessary for her support and recover the reasonable value thereof from the husband.

§ 85. ABANDONMENT—SEPARATION.] A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justi-

fied by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

TITLE II.

PARENT AND CHILD.

CHAPTER I.

CHILDREN BY BIRTH.

§ 86. LEGITIMACY PRESUMED.] All children born in wedlock are presumed to be legitimate.

§ 87. DEFINITIONS.] All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

§ 88. DISPUTED LEGITIMACY.] The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

§ 89. BOTH PARENTS SUPPORT CHILDREN.] The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

§ 90. TITLE TO CUSTODY—FATHER.] The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person, except the mother, without her written consent, unless she has deserted him, or is living separate from him by agreement. If the father be dead, or be unable, or refuse to take the custody, or has abandoned his family, the mother is entitled thereto.

§ 91. OF ILLEGITIMATE CHILD.] The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings.

§ 92. COURT MAY DIRECT.] The district court may direct an allowance to be made to a parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

§ 93. PROPERTY CONTROL.] The parent, as such, has no control over the property of the child.

§ 94. PARENTAL ABUSE.] The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relative within the third degree, or by the officers of the poor where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

§ 95. PARENT'S POWER CEASES.] The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of the child.

2. Upon the marriage of the child: or,

3. Upon its attaining majority.

§ 96. PUBLIC ACTION FOR SUPPORT CHILD.] If a parent chargeable with the support of a child dies, leaving it chargeable upon the township or county, and leaving an estate sufficient for its support, the officers of the poor, in the name of the township or county respectively, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs, devisees, and next of kin of the parent.

§ 97. SUPPORT OF POOR.] It is the duty of the father, the mother, and the children, of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent, is binding.

§ 98. NEGLECT OF CHILD.] If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

§ 99. PARENT WHEN NOT LIABLE.] A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

§ 100. SUPPORT OF STEP-CHILDREN.] A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and where such is the case, they are not liable to him for their support, nor he to them for their services.

§ 101. AFTER MAJORITY.] Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor.

§ 102. CHILD'S EARNINGS.] The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

§ 103. WAGES PAID.] The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

§ 104. CHANGE RESIDENCE.] A parent entitled to the custody of a child

has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

§ 105. NON-LIABILITY.] Neither parent nor child is answerable, as such, for the act of the other.

§ 106. FATHER'S AND MOTHER'S CUSTODY.] The husband and wife, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and when they so live in a state of separation without being divorced, the district court or judge thereof, upon application of either, may grant a writ of *habeas corpus* to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either, for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules prescribed in section 127, under the title of "guardian and ward."

CHAPTER II.

ADOPTION.

§ 107. MINOR ADOPTED.] Any minor child may be adopted by any adult person, in the cases, and subject to the rules, prescribed in this chapter.

§ 108. RELATIVE AGE LIMITED.] The person adopting a child must be at least ten years older than the person adopted.

§ 109. MARRIED PERSONS LIMITED.] A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife, nor can a married woman not thus separated from her husband, without his consent, provided the husband or wife not consenting, is capable of giving such consent.

§ 110. CONSENT OF PARENT.] A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother, if living, except that consent is not necessary from a father or mother, deprived of civil rights, or adjudged guilty of adultery, or of cruelty, and for either cause divorced, or adjudged to be an habitual drunkard, or who has been judicially deprived of the custody of the child, on account of cruelty or neglect.

§ 111. OF CHILD.] The consent of a child, if over the age of twelve years, is necessary to its adoption.

§ 112. PROBATE APPROVAL.] The person adopting a child, and the child adopted, and the other persons whose consent is necessary, must appear before the probate judge of the county where the person adopting resides, and the necessary consent must thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated in all respects as his own lawful child should be treated.

§ 113. SEPARATE EXAMINATION.] The probate judge must examine all persons appearing before him pursuant to the last section, each separately,

and if satisfied that the interests of the child will be promoted by the adoption, he must make an order declaring that the child shall thenceforth be regarded and treated in all respects as the child of the person adopting,

§ 114. CHANGE OF NAME.] A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.

§ 115. PARENTS RELIEVED.] The parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and of all responsibility for, the child so adopted, and have no right over it.

§ 116. ILLEGITIMATE CHILD.] The father of an illegitimate child. by publicly acknowledging it as his own, receiving it as such, with the consent of his wife if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

TITLE III.

GUARDIAN AND WARD.

§ 117. GUARDIAN DEFINED.] A guardian is a person appointed to take care of the person or property of another.

§ 118. WARD.] The person over whom, or over whose property, a guardian is appointed, is called his ward.

§ 119. GUARDIANS CLASSED.] Guardians are either:

1. General; or,
2. Special.

§ 120. GENERAL.] A general guardian is a guardian of the person, or of all the property of the ward within this territory, or of both.

§ 121. SPECIAL.] Every other is a special guardian.

§ 122. HOW AND BY WHOM APPOINTED.] A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

One—If the child be legitimate, by the father with the written consent of the mother, or by either parent, if the other be dead or incapable of consent.

Two—If the child be illegitimate, by the mother.

§ 123. POWER.] No person, whether a parent or otherwise, has any power as guardian of property, except by appointment as hereinafter provided.

§ 124. PROBATE JURISDICTION.] A guardian of the person or property, or both, of a person residing in this territory, who is a minor, or of unsound mind, may be appointed in all cases, other than those named in section 122, by the probate court, as provided in the probate code.

§ 125. OF UNSOUND MIND.] A guardian of the property, within this territory, of a person not residing therein, who is a minor, or of unsound mind, may be appointed by the probate court.

§ 126. EXCLUSIVE CONTROL.] In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him.

§ 127. RULES GOVERNING SECTION.] In awarding the custody of a minor, or in appointing a general guardian, the court or judge is to be guided by the following considerations:

One—By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child be of a sufficient age to form an intelligent preference, the court or judge may consider that preference in determining the question.

Two—As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child be of tender years, it should be given to the mother; if it be of an age to require education and preparation for labor or business, then to the father.

Three—Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

1. To a parent.

2. To one who was indicated by the wishes of a deceased parent.

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.

4. To a relative.

§ 128. GUARDIAN'S POWER.] A guardian appointed by a court has power over the person and property of the ward, unless otherwise ordered.

§ 129. OF THE PERSON.] A guardian of the person is charged with the custody of the ward, and must look to his support, health and education. He may fix the residence of the ward at any place within the territory, but not elsewhere, without permission of the court.

§ 130. OF THE PROPERTY.] A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property, nor make any sale of such property without the order of the probate court, but must, so far as it is in his power, maintain the same, with its buildings and appurtenances, out of the income or other property of the estate, and deliver it to the ward at the close of his guardianship, in as good condition as he received it.

§ 131. RELATION DEFINED.] The relation of guardian and ward is confidential, and is subject to the provisions of the title on trusts.

§ 132. COURT CONTROL.] In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

§ 133. JOINT GUARDIANS.] On the death of one or two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

§ 134. REMOVAL—CAUSES.] A guardian may be removed by the probate court for any of the following causes:

One—For abuse of his trust.

Two—For continued failure to perform its duties.

Three—For incapacity to perform its duties.

Four—For gross immorality.

Five—For having an interest adverse to the faithful performance of his duties.

Six—For removal from the territory.

Seven—In the case of guardian of the property, for insolvency; or

Eight—When it is no longer proper that the ward should be under guardianship.

§ 135. PARENTAL APPOINTEE SUPERSEDED.] The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided in section 134.
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority.

§ 136. COURT APPOINTEE.] The power of a guardian appointed by a court is suspended only:

One—By order of the court; or,

Two—If the appointment was made solely because of the ward's minority, by his obtaining majority; or,

Three—The guardianship over the person of the ward by the marriage of the ward.

§ 137. WARD'S MAJORITY.] After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

§ 138. LIMITATION OF DISCHARGE.] A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

§ 139. ASYLUM FOR UNSOUND MIND.] A person of unsound mind may be placed in an asylum for such persons upon the order of the probate court of the county in which he resides, as follows:

One—The court must be satisfied, by the oath of two reputable physicians, that such person is of unsound mind, and unfit to be at large.

Two—Before granting the order the judge must examine the person himself, or if that is impracticable, cause him to be examined by an impartial person, duly sworn for that purpose.

Three—After the order is granted the person alleged to be of unsound mind, his or her husband or wife, or relative to the third degree, may appeal to the district court and demand therein an investigation before a jury, which must be substantially, in all respects, conducted as under an inquisition of lunacy.

TITLE IV.

MASTER AND SERVANT.

§ 140. APPRENTICESHIP AUTHORIZED.] Male minors, and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves, by a writing called an indenture, as fully as if they were of age, to serve as clerks, apprentices or servants, in a particular calling, until majority (except in the case of females, who cannot bind themselves further than until the age of eighteen,) or for any shorter time.

§ 141. CONSENT—BY WHOM.] Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or endorsed thereon, signed:

1. By the father and mother of the apprentice.

2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him, with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother.

3. If the father is dead, and such guardian or executor has been appointed by him, then by such guardian or executor.

4. If the mother is dead, or lacks capacity to consent, then by the father.

5. If there is no parent of capacity to consent, and no such executor, then by the guardian; or,

6. If there is no such parent, executor or guardian, then by the officers of the poor of the town or county, or by any two justices of the peace of the county, or by the probate judge.

§ 142. LIABILITY.] A parent, executor or guardian, consenting to an indenture, is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor.

§ 143. POOR MAY BE BOUND.] Any child who is chargeable, or whose parents are chargeable to a county or city poor house, or who is in such poor house may be bound to service until attaining twenty-one years, or if a female until attaining eighteen years, by the proper officers of the poor, as provided in this title; but such binding by said officers must be with the consent in writing of the justice of the peace of the county or city.

§ 144. INDIAN CHILD.] No child of an Indian woman can be bound, under this title, except in the presence, and with the consent of a justice of the peace; and his certificate of consent must be filed with the probate judge of the county where the indenture is executed.

§ 145. AGE STATED.] In every indenture of apprenticeship the age of the apprentice must be stated and such statement is presumptive evidence thereof; and before an officer executes an indenture, or consents thereto, he must inform himself of the age of the apprentice.

§ 146. CONSIDERATION.] If there is any pecuniary consideration for an indenture of apprenticeship on either part, it must be stated therein.

§ 147. EDUCATION REQUIRED.] The indenture shall also contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and to be taught the general rules of arithmetic, or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture; and that he will give him a new bible at the expiration of his term of service.

§ 148. FILING COUNTERPART.] Every officer executing an indenture of apprenticeship must file a counterpart thereof with the probate judge of the county in which he is an officer.

§ 149. IMMIGRANT MINOR.] An immigrant minor may bind himself to service until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country, it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term.

§ 150. ACKNOWLEDGMENT.] Every indenture under section 149 must be duly acknowledged by the minor on a private examination before a probate judge or a justice of the peace, and a certificate of the acknowledgment, showing that the same was made freely, must be indorsed upon the contract.

§ 151. ASSIGNMENT ALLOWED.] The master, under an indenture specified in section 149, may assign it, by writing indorsed thereon, and with the approval also indorsed of a magistrate mentioned in section 150.

§ 152. INDENTURE VOID, ETC.] No indenture or contract for the service of an apprentice is binding upon him unless made as hereinbefore prescribed.

§ 153. OVERSEERS OF POOR.] The county overseer of the poor, and the overseers of the poor of cities and towns, must see that every apprentice or other servant in their respective counties, cities or towns, is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law.

§ 154. PENALTY UPON ABSENT APPRENTICE.] If an apprentice, for whose instruction the master receives no pecuniary compensation, willfully absents himself from service without leave, he may be compelled to serve double the time of such absence unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term.

§ 155. FREE VOCATION.] No person may accept from an apprentice or servant, an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant, any consideration for exercising his vocation in any place after his term of service has expired.

§ 156. PENALTY FOR RESTRAINT.] Any consideration exacted contrary to

the last section, may be recovered back with interest, and every person accepting such agreement or exacting such consideration, is liable to the apprentice or servant in a penalty of one hundred dollars.

§ 157. DECEASED MASTER.] The executors or administrators of the master of any apprentice bound by officers of the poor, may assign the indenture, with the written consent of the apprentice, acknowledged before a justice of the peace.

§ 158. CONSENT TO ASSIGNMENT.] If an apprentice refuses consent to an assignment under the last section, the probate or district court may authorize such assignment without his consent, upon application, after fourteen days' notice, to the apprentice or to his parents or guardian, if he has any in the county.

DIVISION SECOND.

PROPERTY.

PART 1.

PROPERTY IN GENERAL.

TITLE I.

NATURE OF PROPERTY.

§ 159. OWNERSHIP DEFINED.] The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership, is called property.

§ 160. WHAT MAY BE OWNED.] There may be ownership of all inanimate things which are capable of appropriation, or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs, and of rights created or granted by statute.

§ 161. WILD ANIMALS.] Animals, wild by nature, are the subjects of ownership while living only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

§ 162. PROPERTY CLASSED.] Property is either:

One—Real or immovable; or,

Two—Personal or movable.

§ 163. REAL DEFINED.] Real or immovable property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law.

§ 164. LAND DEFINED.] Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.

§ 165. FIXTURES.] A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.

§ 166. APPURTENANCES.] A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air or heat, from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

§ 167. PERSONAL PROPERTY DEFINED.] Every kind of property that is not real is personal.

CHAPTER I.

OWNERS.

§ 168. OWNERSHIP—LIMITATION.] The legislative assembly can pass no law interfering with the primary disposal of the soil. All property in this territory has an owner, whether that owner is the United States, or the territory, and the property public; or the owner, an individual, and the property private. The territory may also hold property as a private proprietor.

§ 169. LAND BELOW HIGH WATER MARK.] The ownership of land below ordinary high water mark, and of land below the water of a navigable lake or stream, is regulated by the laws of the United States or by such laws as, under authority thereof, the legislative assembly may enact. The territory is the owner of all property lawfully appropriated or dedicated to its own use; and of all property of which there is no other owner.

§ 170. WHO MAY CONVEY.] Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this territory.

CHAPTER II.

MODIFICATIONS OF OWNERSHIP.

ARTICLE I.—INTERESTS IN PROPERTY.

§ 171. OWNERSHIP CLASSED.] The ownership of property is either:

1. Absolute; or,
2. Qualified.

§ 172. ABSOLUTE.] The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

§ 173. QUALIFIED.] The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited; or,
3. When the use is restricted.

§ 174. SOLE OWNERSHIP.] The ownership of property by a single person is designated as a sole or several ownership.

§ 175. OWNERSHIP OF PROPERTY.] The ownership of property by several persons is either:

1. Of joint interests.
2. Of partnership interests; or,
3. Of interests in common.

§ 176. JOINT TENANCY.] A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

§ 177. PARTNERSHIP.] A partnership interest is one owned by several persons, in partnership, for partnership purposes.

§ 178. COMMON TENANCY.] An interest in common is one owned by several persons not in joint ownership or partnership.

§ 179. DEFINITION.] Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 176.

§ 180. COMMENCEMENT AND DURATION.] In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

§ 181. PRESENT.] A present interest entitles the owner to the immediate possession of the property.

§ 182. FUTURE.] A future interest entitles the owner to the possession of the property only at a future period.

§ 183. PERPETUAL.] A perpetual interest has a duration equal to that of the property.

§ 184. LIMITED. A limited interest has a duration less than that of the property.

§ 185. FUTURE ESTATES CLASSED.] A future interest is either:

One—Vested; or

Two—Contingent.

§ 186. WHEN THEY VEST.] A future interest is vested when there is a person in being who would have a right, defeasable or indefeasable, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

§ 187. HOW CONTINGENT.] A future interest is contingent whilst the person in whom, or the event upon which, it is limited to take effect, remains uncertain.

§ 188. ALTERNATIVE CONTINGENCIES.] Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

§ 189. NOT VOID.] A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

§ 190. POSTHUMOUS HEIR.] When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

§ 191. FUTURE ESTATES PASS.] Future interests pass by succession, will and transfer, in the same manner as present interests.

§ 192. POSSIBILITIES.] A mere possibility, such as the expectancy of an heir-apparent, is not to be deemed an interest of any kind.

§ 193. ESTATES OF REALTY.] In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in part 2 of this division.

§ 194. APPLIES TO PERSONAL, ONLY.] The names and classification of interests in real property have only such application to interests in personal property as is in this division of the code expressly provided.

§ 195. FUTURE INTEREST LIMITED.] No future interest in property is recognized by the law, except such as is defined in this division of the code.

ARTICLE II.- CONDITION OF OWNERSHIP.

§ 196. CONDITIONS DEFINED.] The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

§ 197. CLASSED.] Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right.

§ 198. ILLEGAL CONDITIONS VOID.] If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

§ 199. MARRIAGE LIMITATIONS.] Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

§ 200. RESTRAINT ON ALIENATION.] Conditions restraining alienation when repugnant to the interest created, are void.

ARTICLE III.—RESTRAINTS UPON ALIENATION.

§ 201. EXTENT OF LEGAL LIMIT.] The absolute power of alienation cannot be suspended by any limitation or condition whatever, for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 229.

§ 202. FUTURE LIMITATION VOID.] Every future interest is void in its creation, which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

§ 203. LEASES LIMITED.] No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant of any town or city lot, for a longer period than twenty years, in which shall be reserved any rent or service of any kind, shall be valid.

ARTICLE IV.—ACCUMULATIONS.

§ 204. INCOME—FUTURE INTEREST.] Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this title in relation to future interests.

§ 205. ILLEGAL ACCUMULATION.] All directions for the accumulation of the income of property, except such as are allowed by this title, are void.

§ 206. INCOME HOW DIRECTED.] An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this title permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

§ 207. VOID BEYOND MINORITY.] If, in either of the cases mentioned in the last section, the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

§ 208. PROBATE POWER.] When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the probate court, upon application, may direct a suitable sum to be applied thereto, out of the fund.

CHAPTER III.

RIGHTS OF OWNERS.

§ 209. OWN INCLUDES GAIN.] The owner of a thing owns also all its products and accessions.

§ 210. UNDIRECTED INCOME.] When, in consequence of a valid limitation of future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER IV.

TERMINATION OF OWNERSHIP.

§ 211. SUCCESSION DEFEATS CONTINGENCY.] A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

§ 212. FUTURE INTEREST DEFEATED.] A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

§ 213. WHEN NOT.] No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

§ 214. SAME.] No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

TITLE III.

GENERAL DEFINITION.

§ 215. INCOME INCLUDES.] The income of property, as the term is used in this part of the code, includes the rents and profits of real property, the interest of money, dividends upon stock, and other produce of personal property.

§ 216. WHAT CREATES LIMITATION.] The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of this part of the code.

PART 2.

REAL OR IMMOVABLE PROPERTY.

TITLE I.

GENERAL PROVISIONS.

§ 217. LAW GOVERNING.] Real property within this territory is governed by the law of this territory, except where the title is in the United States.

TITLE II.

ESTATES IN REAL PROPERTY.

CHAPTER I.

ESTATES IN GENERAL.

§ 218. DURATION CLASSED.] Estates in real property, in respect to the duration of their enjoyment, are either:

1. Estates of inheritance, or perpetual estates.
2. Estates for life.
3. Estates for years; or,
4. Estates at will.

§ 219. FEE DEFINED.] Every state of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee.

§ 220. ESTATES TAIL ARE FEES.] Estates tail are abolished; and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute.

§ 221. LIMITATION OF.] Where a remainder in fee is limited upon any estate, which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee, and vests in possession, on the death of the first taker, without issue living at the time of his death.

§ 222. FREEHOLD DEFINED.] Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution.

§ 223. SAME.] An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold.

§ 224. FUTURE HOW LIMITED.] A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination, by lapse of time, or otherwise, of a precedent estate, created at the same time.

§ 225. REVERSION DEFINED.] A reversion is the residue of an estate left, by operation of law, in the grantor, or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised.

§ 226. REMAINDER.] When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder, and may be created and transferred by that name.

§ 227. SUSPENSION.] The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

§ 228. FURTHER DEFINED.] The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation within the meaning of section 201.

§ 229. REMAINDER IN FEE.] A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined, before they attain majority.

§ 230. SAME ON OTHER ESTATES.] Subject to the rules of this title, and of part 1 of this division, a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expect-

ant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, must happen within the period prescribed in this title.

§ 231. SUBSEQUENT LIFE ESTATES VOID.] Successive estates for life cannot be limited, except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons, the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created.

§ 232. REMAINDER ON SUCCESSIVE LIVES.] No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term for years unless it is for the whole residue of such term.

§ 233. ON TERM VOID, UNLESS.] A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such, that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder.

§ 234. TO PERSONS IN BEING.] No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

§ 235. CONDITIONAL LIMITATION.] A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation.

§ 236. TO HEIRS OF BODY.] When a remainder is limited to the heirs, or heirs of the body, of a person to whom a life estate in the same property is given, the persons who, on the termination of the life estate, are the successors or heirs of the body of the owner for life, are entitled to take by virtue of the remainder so limited to them, and not as mere successors of the owner for life.

§ 237. ON DEATH OF FIRST TAKER.] When a remainder, on an estate for life or for years, is not limited on a contingency defeating or avoiding such precedent estate, it is to be deemed intended to take effect only on the death of the first taker, or the expiration, by lapse of time, of such term of years.

§ 238. UNEXECUTED POWER.] A general or special power of appointment does not prevent the vesting of a future estate, limited to take effect in case such power is not executed.

CHAPTER II.

TERMINATION OF ESTATES.

§ 239. OF ESTATE AT WILL.] A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant, in the manner prescribed by the next section, to remove from the premises within a period specified in the notice, of not less than one month.

§ 240. NOTICE SERVED.] The notice prescribed by the last section must

be in writing, and must be served by delivering the same to the tenant, or to some person of discretion residing on the premises, or if neither can, with reasonable diligence, be found, the notice may be served by affixing it on a conspicuous part of the premises, where it may be conveniently read.

§ 241. SUBSEQUENT ACTION.] After the notice prescribed by sections 239 and 240 has been served in the manner therein directed, and the period specified by such notice has expired, but not before, the landlord may re-enter or proceed according to law to recover possession.

§ 242. THREE DAYS' NOTICE.] Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued, upon three days' previous written notice of intention to re-enter, served in the mode prescribed by section 240.

§ 243. WITHOUT NOTICE.] An action for the possession of real property leased or granted, with a right of re-entry, may be maintained at any time after the right to re-enter has accrued, without the notice prescribed in section 242.

CHAPTER III.

SERVITUDES.

§ 244. EASEMENTS ATTACHED TO OTHER LANDS.] The following land burdens or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.
8. The right of receiving air, light or heat from or over, or discharging the same upon or over, land.
9. The right of receiving water from or discharging the same upon land.
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.
12. The right of using a wall as a party wall.
13. The right of receiving more than natural support from adjacent land or things affixed thereto.
14. The right of having the whole of a division fence maintained by a coterminous owner.
15. The right of having public conveyances stopped, or of stopping the same on land.
16. The right of a seat in church.
17. The right of burial.

§ 245. OTHERS NOT ATTACHED.] The following land burdens or servitudes upon land, may be granted and held, though not attached to land:

One—The right to pasture, and of fishing and taking game.

Two—The right of a seat in church.

Three—The right of burial.

Four—The right of taking rents and tolls.

Five—The right of way.

Six—The right of taking water, wood, minerals, or other things.

§ 246. DOMINANT TENEMENT.] The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement.

§ 247. WHO CAN CREATE.] A servitude can be created only by one who has a vested estate in the servient tenement.

§ 248. WHO NOT HOLD.] A servitude thereon cannot be held by the owner of the servient tenement.

§ 249. EXTENT OF.] The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired.

§ 250. PARTITION OF.] In case of partition of the dominant tenement, the burden must be apportioned, according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement.

§ 251. RIGHT OF FUTURE OWNER.] The owner of a future estate in a dominant tenement may use easements attached thereto, for the purpose of viewing waste, demanding rent, or removing an obstruction to the enjoyment of such easements, although such tenement is occupied by a tenant.

§ 252. RIGHT OF ACTION.] The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto.

§ 253. SAME.] The owner in fee of a servient tenement, may maintain an action for the possession of the land, against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public.

§ 254. EXTINGUISHMENT.] A servitude is extinguished.

One—By the vesting of the right to the servitude and the right to the servient tenement in the same person.

Two—By the destruction of the servient tenement.

Three—By the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or excercise; or,

Four—When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

TITLE III.

RIGHTS AND OBLIGATIONS OF OWNERS.

CHAPTER I.

RIGHTS OF OWNERS.

ARTICLE I.—INCIDENTS OF OWNERSHIP.

§ 255. LAND INCLUDES WATER.] The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same.

§ 256. INHERITANCE PROTECTED.] The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance.

§ 257. RIGHTS OF TENANT.] A tenant for years or at will, unless he is a wrong doer by holding over, may occupy the building, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy, and cultivate and harvest the crops growing at the end of his tenancy.

§ 258. LIMITED BY INSTRUMENT.] A tenant for years, or at will, has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired, or by the last section.

§ 259. SUCCESSION TO RIGHTS.] A person to whom any real property is transferred or devised, upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for non-performance of any of the terms of the lease, or for any waste or cause of forfeiture, as his grantor or devisor might have had.

§ 260. ASSIGNEES OF LESSOR OR LESSEE.] Whatever remedies the lessor of any real property has against his immediate lessee for the breach of any agreement in the lease, or for recovery of the possession, he has against the assignees of the lessee, for any cause of action accruing while they are such assignees, except where the assignment is made by way of security for a loan, and is not accompanied by possession of the premises. Whatever remedies the lessee of any real property may have against his immediate lessor, for the breach of any agreement in the lease, he may have

against the assigns of the lessor, and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances, or relating to the title or possession of the premises.

§ 261. NOTICE TO CHANGE TERMS.] In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease, to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease, the terms, rent and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month.

§ 262. LIFE LEASE RENT.] Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

§ 263. AFTER DEATH.] Rent dependent on the life of a person may be recovered after, as well as before, his death.

§ 264. RIGHT OF ACTION.] A person having an estate in fee, in remainder or reversion, may maintain an action for any injury done to the inheritance, notwithstanding an interventing estate for life or years, and although, after its commission, his estate is transferred, and he has no interest in the property at the commencement of the action.

ARTICLE II.—BOUNDARIES.

§ 265. ABOVE AND BELOW SURFACE.] The owner of land in fee has the right to the surface, and to everything permanently situated beneath or above it.

§ 266. BANKS AND BEDS OF STREAMS.] Except where the grant under which the land is held indicates a different intent, the owner of the upland when it borders upon a navigable lake or stream, takes to the edge of the lake or stream at low-water mark, and all navigable rivers shall remain and be deemed public highways. In all cases where the opposite banks of any streams, not navigable, belong to different persons, the stream and the bed thereof shall become common to both.

§ 267. HIGHWAYS.] An owner of land, bounded by a road or street, is presumed to own to the center of the way, but the contrary may be shown.

§ 268. LATERAL SUPPORT.] Each coterminous owner is entitled to the lateral and subjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction, on using ordinary care and skill, and taking reasonable precautions to sustain the land of the other, and giving previous reasonable notice to the other of his intention to make such excavations.

§ 269. TREES ON LAND.] Trees whose trunks stand wholly upon the land of one owner, belong exclusively to him, although their roots grow into the land of another.

§ 270. SAME ON LINE.] Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common.

CHAPTER II.

OBLIGATIONS OF OWNERS.

§ 271. REPAIRS AND TAXES.] The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance.

§ 272. BOUNDARIES—FENCES.] Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.

2. The fences between them, unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value, at that time, of any division fence made by the latter.

TITLE IV.

USES AND TRUSTS.

§ 273. LIMITATION.] Uses and trusts, in relation to real property, are those only which are specified in this title.

§ 274. LEGAL ESTATE CONFIRMED.] Every estate which is now held as a use, executed under any former statute of this territory, is confirmed as a legal estate.

§ 275. DEFINITION.] Every person who, by virtue of any transfer or devise, is entitled to the actual possession of real property, and the receipt of the rents and profits thereof, is to deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest.

§ 276. TRUST VALID.] The last section does not divest the estate of any trustee in a trust heretofore existing, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

§ 277. DIRECT TRANSFER.] Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person, to the use of or in trust for another, no estate or interest vests in the trustee: but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof.

§ 278. LIMITATION OF PRECEDING.] The preceding sections of this title do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined.

§ 279. REQUISITES OF TRUSTS.] No trust in relation to real property is valid, unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing.

2. By the instrument under which the trustee claims the estate affected or,

3. By operation of law.

§ 280. TRUST PRESUMED.] When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

§ 281. INNOCENT PURCHASER.] No implied or resulting trust can prejudice the rights of a purchaser or incumbrancer of real property, for value and without notice of the trust.

§ 282. PURPOSES OF TRUSTS.] Express trusts may be created for any of the following purposes:

One—To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.

Two—To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

Three—To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term, subject to the rules of title two of this part; or,

Four—To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits prescribed by the same title.

§ 283. A TRUST POWER.] A devise of real property to executors or other trustees, to be sold or mortgaged, where the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust.

§ 284. LIABILITY OF SURPLUS.] Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of such person, in the same manner as personal property which cannot be reached by execution.

§ 285. CERTAIN TRUST A POWER.] Where an express trust in relation to real property is created for any purpose not enumerated in the preceding sections, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers, contained in title 5 of this part.

§ 286. POWER IN TRUST.] Nothing in this title prevents the creation of a power in trust for any of the purposes for which an express trust may be created.

§ 287. REALTY PASSES.] In every case where a trust is valid as a power in trust, the real property to which the trust relates, remains in or passes by succession to the persons otherwise entitled, subject to the execution of the trust as a power in trust.

§ 288. ESTATE IN TRUSTEES LIMITED.] Except as hereinafter otherwise provided, every express trust in real property, valid as such, in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

§ 289. CONTINGENT TRUST.] Notwithstanding anything contained in the last section, the author of a trust may, in its creation, prescribe to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust.

§ 290. LEGAL ESTATE.] The grantee or devisee of real property subject to a trust acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

§ 291. UNDISPOSED ESTATES.] Where an express trust is created in relation to real property, every estate not embraced in the trust, and not otherwise disposed of, is left in the author of the trust, or his successors.

§ 292. LIMITED DISPOSAL.] The beneficiary of a trust for the receipt of the rents and profits of real property, or for the payment of an annuity out of such rents and profits, may be restrained from disposing of his interest in such trust during his life, or for a term of years, by the instrument creating the trust.

§ 293. GRANT SEPARATE FROM TRUST.] Where an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee, or in an instrument signed by him, and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust, and in favor of purchasers from such trustee without notice, and for a valuable consideration.

§ 294. NOT SEPARATE.] Where a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees, in contravention of the trust, is absolutely void.

§ 295. TRUST CEASES.] When the purpose for which an express trust was created ceases, the estate of the trustee also ceases.

TITLE V.

POWERS.

§ 296. SPECIFIED ONLY.] Powers, in relation to real property, are those only which are specified in this title.

§ 297. EXCLUSION.] The provisions of this title do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit.

§ 298. DEFINITION.] A power, as the term is used in this title, is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose.

§ 299. AUTHOR DEFINED.] The author of a power, as the term is used in this title, is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation.

§ 300. POWERS CLASSED.] Powers are general or special, and beneficial or in trust.

§ 301. GENERAL POWERS.] A power is general when it authorizes the alienation or incumbrance of a fee in the property embraced therein, by grant, will or charge, or any of them, in favor of any person whatever.

§ 302. SPECIAL.] A power is special:

1. When a person or class of persons is designated, to whom the disposition of property under the power is to be made; or,

2. When it authorizes the alienation or incumbrance, by means of a grant, will, or charge, of only an estate less than a fee.

§ 303. BENEFICIAL] A power is beneficial when no person other than its holder has, by the terms of its creation, any interest in its execution.

§ 304. POWER IN TRUST.] A power is in trust when any person or class of persons, other than its holder, has, by the terms of its creation, an interest in its execution.

§ 305. GENERAL—SAME.] A general power is in trust when any person or class of persons, other than its holder, is designated as entitled to the proceeds of the disposition or charge authorized by the power, or to any portion of the proceeds or other benefits to result from its execution.

§ 306. SPECIAL—SAME.] A special power is in trust:

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power; or,

2. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power.

§ 307. CAPACITY TO CREATE.] No person is capable of creating a power who is not at the same time capable of granting some estate in the property to which the power relates.

§ 308. VESTS IN WHOM.] A power may be vested in any person.

§ 309. HOW CREATED.] A power may be created only:

1. By a suitable clause contained in a grant of some estate in the real property to which the power relates, or in an agreement to execute such a grant; or,

2. By a devise contained in a will.

§ 310. RESERVED POWER.] The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this title in the same manner as if granted to another.

§ 311. IRREVOCABLE UNLESS.] Every power, beneficial or in trust, is irrevocable unless an authority to revoke it is given or reserved in the instrument creating the power.

§ 312. LIEN OF POWER DEFINED.] A power is a lien upon the real property which it embraces from the time the instrument in which it is contained takes effect; except that against creditors, purchasers and incumbrancers, in good faith and without notice, from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded.

§ 313. POWER A SECURITY.] Where a power to sell real property is given to a mortgagee, or other incumbrancer, in an instrument intended to secure the payment of money, the power is to be deemed a part of the security and vests in any person who, by assignment, becomes entitled to the money so secured to be paid, and may be executed by him whenever the assignment is duly acknowledged and recorded.

§ 314. CAPACITY LACKING.] A power cannot be executed by any person not capable of disposing of real property.

§ 315. MARRIED WOMAN.] A married woman may execute a power during her marriage, without the concurrence of her husband, unless otherwise prescribed by the terms of the power.

§ 316. SAME—ACKNOWLEDGMENT.] No power can be executed by a married woman before she attains her majority, nor without being acknowledged by her in the manner prescribed by the chapter on recording transfers.

§ 317. EXECUTION OF POWER.] A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner.

§ 318. MANY—SURVIVOR.] Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survisors, unless otherwise prescribed by the terms of the power.

§ 319. EXECUTION BY WILL.] Where a power to dispose of real property is confined to a disposition by devise or will, the instrument of execution must be a will duly executed according to the provisions of the title on wills.

§ 320. SAME BY GRANT.] Where a power is confined to a disposition by grant, it cannot be executed by will, even though the disposition is not intended to take effect until after the death of the person executing the power.

§ 321. PECULIAR EXECUTION.] Where the author of a power has directed or authorized it to be executed by an instrument which would not be suf-

ficient in law to pass the estate, the power is not void, but its execution is to be governed by the rules before prescribed in this title.

§ 322. FORMALITIES—SURPLUSAGE.] Where the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power.

§ 323. TRIVIAL CONDITIONS.] Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

§ 324. BINDING CONDITIONS.] With the exceptions contained in the preceding sections, the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 333 and 357.

§ 325. CONSENT HOW EXPRESSED.] When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed, or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate, must be subscribed by the party whose consent is required; and to entitle the instrument to be recorded, such signature must be duly proved or acknowledged, according to the chapter on recording transfers.

§ 326. CONSENT OF ALL SURVIVORS.] Where the consent of several persons to the execution of a power is requisite, all must consent thereto; but, in case any one or more of them is dead, the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power.

§ 327. VALIDITY WITHOUT RECITAL.] Every instrument executed by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein.

§ 328. CONVEYANCES, EXCEPT WILL.] Every instrument except a will, in execution of a power, even though the power is one of revocation only, is to be deemed a conveyance within the meaning of the chapter on recording transfers.

§ 329. VALID TO EXTEND POWER.] A disposition of charge, by virtue of a power, more extensive than was authorized thereby, is not therefore void; but every estate or interest so created, so far as it is embraced by the terms of the power, is valid.

§ 330. TIME RUNS FROM.] The period during which the absolute right of alienation may be suspended by an instrument in execution of a power, must be computed, not from the date of the instrument, but from the time of the creation of the power.

§ 331. LEGALITY OF ESTATE.] No estate or interest can be given or limited to any person, by an instrument in execution of a power, which could not have been given or limited at the time of the creation of the power.

§ 332. MARRIED WOMAN'S POWER.] When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may, by virtue of such power, create any estate which she might create if unmarried.

§ 333. RELIEF FROM DEFECTS.] Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner.

§ 334. FRAUD.] Instruments in execution of a power are effected by fraud in the same manner as like instruments executed by owners or trustees.

§ 335. POWER TO WOMAN.] A general and beneficial power is valid, which gives to a married woman power to dispose, during her marriage, and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee.

§ 336. POWER BECOMES DUE.] Where an absolute power of disposition, not accompanied by any trust, is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed, or the property should not be sold for the satisfaction of debts.

§ 337. SAME.] Where an absolute power of disposition, not accompanied by any trust, is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers and incumbrancers.

§ 338. SAME.] In all cases where an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee.

§ 339. SAME.] Where a general and beneficial power to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition, within the meaning of the last three sections.

§ 340. POWER ABSOLUTE.] Every power of disposition is deemed absolute, by means of which the holder is enabled in his lifetime to dispose of the entire fee, in possession or in expectancy, for his own benefit.

§ 341. SAME RESERVED.] Where the grantor in any conveyance reserves to himself, for his own benefit, an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

§ 342. VALID BENEFICIAL POWER.] A special and beneficial power is valid which is granted:

One—To a married woman to dispose, during the marriage, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

Two—To the owner of a life estate in the property embraced in the power to make leases, commencing in possession during his life.

§ 343. POWERS TO LEASE.] A special and beneficial power to make leases of agricultural land for more than ten years, or of town or city lots for more than twenty years, is void only as to the time beyond ten or twenty years, and authorizes leases for those terms or less.

§ 344. ANNEXED TO ESTATE.] The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate, and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant, it is extinguished.

§ 345. EXTINGUISHING GRANT.] The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property, and is thereupon extinguished.

§ 346. MORTGAGE BINDS POWER.] A mortgage executed by the owner of a life estate having a power to make leases, or by a married woman, by virtue of any beneficial power, does not extinguish or suspend the power but the power is bound by the mortgage in the same manner as the real property embraced therein.

§ 347. EFFECTS OF SAME.] The effects on the power, of a lien by mortgage, such as is mentioned in the last section, are:

1. That the mortgagee is entitled to an execution of the power, so far as the satisfaction of his lien may require it; and,

2. That any subsequent estate created by the owner, in execution of the power, becomes subject to the mortgage in the same manner as if in terms embraced therein.

§ 348. CREDITOR'S CLAIMS.] Every special and beneficial power is liable to the claims of creditors, in the same manner as other interests that cannot be reached by execution, and the execution of the power may be adjudged for the benefit of the creditors entitled.

§ 349. OTHER POWERS VOID.] No beneficial power, general or special, not already specified and defined in this title, can hereafter be created.

§ 350. ENFORCEABLE POWERS.] Every trust power, unless its execution is made expressly to depend on the will of the trustee, is imperative, and imposes a duty on the trustee the performance of which may be compelled for the benefit of the parties interested.

§ 351. SAME.] A trust power does not cease to be imperative where the trustee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

§ 352. EQUAL SHARES.] Where a disposition under a power is directed to be made to, among, or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled in equal proportion.

§ 353. DISCRETIONARY POWER.] Where the terms of a power import that the estate or fund is to be distributed among several persons designated, in such manner or proportions as the trustee of the power may think

proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others.

§ 354. DEATH OF TRUSTEE.] If the trustee of a power, with the right of selection, dies, leaving the power unexecuted, its execution must be adjudged for the benefit equally of all the persons designated as objects of the trust.

§ 355. DISTRICT COURT.] Where a power in trust is created by will, and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district court.

§ 356. CREDITORS.] The execution, in whole or in part, of any trust power, may be adjudged for the benefit of the creditors or assignees of any person entitled, as one of the beneficiaries of the trust, to compel its execution, when his interest is transferable.

§ 357. DEFECTS CURED.] Where the execution of a power in trust is defective, in whole or in part, under the provisions of this title, its proper execution may be adjudged in favor of the persons designated as the objects of the trust.

§ 358. CERTAIN LAW APPLIES.] The provisions of the title on trust, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees; the provisions of the title on succession, devolving express trusts upon the court on the death of the trustee; and the provisions of section 295, in title on uses and trusts, apply equally to power, in trust, and the trustees of such powers.

PART 3.

PERSONAL OR MOVABLE PROPERTY.

TITLE I.

PERSONAL PROPERTY IN GENERAL.

§ 359. FOLLOWS DOMICILE.] If there is no law to the contrary in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

TITLE II.

PARTICULAR KINDS OF PERSONAL PROPERTY.

CHAPTER I.

THINGS IN ACTION.

§ 360. DEFINITION.] A thing in action is a right to recover money or other personal property, by a judicial proceeding.

§ 361. TRANSFERABLE.] A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided by law, it passes to his devisees or successor in office.

CHAPTER II.

SHIPPING.

ARTICLE I.—GENERAL PROVISIONS.

§ 362. SHIP DEFINED.] The term "ship," or "shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons.

§ 363. APPURTENANCES.] All things belonging to the owners, which are on board a ship, and are connected with its proper use, for the objects of the voyage and adventure in which the ship is engaged, are deemed its appurtenances.

§ 364. NAVIGATION CLASSED.] Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation when passing to or from a foreign country; and in domestic navigation when passing from place to place within the United States.

§ 365. DOMESTIC AND FOREIGN SHIPS.] A ship in a port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship.

§ 366. COURT POWER.] If a ship belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction.

§ 367. POSSESSOR LIABLE.] If the owner of a ship commits its possession and navigation to another, that other and not the owner, is responsible for its repairs and supplies.

§ 368. CONGRESS REGULATES.] The registry, enrollment, and license of ships, are regulated by acts of congress.

ARTICLE II.—RULES OF NAVIGATION.

§ 369. MEETING SHIPS—LIMITATION.] In the case of ships meeting, the following rules must be observed in addition to those prescribed by any statutes of this territory, which relate to navigation:

One—Whenever any ship, proceeding in one direction, meets another ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except where the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to a due regard to the dangers of navigation.

Two—A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of that fair way or mid-channel which

lies on the starboard side of the steamer. A steamer when passing another steamer in such channel, must always leave the other upon the larboard side.

Three—When steamers must inevitably or necessarily cross so near that, by continuing their respective courses, there would be a risk of collision, each vessel must put her helm to port, so as always to pass on the larboard side of each other.

The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, or other matters prescribed under authority of any act of congress.

§ 370. INFRINGEMENT—DAMAGES.] If it appears that a collision was occasioned by failure to observe any rule of the foregoing section, the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 371. DEFAULT PRESUMED.] Damage to person or property arising from the failure of a ship to observe any rule of section 369, must be deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary.

§ 372. LIABILITY DEFINED.] Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss, and compensate the other for any loss he has sustained.

2. If neither was in fault, the loss must be borne by him on whom it falls.

3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,

4. If it cannot be ascertained where the fault lies, the loss must be equally divided.

CHAPTER III.

CORPORATIONS.

ARTICLE I.—THE CREATION OF CORPORATIONS.

§ 373. DEFINITION.] A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes.

§ 374. CREATED BY STATUTE.] A corporation can only be created by authority of a statute. But the statute may be special for a particular corporation, or general for a number of corporations.

§ 375. RESERVED POWER.] Every grant of corporate power is subject to alteration, suspension or repeal, in the discretion of the legislature.

§ 376. INQUIRY HOW MADE.] The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers, shall not be inquired into, collaterally, in any private suit to which such de facto corporation may be a party; but such inquiry may be had, and action brought, at the suit of the territory, in the manner prescribed in the code of civil procedure.

§ 377. NAME REQUIRED.] Every corporation must have a corporate name, which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended.

§ 378. CLASSED.] Corporations are either:

1. Public; or,
2. Private.

§ 379. PUBLIC—HOW REGULATED.] Public corporations are formed or organized for the government of a portion of the territory. Such corporations are regulated by the political code, or by local statute.

§ 380. PRIVATE PURPOSES.] Private corporations are formed for the purposes of religion, benevolence, education, art, literature, or profit; and all corporations not public, are private.

§ 381. ARTICLES—OFFICERS.] The instrument by which a private corporation is formed is called "articles of incorporation," or "certificate of incorporation." And one-third of the officers of such corporation shall be residents of this territory.

§ 382. ACCEPTANCE ABSOLUTE.] In order to constitute a private corporation, there must not only be a statutory grant of corporate authority, but an acceptance of that grant by a majority of the corporators, or their agents. The acceptance cannot be conditional or qualified.

§ 383. HOW PROVED.] Except when otherwise expressly provided, the

acceptance of a grant of corporate authority may be proved like any other fact.

§ 384. PRIVATE LIMITED.] Private corporations can be formed by the voluntary association of any three or more persons, and only as provided in this chapter. The legislative assembly cannot grant private charters or especial privileges, but they may by general incorporation acts, permit persons to associate themselves together as bodies corporate, for mining, manufacturing and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, and the colonization and improvement of lands in connection therewith—or for colleges, seminaries, churches, libraries, or any benevolent, charitable or scientific association, and for such other purposes as congress may hereafter authorize. [Section 1889 of revised statutes of United States.]

§ 385. RELIGIOUS LIMITED.] No corporation or association for religious or charitable purposes shall acquire or hold real estate in this territory, during the existence of the territorial government, of a greater value than fifty thousand dollars; and all real estate acquired or held by such corporations or associations contrary hereto, shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section. [Section 1890, revised statutes of the United States.]

§ 386. CONTENTS OF ARTICLES.] Articles of incorporation must be prepared setting forth:

One—The name of the corporation.

Two—The purpose for which it is formed.

Three—The place where its principal business is to be transacted.

Four—The term for which it is to exist.

Five—The number of its directors or trustees, and the names and residences of such of them who are to serve until the election of such officers, and their qualifications.

Six—If there be a capital stock, its amount, and the number of shares into which it is divided.

§ 387. RAILROAD AND WAGON ROAD.] The articles of incorporation of any railroad or wagon road must also state:

One—The kind of road intended to be constructed.

Two—The place from and to which it is intended to be run, and all the intermediate branches.

Three—The counties through which it is intended to be run.

Four—The estimated length and cost of the road.

§ 388. THREE RESIDENTS.] The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this territory, and acknowledged by each before some officer authorized to take and certify acknowledgments of conveyances of real property.

§ 389. SECRETARY'S CERTIFICATE.] Upon filing the articles of incorporation with the secretary of the territory, the secretary of the territory must issue to the corporation over the great seal of the territory, a certificate that a copy of the articles containing the required statement of facts, has

been filed in his office: and thereupon the persons signing the articles, and their associates and successors, shall be a body politic and corporate, by the name and for the purposes stated in the certificate.

§ 390. RECORD BY SECRETARY.] Upon the filing of any articles of incorporation and copy thereof, as in the last section is prescribed, the secretary of the territory must record the same in a book to be kept in his office for that purpose, to be called "the book of corporations," with the date of filing.

§ 391. COPY—EVIDENCE.] A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of the territory, must be received in all courts and other places as prima facie evidence of the facts therein stated, and of the existence of such corporation.

§ 392. DEFINITIONS.] The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock, the corporators and their successors are called members.

§ 393. LEGAL REPRESENTATIVES.] The shares of stock of an estate of a minor, or insane person, may, at all elections and meetings of a corporation, be represented by his guardian, and of a deceased person by his executor or administrator.

§ 394. MARRIED WOMAN.] Shares of stock in corporations held or owned by a married woman may be transferred by her, her agent or attorney, in the same manner as if she were a femme sole; and any proxy or power given by her, touching any shares of stock of any corporation owned by her, is valid and binding the same as if she were unmarried.

ARTICLE II.—CORPORATE STOCK.

§ 395. SUBSCRIPTION ENFORCED.] A subscription to the stock of a corporation about to be formed, is to be held for the benefit of the corporation when it is formed, and may be enforced by it.

§ 396. BOOKS OPENED.] After the secretary of the territory issues the certificate of incorporation, as provided in section 389, article I of this chapter, the directors named in the articles of incorporation must proceed in the manner specified, or provided in their by-laws; or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital: and to levy assessments and installments thereon, and to collect the same, as in article VI of this chapter assessments of stock are provided to be made.

§ 397. FORFEIT OR RECOVER.] When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for non-payment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both.

§ 398. STOCK, NEGOTIABLE.] 1. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their by-laws may provide.

2. Whenever the capital stock of any corporation is divided into shares, and certificates therefor are issued, such shares of stock are personal property, and may be transferred by indorsement by the signature of the proprietor, or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid, except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares, and the date of the transfer.

§ 399. EXCESS VOID.] A corporation whose capital is limited by its charter, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed.

§ 400. CORPORATION OWNING STOCK.] Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock, from its surplus profits, or as provided in the article on assessments of stock.

§ 401. DIVIDEND TO WHOM.] A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable.

ARTICLE III.—CORPORATE POWERS.

§ 402. POWERS CLASSED.] Every corporation, as such, has power:

One—To have succession by its corporate name, for the period limited: and when no period is limited, perpetually.

Two—To sue and be sued: to complain and defend in any court.

Three—To make and use a common seal, and alter the same at pleasure.

Four—To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding, in any case, any amount limited by law.

Five—To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.

Six—To make by-laws not inconsistent with the law of the land, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

Seven—To admit stockholders or members, and to sell their stock or hares for the payment of assessments or instalments.

Eight—To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

In addition to the above enumerated powers, and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given.

§ 403. BY-LAWS—WHO ADOPT.] Every corporation formed under this chapter must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the laws of the United States or of this territory. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the

event of such meeting being called, two weeks notice of the same, by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting president. The written assent of the holders of two-thirds of the stock, or of two-thirds of the members, if there be no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose.

§ 404. SCOPE OF BY-LAWS. A corporation may, by its by-laws, where no other provision is specially made, provide:

One—The time, place and manner of calling and conducting its meetings.

Two—The number of stockholders or members constituting a quorum.

Three—The mode of voting by proxy.

Four—The time of the annual election for directors, and the mode and manner of giving notice thereof.

Five—The compensation and duties of officers.

Six—The manner of election and the tenure of office of all officers other than the directors; and,

Seven—Suitable penalties for violations of by-laws, not exceeding, in any case, one hundred dollars for any one offense.

§ 405. RECORD—CERTIFICATE—REPEAL OF BY-LAWS.] All by-laws adopted must be certified by a majority of the directors and secretary of the corporation, and copied in a legible hand in some book kept in the office of the corporation, to be known as "the book of by-laws," and no by-law shall take effect until so copied, and the book shall then be open to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended, or new by-laws may be adopted at the annual meeting, or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws, and to adopt new by-laws, may, by a similar vote at any such meeting, be delegated to the board of directors. The power, when delegated, may be revoked by a similar vote, at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted, it shall be copied in the book of by-laws with the original by-laws, and immediately after them, and shall not take effect until so copied. If any by-law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, shall be stated in the said book, and until so stated the repeal shall not take effect.

§ 406. ELECTION OF DIRECTORS.] 1. The directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of such election must be given, and the right to vote determined, as provided in section 403.

2. At the first meeting at which the by-laws are adopted, or at such sub-

sequent meeting as may be then designated, directors must be elected to hold their offices for one year and until their successors are elected and qualified.

3. All elections of directors must be by ballot, and a vote of stockholders representing a majority of the subscribed capital stock, or of a majority of the members, is necessary to a choice. If there be capital stock in the corporation, each stockholder is entitled to one vote for each share held by him at all such elections, and also at all elections at other meetings of stockholders.

§ 407. NUMBER AND POWER OF DIRECTORS.] The corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or where there is no capital stock, then from the members of such corporation. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board.

§ 408. ORGANIZATION.] Immediately after their election, the directors must organize by the election of a president, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act.

§ 409. DIVIDENDS, DEBTS, BAD FAITH, LIMITATIONS AND PENALTY.] The directors of corporations must not make dividends except from the surplus profit arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, or reduce or increase their capital stock except as specially provided by law. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence.

2. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable.

§ 410. REMOVAL OF DIRECTORS.] No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it was called. If the secretary refuse to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 403, unless other express provision has been made therefor in the by-laws. In case of removal, the vacancy may be filled by election at the same meeting.

§ 411. QUORUM—PROXY.] At all elections or votes had for any purpose, there must be a majority of the subscribed capital stock or of the members, represented either in person, or by proxy, in writing. Every person acting therein, in person, or by proxy, or representative, must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members, and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members, may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election or majority vote had; such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors.

§ 412. ELECTION FAILING—ACTION—PLACE OF MEETING—JUSTICE OF PEACE MAY CALL.] If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as is provided for in such by-laws, or to which such election may be adjourned or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders, as provided in section 410.

2. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the

district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice. Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby.

3. The meetings of the stockholders and board of directors of a corporation must be held at its office or principal place of business.

4. When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary, on the order of the president, or if there be none, on the order of two directors.

5. Whenever, from any cause, there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation, by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat.

§ 413. INDIVIDUAL LIABILITY.] Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders, for the proportion of his claim payable by each, and in such action the court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred, and such liability is not released by any subsequent transfer of stock. The term "stockholder," as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee

who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock, until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered.

§ 414. VALID UNCALLED MEETING.] When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation.

§ 415. NON-RESIDENT STOCK TRANSFERS.] When the shares of stock in a corporation are owned by parties residing out of the territory, the president, secretary and directors of the corporation, before entering any transfer of the shares on its books, or issuing a certificate thereof, to the transferee, may require from the attorney or agent of the non-resident owner, or from the person claiming under the transfer, an affidavit or other evidence that the non-resident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence be not furnished, may require from the attorney, agent, or claimant, a bond of indemnity, with two sureties satisfactory to the officers of the corporation, or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares, in case of his or her death before the transfer, and if such affidavit or other evidence or bond be not furnished when required, as herein provided, neither the corporation nor any officer thereof shall be liable for refusing to enter the transfer on the books of the corporation.

§ 416. CHANGING AMOUNT OF STOCK.] Every corporation may increase or diminish its capital stock at a meeting called for that purpose, by the directors as follows:

One—Notice of the time and place of the meeting, stating its object

and the amount to which it is proposed to increase or diminish its capital stock, must be personally served on each stockholder resident in the territory, at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published in a newspaper published in the county of such principal place of business, once a week, for four weeks successively.

Two—The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

Three—At least two-thirds of the entire capital stock must be represented by the vote in favor of the increase or diminution, before it can be effected.

Four—A certificate must be signed by the chairman and secretary of the meeting, and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

Five—The certificate must be filed in the office of the register of deeds where the original articles of incorporation were filed, and a certified copy thereof in the office of the secretary of the territory, and thereupon the capital stock shall be so increased or diminished.

Six—The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the increase or diminution of the capital stock, as if a meeting were called and held; and upon such written assent, the directors may proceed to make the certificate herein provided for.

ARTICLE IV.—CORPORATE RECORDS.

§ 417. ENTRIES REQUIRED IN JOURNAL—STOCK BOOK—PUBLICITY.] All corporations for profit are required to keep a record of all their business transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done who were present and who were absent; and, if requested by any director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the ayes and noes must be taken on any proposition, and a record thereof made. On a similar request the protest of any director, member or stockholder, to any action or proposed action, must be entered in full; all such records to be open to the inspection of any director, member, stockholder, or creditor of the corporation.

2. In addition to the records above required to be kept, corporations for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members, alphabetically arranged; instalments paid or unpaid; assessments levied and paid or unpaid; a statement of every alien-

ation, sale or transfer of stock made, the date thereof, and by and to to whom; and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor.

ARTICLE V.—DISSOLUTION OF CORPORATIONS.

§ 418. INVOLUNTARY—VOLUNTARY, HOW.] A corporation is dissolved:

One—By the expiration of the time limited by its articles of incorporation.

Two—Its involuntary dissolution is provided for in chapter XXVI, of the code of civil procedure.

Three—If voluntary, its dissolution may be effected in the following manner:

1. A corporation may be dissolved by the district court of the county where its office, or principal place of business is situated, upon its voluntary application for that purpose.

2. The application must be in writing, and must set forth:

That at a meeting of the stockholders or members called for that purpose, the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members; and that all claims and demands against the corporation have been satisfied and discharged.

3. The application must be signed by a majority of the board of directors, trustees, or other officers having the management of the affairs of the corporation, and must be verified in the same manner as a complaint in a civil action.

4. If the court is satisfied that the application is in conformity with this article, it must order the application to be filed, and that the clerk give not less than thirty nor more than fifty days' notice of the application, by publication in some newspaper published in the county, and if there are none such, then by advertisement posted up in five of the principal public places in the county.

5. At any time before the expiration of the time of publication, any person may file his objections to the application.

6. After the time of publication has expired, the court may, upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true the court must declare the corporation dissolved.

7. The application, notices and proof of publication, objections, (if any) and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions.

§ 419. LAPSE BY NON-USER.] If a corporation does not organize and commence the transaction of business, or the construction of its works, within one year from the date of its incorporation, its corporate powers cease.

§ 420. DIRECTORS TRUSTEES ON DISSOLUTION.] Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions in their own names by the style of the trustees of such corporation dissolved, naming it; and no action whereto any such corporation is a party shall abate by reason of such dissolution.

§ 421. LIABILITY.] The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation, to the extent of its property in their hands.

§ 422. REVIVAL.] A corporation once dissolved can be revived only by the same power by which it could be created.

ARTICLE VI.—ASSESSMENTS OF STOCK.

§ 423. LEVIED—WHEN.] The directors of any corporation formed or existing under the laws of this territory, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock thereof, in the manner and form and to the extent provided herein.

§ 424. LIMITATION OF.] No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

§ 425. NEW ASSESSMENT ONLY.] No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined: or,

3. The assessment falls within the provisions of either the first, second or third subdivision of section 424.

§ 426. REQUISITES OF ASSESSMENT.] Every order levying an assessment must specify the amount thereof, when, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice,

on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

§ 427. FORM OF NOTICE.] Upon the making of the order, the secretary shall cause to be published a notice thereof, in the following form:

(Name of corporation in full. Location of principal place of business). Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of Secretary, with location of office).

§ 428. SERVICE THEREOF.] The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks, in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there be one, and if there be none, then in a newspaper published in an adjoining county.

§ 429. DELINQUENT LEVY.] If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.)

NOTICE.—There is delinquent upon the following described stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any,) the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount.) And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary, with location of office.)

§ 430. CONTENTS OF NOTICE.] The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificate for such shares have not been issued, must be stated.

§ 431. PUBLICATION.] The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale.

§ 432. EFFECT OF SAME.] By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs or advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale.

§ 433. MANNER OF SALE.] On the day, at the place, and at the time appointed in the notice of sale, the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

§ 434. BIDDER DEFINED.] The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

§ 435. BIDDING IN.] If, at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation, through the secretary, president, or any director thereof, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

§ 436. STOCK HELD BY CORPORATION.] All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders meeting.

§ 437. EXTENDED NOTICE.] The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof,

may be extended from time to time for not more than thirty days, by order of the directors, entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

§ 438. IRREGULARITIES.] No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous procsedings except the levying of the assessment, are void, and publication must be begun anew.

§ 439. REDEMPTION—LIMITATION.] No action must be sustained to recover stock sold for delinquent assessments, upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all delinquent assessments which may have been paid thereon, and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale was made.

§ 440. PROOF OF NOTICE—SALE.] The publication of notice required by this article may be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price, and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation, and copies of the same, certified by the secretary thereof, are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

§ 441. ACTION—OPTION.] On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof.

ARTICLE VII.—JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

§ 442. FRANCHISE SALABLE—NO EXEMPTION.] For the satisfaction of any judgment against a corporation authorized to receive tolls, its franchise, and all the rights and privileges thereof, may be levied upon and sold under execution, in the same manner and with the same effect as any other property, but without any exemption.

§ 443. CERTIFICATE OF SALE.] The purchaser at the sale must receive a certificate of purchase of the franchise, and be immediately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof, and must thereafter conduct the business of such corporation, with all its powers and privileges, and subject to all its liabilities, until the redemption of the same as hereinafter provided.

§ 444. PURCHASER'S RIGHTS.] The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause, occurring during the time he holds the same, and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same.

§ 445. OTHER POWERS REMAIN.] The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties, and is liable to the same penalties and forfeitures, as before such sale.

§ 446. REDEMPTION.] The corporation may, at any time within one year after such sale, redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor, with twelve per cent. interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation, as if no such sale had been made.

§ 447. WHERE SOLD.] The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid, is situated.

ARTICLE VIII.—EXAMINATION OF CORPORATIONS, ETC.

§ 448. POWER OF LEGISLATURE.] The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this territory at all times; and for that purpose any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof; and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and compel the production of all keys, books, papers and documents by summary process, to be issued on application to any district court or any judge thereof, under such rules and regulations as the court may prescribe.

§ 449. POWER RESERVED.] The legislative assembly may at any time amend this chapter or any article or section thereof.

ARTICLE IX.—RAILROAD CORPORATIONS.

§ 450. GENERAL POWERS CLASSED.] Every railroad corporation has power and is authorized:

1. To enter upon any land for the purpose of examining and surveying its railroad line, and may take, hold and appropriate so much real property as may be necessary for the location, construction and convenient use of its road, including all necessary grounds for stations, buildings, workshops, depots, machine shops, switches, side tracks, turn tables and water stations; all materials for the construction and repair of said road and its appurtenances; and a right of way over adjacent lands, sufficient to enable such corporation to construct and repair its road, and a right to conduct water by aqueducts, and the right of making proper drains: *Provided*, That the lands so held, taken and appropriated, otherwise than by the consent of the owner, shall not exceed two hundred feet in width, except for wood and water stations, and depot grounds, unless where greater width is necessary for excavation, embankments, or depositing waste earth: *And provided further*, That no appropriation of private property, for the use of any corporaton provided for in this article, shall be made, until full compensation therefor be first made or secured to the owners thereof.

2. To lay out, locate, construct, furnish, maintain, operate and enjoy a railroad with single or double tracks, with such side tracks, turn outs, offices and depots as shall be necessary, between the places of the termini of the said road, commencing at or within, and extending to or into any town, city or village, named as the places of the termini of said road, and construct branches from the main line to other towns or places within the limits of this territory.

3. To carry persons and property on its railroad, and receive tolls or compensation therefor.

§ 451. PURCHASE OR TAKE REALTY.] Any railroad corporation may purchase and use real property for a price to be agreed upon with the owners thereof; or the damages to be paid by such corporation for any real property taken as aforesaid, when not agreed upon, shall be ascertained and determined by commissioners to be appointed by the judge of the district court of the county or judicial subdivision, wherein such real estate is situated, in conformity with the provisions of this article.

§ 452. TAKING WHEN OWNER REFUSES—PROCEDURE.] If the owner of any real property over which said railroad corporation may desire to locate its road, shall refuse to grant the right of way through and over his premises, the district judge of the county or subdivision in which said real property may be situated, as provided in this article, shall, upon the application or petition of either party, and after ten days' notice to the opposite party, either by personal service or by leaving a copy thereof at his usual place of residence; or in case of his non-residence in the territory, by such publication in a newspaper as the judge may order, direct the sheriff of said county to summon three disinterested freeholders of said county or subdivision (or if there be none such, then of the territory), as

commissioners, who shall be selected by said judge, and who must not be interested in a like question. The commissioners shall be duly sworn to perform their duties impartially and justly; and they shall inspect said real property and consider the injury which such owner may sustain by reason of such railroad; and they shall assess the damages which said owner will sustain by such appropriation of his land; and they shall forthwith make report thereof in writing to the clerk of the said court, setting forth the quantity, boundaries, and value of the property taken, or amount of injury done to the property which they assess to the owner: which report must be filed and recorded by the clerk, and a certified copy thereof may be transmitted to the register of deeds of the county or subdivision where the land lies, to be by him filed and recorded (without further acknowledgment or proof), in the same manner and with like force and effect as is provided for the record of deeds. And if said corporation shall, at any time before it enters upon said real property for the purpose of constructing said road, pay to said clerk for the use of said owner the sum so assessed and reported to him as aforesaid, it shall thereby be authorized to construct and maintain its road over and across said premises: *Provided*, That, if the corporation shall need or require, for the purpose of constructing said railroad, to take and occupy any real property in any unorganized county or in other unorganized country where there is no district court established, then the judge of the district court of the nearest organized county or subdivision (wherein such court is established), upon the line of said road, shall appoint commissioners to assess said damages; and he and they shall perform all other duties required of district judges and commissioners by the terms of this article, and either party shall have the right to appeal as in other cases herein provided: *And provided further*, That the report of the commissioners may be reviewed by the district court, on written exceptions filed by either party, in the clerk's office, within sixty days after the filing of such report; and the court shall take such order therein as right and justice may require, either by confirming, modifying, or rejecting the same, or by ordering a new appraisement, on good cause shown: *And provided further*, That either party may appeal from the decision of the district court to the supreme court, and the money so deposited shall remain in the hands of the clerk, as aforesaid, until a final decision be had and subject thereto. But such review or appeal shall not delay the prosecution of the work on said railroad over the premises in question, if such corporation shall first have paid or deposited with said clerk the amount so assessed by said commissioners; and in no case shall said corporation be liable for the costs on such review or appeal, unless the owner of such real property shall be adjudged entitled, upon either review or appeal, to a greater amount of damages than was awarded by said commissioners. The corporation shall, in all cases, pay the costs and expenses of the first assessment. And in case of review or appeal, the final decision may be transmitted by the clerk of the proper court, duly certified, to the proper register of deeds, to be by him filed and recorded as hereinbefore provided for the recording of the report, and with like effect.

§ 453. COMMISSIONERS ACT IN ALL CASES—VACANCIES.] Freeholders so appointed shall be the commissioners to assess all the damages to the owners of real property in said county or subdivision; and said corporation may, at any time after their appointment, upon the refusal of any owner or guardian of any owner of lands in said county or subdivision to grant the right of way as aforesaid, by giving said owner or guardian ten days' notice thereof in the manner prescribed in the preceding section, have the damages assessed in the manner hereinbefore prescribed. In case of the death, absence, or refusal or neglect of any of said freeholders to act as commissioners as aforesaid, the sheriff shall, upon the selection of the district judge summon other freeholders to complete the panel, and said commissioners shall receive three dollars per day, each, for their services, and the same shall be taxed in the bill of costs.

§ 454. GUARDIANS—MARRIED WOMEN.] Whenever any railroad corporation shall take any real property as aforesaid, of any minor, any person insane or otherwise incompetent, or of any married woman whose husband is under guardianship, the guardian of such minor, insane or incompetent person, or, such married woman with the guardian of her husband, may agree and settle with said corporation for all damages or claims by reason of the taking of such real property and may give valid releases and discharges therefor upon the approval thereof by the judge of the probate court.

§ 455. UNKNOWN OWNER.] If upon the location of said railroad it sh[redacted] be found to run through the real property of any non-resident own[redacted] who is unknown to the corporation, or who has not been by it informed thereof, and has neither granted nor refused to grant the right of way through and over his said premises, the said corporation may give four weeks' notice to such owner, if known, and if not known, by a description of such real property by publication four consecutive weeks in some newspaper published in the county or subdivision where such real property may lie, if there be any, and if not, in one nearest thereto on the line of their said road, that said railroad has been located through and over his lands; and if said owner do not, within thirty days thereafter, apply to the district judge to have the damages assessed in the mode prescribed in this article, said corporation may proceed to have the damages assessed, as hereinbefore provided, subject to the same right of review and appeal, as in case of resident owners; and upon payment of damages assessed to the clerk of the district court, the corporation shall acquire all the rights and privileges mentioned in this article.

§ 456. CLAIMANTS ON PUBLIC LANDS.] Any railroad corporation is authorized to pass over, occupy and enjoy all the public lands, to the extent and in the manner prescribed by the act of congress approved March 3, 1875: *Provided*, That the damages accruing to any occupant or possessory claimant or other person who may reside on or have improvements upon said public land, shall be determined and paid by said railroad corporation as provided in this article for owners of private lands.

§ 457. HIGHWAYS, CANALS, &C.] Any railroad corporation may locate,

construct and operate its railroad across, over, or under any road, highway, railroad, canal, stream, or water course, when it may be necessary in the construction of the same; and in such cases said corporation shall so construct its railroad crossings as not unnecessarily to impede the travel, transportation or navigation upon the road, highway, railroad, canal, stream, or water course so crossed. Said corporation shall have the right to change the channel of any stream or water course from its present location or bed, whenever it may be necessary in the location, construction, or use of its said road: *Provided*, Such change do not alter its general course or materially impair its former usefulness.

§ 458. CHANGE OF LINE OR GRADE.] Whenever any railroad corporation shall find it necessary, for the purpose of avoiding annoyance to public travel, or dangerous or difficult curves or grades, or unsafe or unsubstantial grounds or foundations, or for other reasonable causes, to change the grade or location of any portion of its road, such railroad corporation shall be and is hereby authorized to make such changes of grade and location, not departing from its general route. And for the purpose of making any such change in the location and grades of any such roads as aforesaid, such corporation shall have all the rights, powers and privileges to enter upon and appropriate such real property, and make surveys necessary to effect such changes and grades, upon the same terms, and subject to the same obligations, rules and regulations as are prescribed by [redacted]; and shall also be liable in damages, when any may have been caused [redacted] such change to the owner of real property upon which such road was heretofore constructed, to be ascertained and paid, or deposited as herein provided; but no damages shall be allowed unless claimed within ninety days after actual notice in writing of such intended change shall be given to such owner residing on the premises, or, if non-resident, notice by such publication in some newspaper in general circulation, as the district judge may order.

§ 459. PUBLIC GROUNDS—STREETS.] If it shall be necessary, in the location of any part of any railroad, to occupy any road, street, alley, or public way or ground of any kind, or any part thereof, it shall be competent for the municipal or other corporation, or public officer or public authorities, owning or having charge thereof, and the railroad corporation, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; and if said parties shall be unable to agree thereon, and it shall be necessary, in the judgment of the directors of such railroad corporation, to use or occupy such road, street, alley, or other public way or ground, such corporation may appropriate so much of the same as may be necessary for the purposes of such road, in the same manner and upon the same terms as is provided in this article for the appropriation of the property of individuals.

§ 460. RAILROAD JUNCTIONS—CROSSINGS.] Every railroad corporation shall have power to cross, intersect, join and unite its railroad with any other railroad before constructed at any point on its route and upon the grounds of such other railroad corporation, with the necessary turnouts, sidings

and switches, and other conveniences in furtherance of the objects of its connection. And every corporation whose railroad is or shall hereafter be intersected by any new railroad, shall unite with the owners of such new railroad in forming such intersection and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined by commissioners to be selected as provided in this article in respect to taking of lands.

§ 461. UNION OF LINES.] Railroad corporations shall have power to intersect, join and unite their respective railroads, constructed or to be constructed in this territory, or in adjoining states and territories, at such point on the boundary line of each, or at such other point as may be mutually agreed upon by said corporations. And such railroads are authorized to merge and consolidate the stock of the respective corporations, making one joint stock corporation of the railroads thus connected, upon such terms as may be agreed upon in accordance with the laws of the adjoining state or territory with whose road or roads connections are thus formed: *Provided*, That the consent thereto of three-fourths of all the stockholders in amount in any road whose stock is proposed to be consolidated shall first be obtained.

§ 462. EXTENSION BEYOND TERRITORY.] Every railroad corporation is empowered to extend its road into or through any other state or territory under such regulations as may be prescribed by the laws of such state or territory through which said road may be extended: and the rights and privileges over said extension, in the construction and use of said railroad for the benefit of said corporation, and in controlling and applying the assets of said corporation, shall be the same as if its railroad had been constructed wholly within this territory.

§ 463. MUTUAL CONTRACTS.] Every railroad corporation which may have constructed or commenced the construction of its road so as to meet and connect with any other railroad in an adjoining state or territory, at the boundary line of this territory, shall have the power to make such contracts and agreements with any such road constructed in an adjoining state or territory for the transportation of freight and passengers, or for the use of its said road, as to the board of directors may seem proper.

§ 464. MORTGAGE BONDS—LIMITATION.] Every railroad corporation shall have power to mortgage or execute deeds of trust of the whole or any part of its property and franchises, including any lands or other property granted to said corporation by the United States, to secure money borrowed by it for the construction and equipment of its road, and may issue its corporate bonds in sums not less than five hundred dollars—secured by said mortgages or deeds of trust—payable to bearer or otherwise; and if payable to bearer, negotiable by delivery, bearing interest at a rate not to exceed ten per cent. per annum, and convertible into stocks, and may sell them at such rates or prices as it may deem proper; and if said bonds should be sold below their nominal or par value, they shall be valid and

binding upon the corporation, and no plea of usury shall be put in by or allowed in behalf of said corporation in any action or proceedings upon the same; the principal and interest upon said bonds, or either of them, may be made payable within or without this territory.

§ 465. LIEN—SALE.] Such corporation shall have power to borrow money on the credit of the corporation and may execute bonds or promissory notes therefor, and to secure the payment thereof, may pledge the property and income on such corporation. Any mortgage or deed of trust made upon the lands, road or other property of railroad corporation, shall bind and be a valid lien upon all the property mentioned in such deed or mortgage, including rolling stock; and the purchaser under foreclosure of such mortgage or trust deed shall have and enjoy all the rights of a purchaser on execution sale: *Provided*, That nothing contained in this article shall be so construed as in any manner to interfere with, change or modify the rights of this territory or the United States, to any lands granted by congress to this territory or to said corporations or to transfer any right in said lands, otherwise than as subject to all the conditions imposed by the grant made by the United States or this territory.

§ 466. COVER FUTURE ASSETS.] Said mortgages or deeds of trust may by their terms include and cover not only the property of the corporations making them at the time of their date, but property, both real and personal, which may thereafter be acquired by them, together with all the material and property necessary for the use and operation of said roads, and shall be as valid and effectual as if the property were in possession at the time of the execution thereof.

§ 467. RECORD—EFFECT OF.] Said mortgages or deeds of trust shall be recorded in the office of the register of deeds of each organized county through which said road mortgaged or deeded may run in this territory, or wherever it may hold lands included in said mortgages or deeds of trust, and shall be a notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the rights of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock, personal property, and material necessary for operating the road of said corporation, belonging to said road and appertaining thereto, shall be deemed a part of the road, and said mortgages and deeds so recorded shall have the same effect, both as to notice and otherwise, as to the real estate covered by them.

§ 468. CONSOLIDATION—METHOD OF.] Whenever the lines of railroad of any railroad corporations in this territory, or any portion of such lines, have been or may be constructed, so as to admit the passage of burden or passenger cars over any two or more of such roads continuously, without break of gauge or interruption, such corporations are hereby authorized to consolidate themselves into a single corporation, in the following manner: The directors of the said two or more corporations may enter into an agreement, under the corporate seal of each, for the consolidation of the said two or more corporations, prescribing the terms and conditions thereof: the mode of carrying the same into effect; the name of the new

corporation; the number of the directors thereof, which shall not be less than seven; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share; the manner of converting the shares of capital stock in each of said two or more corporations, into shares in such new corporation; the manner of compensating stockholders in each of said two or more corporations, who refuse to convert their stock into the stock of such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations, together with such other statements as may be required in the premises by sections 392 and 393 of this code; and when such corporations shall have complied with all the other requisites for the creation of corporations prescribed in article 1 of this chapter, and other provisions of law; then such new or consolidated corporation shall retain and possess all the powers, rights and franchises originally conferred upon such said two or more corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of this chapter: *Provided*, That all stockholders in either of such corporations who shall refuse to convert their stock into the stock of such new corporation, shall be paid the market value of said stock at the date of such consolidation.

§ 469. STOCKHOLDERS CONSENT REQUIRED.] Such agreement of the directors shall not be deemed to be the agreement of the said two or more corporations until after it shall have been submitted to the stockholders of each of the said corporations separately, at a meeting thereof, to be called upon a notice of at least ninety days, specifying the time and place of such meeting, and the object thereof, to be addressed to each of such stockholders, when the place of residence is known, and deposited in the post office, and published at least for six successive weeks, in one newspaper in one of the cities or towns in which each of said corporations has its principal office of business; and has been sanctioned by such stockholders by the vote of at least two-thirds in the amount of the stock represented at such meeting, voting by ballot in regard to such agreement, either in person or by proxy, each share of capital stock being entitled to one vote. And when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders, separately, after being submitted to such meetings in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said two or more corporations.

§ 470. FILING AGREEMENT.] Upon making the agreement and the statements mentioned in the last two sections, in the manner required therein, and filing the same as required by section 389, the said two or more corporations, mentioned or referred to in the last two preceding sections, shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect as provided therein.

§ 471. SUCCESSORS TO PROPERTY, &C.] Upon the election of the first board of directors of the corporation created by the agreement in the preceding

section mentioned, and by the provisions of this article, all and singular the rights and franchises of each and all of said two or more corporations, parties to such agreement, all and singular the rights and interests in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to, and vested in such new corporation, without any other deed or transfer. And such new corporation shall hold and enjoy the same together with the right of way and all other rights of property, in the same manner and to the same extent as if the said two or more corporations, parties of agreement, should have continued to retain the title and transact the business of such corporations. And the titles, and the real estate acquired by either of said two or more corporations, shall not be deemed to revert or be impaired by means of anything in this article contained: *Provided*, That all rights of creditors, and all liens upon the property of either of said corporations, shall be, and hereby are preserved unimpaired; and the respective corporations shall continue to exist as far as may be necessary to enforce the same: *And provided further*, That all debts, liabilities and duties of either corporation shall henceforth attach to such new corporation and be enforced to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

§ 472. OBLIGATIONS.] When any two or more railroad corporations shall have been consolidated, as contemplated by the provisions of this article, such corporations so consolidated, shall keep each and every railroad line that may come into its possession by such consolidation, in good running order, with sufficient rolling stock to transport the freight and passengers. They shall not discriminate against business of either or any of said railroad lines, either directly or indirectly, by the detention of freight or passengers.

§ 473. AID TO OTHER CORPORATION—REPORTS.] Any railroad corporation may, at any time by means of subscription to the capital stock of any other corporation, or otherwise, aid such other corporation in the construction of its railroad, for the purpose of forming a connection of said last mentioned road with the road owned by the corporation furnishing such aid; or any railroad corporation existing in pursuance of law, may lease or purchase any part or all of any railroad constructed by any other corporation, if said corporation's lines of said road are continuous or connected as aforesaid, upon such terms and conditions as may be agreed on between said corporations respectively; or any two or more railroad corporations whose lines are so connected, may enter into an agreement for their common benefit consistent with, and calculated to promote the objects for which they were created; *Provided*, That no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said corporations shall have been called by the directors thereof, at such time and place, and in manner as they shall designate, and the holders of at least two-thirds of the stock of such corporation represented at such meeting, either in person or by proxy, and voting thereat, shall have assented thereto. Every railroad corporation

shall annually on or before the first day of February make, upon the oath of its president, secretary or treasurer, a full report of the condition of its affairs, for the previous year ending the thirty-first day of December, to the auditor of the territory, embracing and showing:

1. The capital stock, and the amount thereof actually paid in.
2. The amount and nature of its indebtedness, and the amounts due the corporation.
3. The amount expended for the purchase of lands, for the construction of the road, for buildings, and for engines and cars respectively.
4. The amounts received from the transportation of passengers, property, mails, and express matter, and from other sources.
5. The amount of freight, specifying the quantity in tons.
6. The amount paid for repairs of engines, cars, buildings, and other expenses, in gross, showing the current expenses of running said road.
7. The number and amount of dividends, and when paid; and the amount of profits.

A copy of such report must also, at the same time and by the corporation, be published in a newspaper printed in the county in which the main office of the corporation is situated, or at the capital of the territory; and the territorial auditor must incorporate such report in his biennial report to the governor.

§ 474. RUNNING RULES.] Every such railroad corporation shall start and run its cars, for the transporation of persons or property, at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer, or be offered, for transportation at the place of starting, or at the junction of other railroads, and at siding and stopping places established for receiving and discharging way passengers and freight, and shall take, transport, and discharge passengers and property at, from, and to such places, on the due payment of tolls, freight, or fare therefor.

§ 475. VIOLATION—PENALTY.] In case of the refusal by such corporation or its agents to take or transport any passenger or property as provided in the preceding section; or in case of the neglect or refusal of such corporation or its agents to discharge or deliver passengers or property at the regularly appointed place, under the laws which regulate common carriers, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of action.

§ 476. PERSONAL INJURIES.] In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation posted up at the time in a conspicuous place inside of its passenger cars then in the train, such corporation shall not be liable for the injury: *Provided*, It had furnished room inside its passenger cars sufficient for the accommodation of its passengers.

§ 477. FARE IMPOSES DUTY.] When fare is taken by any railroad corporation for transporting passengers on any mixed train of passenger and

freight cars, or on any baggage, wood, gravel or freight car, the same care must be taken and the same responsibility and duties are assumed by the corporation as for passengers on passenger cars.

§ 478. CHANGING HIGHWAY.] Any railroad corporation may raise or lower any turnpike, plank road, or other way, for the purpose of having its railroad pass over or under the same; and in such cases said corporation shall put such turnpike, plank road or other way, as soon as may be, in good repair.

§ 479. TEMPORARY WAYS.] Every railroad corporation, while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed, shall provide and keep in good order, suitable temporary ways to enable travelers to avoid or pass such obstructions.

§ 480. BRIDGE REPAIRS.] Every railroad corporation shall maintain and keep in good repair all bridges, with their abutments, which such corporation shall construct, for the purpose of enabling its road to pass over or under any turnpike road, canal, water-course or other way.

§ 481. SIGNS AT CROSSINGS.] Every railroad corporation operating a line of road within this territory, must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be painted with black roman or block letters, on white back-ground, "railroad crossing, look out for the cars;" said letters to be at least eight inches in length and proportionately broad: said signs shall be placed at the top of posts at least fifteen feet high.

§ 482. NEGLECT OF SAME.] In case any railroad corporation shall refuse or neglect, for the space of thirty days after notice given by the board of county commissioners to comply with the provisions of the preceding section, it shall become the duty of the county commissioners of each county through which any such railroad shall be in operation, to erect such signs, and the company shall be liable for all expenses so incurred by said commissioners.

§ 483. BELL AND WHISTLE.] A bell at least thirty pounds weight or a steam whistle, shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street, and be kept ringing or whistling until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this territory, and also be liable for all damages which shall be sustained by any person by reason of such neglect.

§ 484. CAUSEWAY.] When any person owns land on both sides of any railroad, the corporation owning such railroad shall, when required so to do, make and keep in good repair one causeway or other safe and adequate means of crossing the same.

§ 485. FARE REFUSED.] If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the cor-

poration to put him and his baggage out of the cars, in the manner prescribed in section 1292. (See also sections 1284 to 1294 of this code).

ARTICLE X.—OF WAGON ROADS.

§ 486. LAID OUT—HOW.] Where a corporation is formed for the construction and maintenance of a wagon road, the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of commissioners of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings, together with the map of the road, to the board of commissioners of the county as provided in the succeeding section.

§ 487. MAP FILED—RECORD OF APPROVAL—EFFECT.] When the route is surveyed a map thereof must be submitted to and filed with the board of commissioners of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, andi ts width, which must in no case exceed one hundred feet, and the board of county commissioners must either approve or reject the survey. If approved, it must be entered of record on the journal of the board, and such approval authorizes the use of all public lands and highways over which the survey runs; but the board of county commissioners must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road and its toll gates, as not to hinder or obstruct the use of the same.

§ 488. BRIDGES AND FERRIES—TOLLS.] All wagon road corporations may bridge or keep ferries on streams on the line of their road, and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries, or bridges, as are fixed by the board of commissioners of the proper county through which the road passes, or in which the ferry or bridge is situate, subject, however, to the limitation of rates for ferriage prescribed in the general law upon ferries; but in no case must the tolls be more than sufficient to pay fifteen per cent. per annum on the cost of construction, after paying for repairs and other expenses for attending to the roads, bridges and ferries. If tolls, other than as herein provided, are charged or demanded, the corporation forfeits its franchise, and must pay to the party so charged one hundred dollars as liquidated damages.

§ 489. PUBLIC HIGHWAYS USED.] When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a toll gate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers, or any one transporting property over the same.

§ 490. TOLL RATES POSTED.] The corporation must affix and keep up, at or over each gate, or in some conspicuous place, so as to be conveniently read, a printed list of the rates of toll levied and demanded.

§ 491. TOLLS REQUIRED.] Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid, respectively, the tolls authorized to be collected.

§ 492. TOLL GATHERER'S DUTY—PENALTY.] Every toll gatherer who, at any gate, unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense, forfeits the sum of twenty-five dollars to the person aggrieved.

§ 493. PASSING GATE.] Every person who, to avoid the payment of the legal toll, with his team, vehicle or horse, turns out of a wagon, turnpike or plank road, or passes any gate thereon on the ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured.

§ 494. INJURING ROAD.] Every person who:

1. Willfully breaks, cuts down, defaces or injures any mile-stone or post on any wagon, turnpike, or plank road; or,

2. Willfully breaks or throws down any gate on such road; or,

3. Digs up or injures any part of such road, or anything thereunto belonging; or,

4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars, in addition to the damages resulting from his wrongful act.

§ 495. REVENUE APPLIED.] The entire revenue from the road shall be appropriated:

First—To repayment to the corporation of the costs of its construction, together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and,

Second—To the payment of the dividend among its stockholders, as provided in section 488. When the repayment of the cost of construction is completed, the tolls must be so reduced as to raise no more than an amount sufficient to pay a dividend of twelve per cent. per annum, and incidental expenses, and to keep the road in good repair.

§ 496. MORTGAGE—CONDITIONS.] The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair their road, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent. of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances, and then only after an affirmative vote of two-thirds of the capital stock subscribed.

§ 497. NATURAL PERSON LIKE CORPORATION.] When a wagon, turnpike, or plank road is constructed, owned, or operated by any natural person this article is applicable to such person in like manner as it is applicable to corporations.

ARTICLE XI.—INSURANCE CORPORATIONS.

§ 498. STATEMENT REQUIRED.] Every insurance corporation incorporated

under the laws of this territory, shall file with the secretary of the territory, within forty days after its incorporation, a full and specific statement of the amount of cash paid in upon its stock; the amount of stock not paid for in cash, the amount secured by mortgages or pledges of real property; the names and residences of the stockholders in said corporation, with the amount of stock owned or held, set opposite the name of each, and if not all paid up in cash, the amount unsecured and the amount secured, specifying whether by real or personal security; also, set opposite the name of each the names of all the officers and agents of the corporation, wherever residing; the amount of policies issued by, and outstanding against the corporation at the date of said report; the amount of premiums received by said corporation during its existence; the amount of cash on hand; the amount of bills payable and receivable at the date of said statement; the amount of real property owned by said corporation, where held and owned, and in what manner such real property became vested in said corporation; which report and statement shall be verified by the oath of the president, and secretary of the corporation.

§ 499. SEMI-ANNUAL REPORT—CONTENTS.] Every insurance corporation created under the laws of this territory, shall file a semi-annual statement of the affairs of said corporation with the auditor of the territory on the first day of January and July in each year, or within ten days thereafter, which statement shall be verified by the oath of the secretary or other officer of such corporation. Such statement shall contain:

First—The name and locality of the corporation.

Second—The amount of capital stock of said corporation.

Third—The amount of its capital stock paid up.

Fourth—The assets of the corporation, including:

1. The amount of cash on hand.
2. The amount of cash in hands of agents.
3. The real estate unincumbered.
4. The bonds and notes of the corporation, and how they are secured, with the rates of interest thereon, and whether given in payment of stock subscription, or for bona fide loans.
5. Debts of the corporation secured by mortgages.
6. Debts otherwise secured.
7. Debts for premiums.
8. All other securities.

Fifth—The amount of liabilities due or not due to banks or other creditors of the corporation.

Sixth—Losses adjusted and due.

Seventh—Losses adjusted and not due.

Eighth—Losses unadjusted.

Ninth—Losses in suspense.

Tenth—All other claims against the corporation.

Eleventh—The greatest amount insured by any one risk.

And the auditor shall cause a brief abstract of such statement to be published in at least one newspaper at the capital of the territory, and such corporation shall pay for said publication.

§ 500. PENALTY FOR REFUSAL.] A failure to comply with the provisions of the two preceding sections, shall subject the president and secretary of any corporation, each, individually, to the penalty of one hundred dollars, to be recovered in an action at law in the name of any citizen of the territory, one-half of the same to the use of the territory, and the other moiety to the use of the informer.

§ 501. OWNERSHIP OF REALTY LIMITED.] It is declared unlawful for any insurance corporation in this territory to purchase or hold any real property, save what shall be necessary for the transaction of its legitimate business of insurance; and deeds and conveyances to said corporation for any other purposes, are hereby declared to be void.

§ 502. AGENT'S CERTIFICATE—CONTENTS.] It shall not be lawful for any agent or agents of any insurance corporation, incorporated by any other state or territory, directly or indirectly to take risks or transact any business of insurance in this territory, without first procuring a certificate from the auditor of the territory, and before obtaining such certificate, such agent or agents shall furnish the auditor with a statement under the oath of the president or secretary of the corporation for which he or they may act, which statement shall show:

First—The name and locality of the corporation.

Second—The amount of its capital stock.

Third—The amount of its capital stock paid up.

Fourth—The assets of the corporation, including:

1. The amount of cash on hand, and in the hands of agents or other persons.

2. The real property unincumbered.

3. The bonds and notes owned by the corporation, and how they are secured, with the rate of interest thereon.

4. The debts of the corporation secured by mortgage.

5. Debts otherwise secured.

6. Debts for premiums.

7. All other securities.

Fifth—The amount of liabilities due or not due to banks or other creditors of the corporation.

Sixth—Losses adjusted and due.

Seventh—Losses adjusted and not due.

Eighth—Losses unadjusted.

Ninth—Losses in suspense, waiting for further proof.

Tenth—All other claims against the corporation.

Eleventh—The greatest amount insured by any one risk.

Twelfth—The greatest amount allowed by the rules of the corporation to be insured in any one city, town or village.

Thirteenth—The greatest amount allowed to be insured in any one block.

Fourteenth—The act of incorporation of such corporation.

Which statement shall be filled in the office of said auditor, together with a written instrument under the seal of the corporation, signed by

the president and secretary, authorizing such agent to acknowledge service, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the corporation, according to the laws of the territory, or any state or territory, and waiving all claims of errors by reason of such service; and no insurance corporation or agents of any insurance corporation, incorporated by any other state or territory, shall transact any business of insurance in this territory, unless such corporation is possessed of at least one hundred thousand dollars of actual capital, invested in stocks of at least par value, or in bonds or mortgages on real property worth double the amount for which the same is mortgaged; and upon filing the aforesaid statement and instrument with the auditor of the territory, and furnishing him with satisfactory evidence of such instrument as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact business of insurance, to the agent or agents applying for the same; and the auditor may demand and receive two dollars for every such certificate, to be paid by the corporation.

§ 503. FOREIGN INSURANCE—SAME.] It shall be unlawful for any corporation or association, partnership, firm or individual, or any member or agent thereof, or for any agent of any corporation incorporated by any foreign government other than a state of this Union, to transact any business of insurance in this territory without procuring a certificate of authority from the auditor of this territory; such corporation, association, partnership, firm or individual, or any agent thereof, having first filed, under oath, in the office of said auditor, a statement setting forth the charter or articles of incorporation of any and every such corporation, and the by-laws, copartnership agreement and articles of association of any and every such unincorporated company, association, partnership or firm; and the name and residence of such individual, and the names and residences of the members of every such partnership or firm; and the matters required to be specified by the provisions of this article, and the written authority therein mentioned, and furnish evidence, to the satisfaction of the auditor of the territory, that said company has invested in stocks of some one or more of the states of this Union, or of the United States, the amount of one hundred thousand dollars, and that such stocks are held by citizens of the United States, or in bonds or mortgages of real property situated within the United States, fully securing the amount for which the same is mortgaged, or bonds of cities of the United States, the aggregate market value of the investment of the company in which shall not be less than one hundred thousand dollars; and such corporation or unincorporated company, association, partnership, firm or individual, or any agent thereof, filing said statement and furnishing evidence of investment, as aforesaid, shall be entitled to a certificate of authority for such body or individual, in like manner as is provided in this article.

§ 504. SAME ANNUALLY.] The statement and evidences of investment required by this article, shall be renewed annually in the month of Janu-

ary of each year. The auditor of the territory, upon being satisfied that the capital, securities and investments remain secure, shall furnish a renewal of certificates as aforesaid; and the company or agent obtaining such certificate, shall file the same, together with the statement upon which it was obtained or renewed, in the office of the auditor of the territory.

§ 505. AGENCY DEFINED.] Any person or firm in this territory who shall receive or receipt for any money, on account of or for any contract of insurance made by him or them, or for any such insurance corporation, company, or individual aforesaid, or who shall receive or receipt for money from other persons to be transmitted to any such corporation, company, or individual aforesaid, for a policy of insurance or any renewal thereof, although such policy of insurance may not be signed by him or them as agent or agents of such corporation or company, or who shall in any wise, directly or indirectly, make or cause to be made any contract of insurance, for or on account of such corporation or company aforesaid, shall be deemed, to all intents and purposes, an agent or agents of such corporation, company or individual, and shall be subject and liable to all the provisions of this article.

§ 506. COPIES EVIDENCE.] Copies of all papers required by this article to be deposited in the office of the auditor, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner, and have the same force and effect as the original would have, if produced.

§ 507. VIOLATION—PENALTY.] Any person violating the provisions of this article shall, upon conviction thereof in the district court, be fined in any sum not exceeding one thousand dollars, or imprisoned in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this article may be prosecuted either by information filed by the district attorney, or by indictment of the grand jury.

§ 508. SINGLE STATEMENT ONLY.] Any insurance corporation complying with the provisions of this article, and securing the certificate of the auditor for any of its agents, shall not be required to furnish the single statement, and evidences required hereby, for more than one of such agents, which being filed with the auditor, shall be deemed a sufficient compliance for its free transaction of business in this territory.

§ 509. MUTUAL INSURANCE.] Every mutual insurance corporation incorporated by any state or territory, other than Dakota, upon filing in the office of the auditor its articles of incorporation, together with a written instrument, under seal of said corporation, signed by the president and secretary thereof, under oath, certifying that said corporation is possessed of a capital of at least one hundred thousand dollars, secured by lien on real property, worth, at cash valuation, at least five times the amount of said capital, and not encumbered to more than one-fourth of said cash valuation, shall be entitled to a certificate from said auditor, with authority to transact business of insurance in this territory, and said corporation shall be exempt from the provisions of this article, with the

exception of the publication of the statement and certificate of the auditor.

§ 510. FILING AND PUBLICATION OF CERTIFICATE.] It shall be the duty of any agent in either of the foregoing sections mentioned, before taking any risks or transacting any business of insurance in this territory, to file in the office of the register of deeds of the county in which he may desire to establish an agency for any such corporation, a copy of the statement required to be filed with the auditor of the territory as aforesaid, together with a certificate of such auditor, which shall be carefully preserved for public inspection by said register, and said statement and certificate shall be published for one week in one daily, or for four weeks in one weekly newspaper printed and published in the county in which such agent has his office of business as such agent; and if no newspaper is published in such county, then such publication shall be made in one weekly newspaper of this territory of most general circulation in such county.

ARTICLE XII.—MINING AND MANUFACTURING CORPORATIONS, ETC.

§ 511. LIMITED TWENTY YEARS.] Corporations for mining, manufacturing and other industrial pursuits, may be formed as provided in this chapter; and such corporations have all the rights, and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years.

§ 512. LOAN TO STOCKHOLDER FORBIDDEN.] The purposes for which every such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation; and it must not appropriate its funds to any other purpose, nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation be made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable, to the extent of such loan or misappropriation, and interest, for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated.

§ 513. ACCOUNTS—PUBLICITY—STATEMENT.] Regular books of accounts of all the business of such corporations must be kept, which, with the vouchers, shall be at all reasonable times open for the inspection of any of the stockholders; and as often as once in each year a statement of such accounts shall be made, by order of the directors, and laid before the stockholders.

§ 514. LIABILITY FOR LABOR.] The stockholders of any corporation formed for the purposes mentioned in this article, shall be jointly and severally liable, in their individual capacities, for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied: *Provided*, Such action be commenced within four months; *And provided always*, That if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call

upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

§ 515. ANNUAL REPORT—CONTENTS.] Every such corporation shall annually, within twenty days from the first day of January, make a report, which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid, and the net amount of profits. The said report must be signed by the president and a majority of the directors, and be verified by the oath of the president or secretary of the corporation, and filed in the office of the register of deeds of the county where the business of the corporation is carried on; and if any such corporation shall fail so to do, the directors shall be jointly and severally liable for all the debts of the corporation then existing, and for all that shall be contracted before such report shall be made.

§ 516. DEMAND FOR STATEMENT.] Whenever any person or persons owning twenty per cent. of the capital stock of any corporation formed for the purposes mentioned in this article shall present a written request to the treasurer thereof, that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail, and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also, at the same time, place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof: the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglect or refuse to comply with the provisions of this section, he shall forfeit and pay to the person or persons presenting such written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action.

§ 517. MAY HAVE OFFICE ELSEWHERE.] Any corporation formed for the purposes mentioned in this article may provide in the articles of incorporation for having a business office without this territory at any place within the United States, and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this territory must have its main office for the transaction of business within this territory, to be also designated in such articles.

§ 518. FRAUD, RESPONSIBILITY.] If any such corporation shall willfully violate any of the provisions of this chapter relating or applying to such

corporation, and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute, for all debts contracted after such violation.

§ 519. DITCH CORPORATION—REQUISITES.] In addition to the matters required by section 386, every corporation formed for the purpose of constructing a ditch to convey water to any mines, mills or lands, to be used for mining, manufacturing, milling, or for the irrigation of lands, must in the articles of incorporation, specify as follows: The stream or streams from which the water is to be taken; the point or place on said stream at or near which the water is to be taken out; the line of said ditch as near as may be, and the use to which the said water is intended to be applied.

§ 520. RIGHTS.] Any ditch corporation shall have the right of way over the line named in the articles, and shall also have the right to run the water of the stream or streams named in the articles, through their ditch: *Provided*, That the line proposed shall not interfere with any other ditch whose rights are prior to those granted under this article, and acquired by virtue of such articles of incorporation. Nor shall the water of any stream be diverted from its original channel to the detriment of any miners, millmen, or others, along the line of said stream, who may have a priority of right; and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists along said stream.

§ 521. DUTY TO FURNISH WATER.] Every ditch corporation must furnish water to the class of persons using water in the way and for the purpose for which the articles of incorporation declare the water obtained by the corporation is to be used, whether miners, manufacturers, mill men or farmers, whenever they shall have water in their ditch unsold, and must at all times give the preference to the use of the water in such ditch to the class of persons so named in the articles; and the rates or tolls at which water is to be furnished must be fixed by the board of county commissioners, as soon as such ditch shall be completed and prepared to furnish water.

§ 522. PROTECTION FROM INJURY.] Every ditch corporation must keep the banks of its ditch in good condition, so that the water shall not be allowed to escape from it to the injury of any mining claim, road, ditch, or other property; and whenever it is necessary to extend or construct any ditch over, across or above, any lode or mining claim, or public highway, the corporation shall, if necessary to keep the water of said ditch out or from any such lode, claim or highway, flume the ditch so far as necessary to protect such claim, property or highway, from the water of such ditch.

§ 523. FLUMES—REQUISITES.] In addition to the matters required in section 386, every corporation formed for the purpose of constructing a flume, must in its articles of incorporation, specify as follows: The place of beginning, the termini, and the route so near as may be, and the purpose for which such flume is intended. Such corporation shall have the right of way over the line named in its articles: *Provided*, It does not conflict

with the right of any fluming, ditching or other corporation, or with the prior water rights of any person.

§ 524. TUNNELS—SAME.] In addition to the matters required by section 386, every corporation formed for the purpose of running and excavating a tunnel for mining for gold, silver, or other ore, or quartz or coal, must, in the articles of incorporation, specify as follows: Where said tunnel is to be run; the place of commencement; the course and termination; and the metals, minerals or ores designed to be excavated. Through all lodes crossed by such tunnel, such corporation shall have the right of way.

§ 525. ACQUIRING RIGHT OF WAY.] The right of way granted in this article to any ditch, flume or tunnel corporation, may be acquired in the same manner, and by like proceedings as provided for railroad corporations.

§ 526. NON-USER FORFEITS RIGHTS.] Every corporation formed under the provisions of this article must, within ninety days from the date of the issue of its certificate of incorporation, commence the construction of its works or the transaction of its business, and must prosecute the work or business with due diligence until the same is completed; and the time of the completion of its works shall not extend beyond a period of two years from the time work was commenced as aforesaid; and any such corporation failing to commence work within ninety days from the date of its certificate, or failing to complete the same within two years from the time of commencement as aforesaid, shall forfeit all right to the route so claimed, and the same shall be subject to be claimed by any other corporation: *Provided*, That this section shall not apply to the construction of any works through or over any grounds owned by such corporation.

ARTICLE XIII.—BRIDGE CORPORATIONS.

§ 528. ARTICLES MUST INCLUDE—FILING.] The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required by section 486, every corporation formed for the purpose of constructing a bridge over any stream of water must, in the articles of incorporation, specify as follows: The place where such bridge is to be built, and over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the consent of the owners of the banks, where the bridge is to be built, to build the bridge; or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained, and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which its bridge or any part thereof is situated or to be located.

§ 529. COUNTY BOARD.] No such corporation shall construct, or take tolls on, a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located.

§ 530. FORFEITURE PROVIDED.] Every such corporation also ceases to be a body corporate:

1. If, within six months from the issue of its certificate by the secretary of the territory, it has not obtained such authority from the board or boards of county commissioners as mentioned in the last section; and if, within one year thereafter, it has not commenced the construction of its bridge and actually expended thereon at least ten per cent. of its capital stock.

2. If, within three years from the issuing of its certificate of incorporation, the bridge be not completed.

§ 531. GOOD CONDITION REQUIRED.] Every bridge coporation must at all times keep the bridge in good and safe condition for travel both night and day, unless it be rendered impassable by reason of floods or high water; and if it be destroyed by fire, or other causes, the corporation must rebuild within a period of one year from such destruction, or its corporate rights shall be forfeited and cease to exist.

§ 532. POSTED TOLL RATES.] Such corporation previous to receiving, and as a precedent condition to the right to receive any toll upon the use of its bridge, must set up and keep in a conspicuous place on the bridge a board on which must be written, painted or printed, in a plain and legible manner, the rates of toll which shall have been prescribed by the board of county commissioners; and if such corporation shall demand or receive any greater rate of toll than the rate so prescribed, it shall be subject to a fine of ten dollars for each offense, to be recovered in an action by the party aggrieved, or by any public officer making the complaint.

§ 533. BAD CONDITION—PENALTY.] No such corporation shall demand or receive toll whenever said bridge is not in good and safe condition for use, and any person having paid toll on such bridge and finding the same in a bad or unsafe condition for loaded wagons or teams, shall have the right to make complaint before any justice of the peace in the county or counties in which the bridge is located, who shall thereupon summon the said corporation, through its toll-gatherer, officers or directors, to appear before him to answer the complaint, within not over five days from the date thereof, and if upon the hearing it be found that the bridge is not in a good and safe condition for use, or is in a bad condition and unsafe for loaded wagons or teams, the justice of the peace must impose a fine not less than ten dollars nor more than fifty dollars, upon such corporation and he must thereupon also enter judgment and issue his order that no toll be collected upon said bridge until it is put in good repair and safe condition.

§ 534. COLLECTION OF TOLL—PENALTY.] Each toll gatherer may prevent from passing through his gate all persons, animals or vehicles subject to toll until he shall have received, respectively, the tolls authorized to be collected; and if he willfully and unreasonably hinder or delay any such persons, animals or vehicles from passing, when the lawful toll has been paid or tendered, he shall forfeit and pay for each offense a sum not less than five dollars nor more than twenty-five dollars, to be recovered in an action by the party aggrieved.

§ 535. UNLAWFUL PASSING.] Every person who forcibly, willfully or

fraudulently, passes over any such bridge without having paid or tendered the legal toll for himself, and the property in his charge, shall, for each offense forfeit and pay to the corporation injured a sum not exceeding twenty-five dollars, to be recovered in an action in the name of such corporation.

§ 536. ANNUAL REPORT TO COUNTY BOARD.] The president and secretary of every bridge corporation must annually, within twenty days from the first day of January, report under oath to the board of county commissioners of the county in which the articles of incorporation are filed, specifying as follows: The costs of constructing and providing all necessary appendages and appurtenances of their bridge; the amount of all moneys expended thereon, since its construction, for repairs and incidental expenses; the capital stock, how much paid in and how much actually expended thereof; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made; the indebtedness of the corporation, specifying for what it was incurred; the net amount of profits; and such other facts and particulars respecting the business of the corporation as the board of county commissioners may require.

§ 537. PUBLICATION OF SAME—PENALTY.] Such corporation must cause the report required in the preceding section to be published for four weeks in a newspaper published in the town or city nearest such bridge. A failure to make such report and to publish it as aforesaid, subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county or counties from which the authority to construct and take tolls is derived, at the suit of such county or counties. All such cases must be reported by the boards of county commissioners to the district attorney, who must commence an action therefor.

ARTICLE XIV.—RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS—GENERAL PROVISIONS.

§ 538. TRUSTEES—NUMBER.] Persons associated together for religious, educational, benevolent, charitable or scientific purposes, may elect trustees or directors, not less than three nor more than eleven, and may incorporate themselves as generally provided for in this chapter.

§ 539. CONTENTS OF ARTICLES.] In addition to the requirements of section 386, the articles of incorporation of any such association, must set forth the holding of the election for trustees or directors, the time and place the same was held, that a majority of the members of such association were present and voted at such election, and the result thereof: which facts must be verified by the officers conducting the election.

§ 540. PROPERTY LIMITED.] All such corporations may hold all the property of the association owned prior to incorporation, as well as that acquired thereafter in any manner, and transact all business relative thereto; but no such corporation shall own or hold more real property than may be reasonably necessary for the business and objects of the as-

sociation; and no such corporation for religious or charitable purposes shall acquire or hold real property of a greater value than fifty thousand dollars.

§ 541. ANNUAL REPORT.] The trustees or directors of all such corporations must annually make a full report of all their property, real and personal, including property held in trust by them, and of the condition thereof, and of all their affairs, to the members of the corporation for which they are acting.

§ 542. COURT MAY PERMIT CONVEYANCE.] Corporations of the character mentioned in this article may sell, exchange, or mortgage, real property held by them, upon obtaining an order for that purpose from the district court held in the county or subdivision in which the property is situated. Before making the order, proof must be made to the satisfaction of the court that notice of the application for leave to sell, exchange, or mortgage, has been given by publication in such manner and for such time as the court or judge has directed, and that it is to the interest of the corporation that leave should be granted as prayed for. The application must be made by petition, and any member of the corporation, or any person claiming a vested, contingent, or reversionary interest in such real property, may oppose the granting of the order, by affidavit or otherwise: *Provided*, That the provisions of this section shall not extend to any grounds used or occupied for the burial of the dead.

§ 543. BY-LAWS.] Such corporations may, in their by-laws or articles of incorporation, in addition to the provisions of sections 386 and 404 provide for:

First—The qualification of members, mode of election, and terms of admission to membership.

Second—The fees of admission, and dues to be paid to their treasury by members.

Third—The expulsion and suspension of members for misconduct or non-payment of dues; also, for restoration to membership.

Fourth—Contracting, securing, paying and limiting the amount of their indebtedness.

Fifth—Other regulations, not repugnant to the law of the land, and consonant with the objects of the corporation.

§ 544. EQUAL RIGHTS.] Members admitted after incorporation, have all the rights and privileges, and are subject to the same responsibilities, as members of the association prior thereto.

§ 545. MEMBERSHIP RIGHTS PERSONAL.] No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him by reason of his membership of such corporation, or be deprived thereof, except as herein provided.

RELIGIOUS CORPORATIONS.

§ 546. TRUSTEES—HOW CHOSEN.] The board of trustees of any religious corporation may be chosen at such times and in such manner as may be in conformity to the rules, usage or general discipline of such church.

INSTITUTIONS OF LEARNING.

§ 547. REQUISITES OF ARTICLES.] Any corporation formed for the purpose of establishing an institution of learning must, in addition to the requirements mentioned in section 386, set forth in its articles of incorporation the particular branch or branches of science, literature and the arts, proposed to be taught; and, if the institution is to be of the rank of a college or university, the number and designation of the professorships to be established.

§ 548. PROPERTY APPLIED.] Such corporation shall hold the property of the institution solely for the purposes of education, and not for the individual benefit of itself or any contributor to the endowment thereof.

§ 549. OBJECTS FOR EXPENDITURE.] The trustees or directors of any such corporation shall faithfully apply all the funds collected or the proceeds of the property belonging to the institution, according to their best judgment, in erecting, completing or repairing suitable buildings, in supporting necessary officers, instructors, agents and employes, and in procuring books, maps, charts, globes and philosophical, chemical and other apparatus or cabinets, necessary to the objects and success of the institution; and all donations, devices or bequests made to it for particular purposes, when accepted, shall be applied in conformity with the express condition of the donor or devisor.

§ 550. POWERS OF CORPORATION.] Such corporation has power to appoint a president or principal for the institution and such professors, tutors and other agents and officers as may be necessary, and to displace any of them as the interests of the institution may require; to fill vacancies, to prescribe and direct the course of studies and the discipline to be pursued and observed in the institution and the rates of tuition in the same; and the president and professor shall constitute the faculty of such institution and they have power to enforce the rules and regulations enacted for the government and discipline of the students, and to suspend and expel offenders as may be deemed expedient.

§ 551. DEGREES CONFERRED.] Every such corporation having the rank of a college or university has power to confer, on the recommendation of the faculty, all such degrees or honors as are usually conferred by colleges and universities in the United States, and such others, having reference to the course of studies and the worth and accomplishment of the student, as may be deemed proper.

§ 552. MECHANICS AND AGRICULTURE.] Such corporation may connect with its institution, to be used as a part of its course of education, any mechanical shops or machinery, or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical and agricultural purposes of such institution.

CEMETERY CORPORATIONS.

§ 553. REAL PROPERTY LIMITED—USES.] Every cemetery corporation has power to purchase or take by gift, grant or devise, and to hold real prop-

erty, not exceeding eighty acres, for the sole use and purpose of a burial ground, and to lay out the same into blocks and lots with convenient avenues and walks, and to sell the lots for the sole use and purpose of burying the dead; and it may hold all such personal property as the legitimate and necessary purposes of the corporation may require.

§ 554. SURVEY AND PLAT.] Such corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose, to be surveyed into lots, avenues and walks, and platted, and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor, and such number shall be marked on the plat and recorded.

§ 555. POWERS.] Such corporation has power to inclose, improve and embellish its grounds, avenues and walks, and to erect buildings or vaults for its use, and to prescribe in its by-laws, rules for the sale, inclosure and ornamentation of lots and for erecting monuments or grave stones thereon; and to prohibit any use, division, improvement or ornamentation of any lot which the corporation may deem improper; and to make other by-laws and acts to the end that all the appliances, conveniences and benefits of a public and private cemetery may be obtained and secured.

§ 556. USE OF RECEIPTS.] The proceeds arising from the sale of lots, after deducting all expenses of purchasing, inclosing, laying out and improving the ground, and of erecting buildings, shall be exclusively applied, appropriated and used in protecting, preserving, improving and embellishing the cemetery and its appurtenances, and to paying the necessary expenses of the corporation, and must not be appropriated to any purposes of profit to the corporation or its members.

§ 557. PAYMENT OF DEBTS.] At least fifty per cent. of the gross proceeds of sales of blocks, lots or graves must be applied, as often as every six months, to the payment of the debts and obligations of the corporation.

§ 558. PREVIOUS BURIAL PROTECTED.] When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase continue to own the same, and are members of the corporation, as hereinafter provided, with all the privileges the purchase of a corporation lot confers.

§ 559. QUALIFICATION OF VOTERS.] At each subsequent election of officers of any such corporation, held after the first annual election, the owner or owners of a lot in the cemetery, and none other, shall be entitled to one vote at such election, or for any other purpose, and no more than one vote; and shall, by virtue of such proprietorship, be a member of the corporation, and eligible to any of its offices; but if there be more than one proprietor of any such lot, then such one of the proprietors as the majority of them shall designate may cast the one vote as aforesaid; and each trustee or director shall be the sole proprietor of a lot in such cemetery.

§ 560. INTERMENT RENDERS LOT INALIENABLE.] Whenever an interment is made in any lot transferred to individual owners by the corporation, the same thereby, while any person is buried therein, becomes forever inalien-

able, and descends in regular line of succession to the heirs at law of the owner; but any one or more of such heirs may release to any other of said heirs his or their interest in the same, and any other joint owners may release to each other in like manner.

§ 561. EXEMPT WHOLLY.] All the property of every such benevolent corporation, and the lots sold by it to individual proprietors, shall be exempt from taxation, assessment, lien, attachment, and from levy and sale upon execution; and all such real property shall be exempt from appropriation for streets, roads, or any other public uses or purposes.

OTHER BENEVOLENT CORPORATIONS.

§ 562. SPECIAL ASSOCIATIONS AND ORDERS.] The following associations for benevolent and charitable purposes may become incorporated, as provided in this chapter, to-wit:

1. To establish and maintain hospitals and infirmaries for the cure of the sick and support of the aged and indigent, and asylums for orphans.

2. For the mutual assistance of the members in time of sickness or necessity, and to provide a fund for this purpose by contributions of the members thereof from time to time, and for the like incidental benevolent purposes.

3. To establish and maintain lodges, chapters and encampments of fraternities or associations commonly known as free masons, the independent order of odd fellows, good templars, sons of temperance, and other like benevolent orders or societies.

4. To establish and maintain fire companies in any incorporated city or town.

ARTICLE XV.—AGRICULTURAL FAIR CORPORATIONS.

§ 563. PROPERTY RIGHTS.] Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon, and may sell, lease, or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising and general domestic industry.

§ 564. DEBTS LIMITED.] Such corporation must not contract any debts or liabilities in excess of the amount of money in the treasury at the time of contract except for the purchase of real property, for which they may create a debt not exceeding three thousand dollars, secured by mortgage on the property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section.

§ 565. CHARGES AND EXPENSES.] Agricultural fair corporations are not conducted for profit, and have no capital stock or income other than that derived from charges to exhibitors and fees for membership and admissions, which charges, together with the term of membership and mode of acquiring the same must be provided for in their by-laws. Such charges

and fees must never be greater than to raise sufficient money to discharge the debt for the real estate and the improvements thereon, and to defray the current expenses of fairs.

ARTICLE XVI.—EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

§ 566. PROCEEDINGS—VOTE—CERTIFICATE.] Any corporation existing at the passage of this act, formed under the laws of this territory, may elect to continue its existence under the provisions of this chapter applicable thereto, and it may, at any time thereafter, make such choice or election, at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock, or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or, a certificate of the proceedings of the meeting of the stockholders or members when such election is so made, signed by the chairman and secretary of the meeting and a majority of the directors and trustees, must be filed in the office of the secretary of the territory, and thereafter the corporation shall continue its existence under the provisions of this chapter which are applicable thereto, and shall possess all the rights and powers, and be subject to all the obligations, restrictions and limitations prescribed thereby.

ARTICLE XVII.—DUTIES OF FOREIGN CORPORATIONS.

§ 567. FILING CHARTER.] No corporation created or organized under the laws of any other state or territory shall transact any business within this territory, or acquire, hold, and dispose of property, real, personal or mixed within this territory, until such corporation shall have filed in the office of the secretary of the territory, a duly authenticated copy of its charter or articles of incorporation, and shall have complied with the provisions of this article: *Provided*, That the provisions of this act shall not apply to corporations or associations created for religious or charitable purposes solely.

§ 568. RECORD.] Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of this territory for that purpose.

§ 569. RESIDENT AGENT TO ACCEPT SERVICE.] Such corporation shall appoint an agent, who shall reside at some accessible point in this territory, in the county where the principal business of said corporation shall be carried on, duly authorized to accept service of process, and upon whom service of process may be made in any action in which said corporation may be a party; and service upon such agent shall be taken and held as due service upon such corporation. A duly authenticated copy of the appointment or commission of such agent shall be filed and recorded in the office of the secretary of the territory, and a certified copy thereof by the secre-

tary shall be conclusive evidence of the appointment and authority of such agent.

CHAPTER IV.

PRODUCTS OF THE MIND.

§ 570. COMPOSITION—ART—MAPS.] The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product, and the representations or expressions thereof made by him, remain in his possession.

§ 571. JOINT PRODUCTS DEFINED.] Unless otherwise agreed, a product of the mind, in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions; or,
2. If it is not single, in proportion to the contribution of each.

§ 572. TRANSFER.] The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

§ 573. PUBLICATION.] If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, so far as the law of this territory is concerned.

§ 574. PRIOR PUBLICATION.] If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing, has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

§ 575. PRIVATE LETTERS.] Letters and other private communications in writing, belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

CHAPTER V.

OTHER KINDS OF PERSONAL PROPERTY.

§ 576. TRADE MARKS LIMITED.] One who produces or deals in a particular thing, or conducts a particular business, may appropriate to his exclusive use, as a trade mark, any form, symbol or name which has not been so appropriated by another, to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality, or the description of the thing or business, or the place where the thing is produced, or the business is carried on.

§ 577. GOOD WILL.] The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired.

§ 578. IS PROPERTY.] The good will of a business is property, transferable like any other.

§ 579. TITLE DEEDS.] Instruments essential to the title of real property, and which are not kept in a public office as a record pursuant to law, belong to the person in whom, for the time being, such title may be vested, and pass with the title.

PART 4.

ACQUISITION OF PROPERTY.

TITLE I.

MODES IN WHICH PROPERTY MAY BE ACQUIRED.

§ 580. MODES CLASSED.] Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.
4. Will: or,
5. Succession.

TITLE II.

OCCUPANCY.

§ 581. TITLE BY—LIMITED.] Occupancy for any period confers a title sufficient against all except the territory, and those who have title by prescription, accession, transfer, will or succession.

§ 582. PRESCRIPTION.] Occupancy for the period prescribed by the code of civil procedure, or any law of this territory as sufficient to bar an action for the recovery of the property, confers a title thereto, denominated a title by prescription, which is sufficient against all.

TITLE III.

ACCESSION.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

§ 583. LAND FIXTURES—TENANTS.] When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it: *Provided*, That a tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

§ 584. RIPARIAN ACCRETIONS.] Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material, or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

§ 585. REMOVALS IN MASS.] If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 586. ISLANDS IN NAVIGABLE STREAMS.] Islands and accumulations of land formed in the beds of streams which are navigable, belong to the territory, if there is no title or prescription to the contrary.

§ 587. IN OTHER STREAMS.] An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 588. BY NEW CHANNEL.] If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

§ 589. ANCIENT BED.] If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take, by way of indemnity, the ancient bed abandoned, each in proportion to the land of which he has been deprived.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

§ 590. INSEPARABLY UNITED.] When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

§ 591. DOMINANT PART DEFINED.] That part is to be deemed the principal, to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

§ 592. HOW DETERMINED.] If neither party can be considered the principal, within the rule prescribed by the last section, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

§ 593. WORK AND MATERIAL.] If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

§ 594. BLENDED MATERIALS.] Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

§ 595. ADMIXTURES.] When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require a separation, if the materials can be separated without inconvenience. If they cannot be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

§ 596. WILLFUL USES. The foregoing sections of this article are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

§ 587. ALTERNATIVE OF KIND OR VALUE.] In all cases where one, whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an

option to demand either restitution of his material, in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

§ 598. DAMAGES ALSO.] One who wrongfully employs materials belonging to another, is liable to him in damages, as well as under the foregoing provisions of this chapter.

TITLE IV.

TRANSFER.

CHAPTER I.

TRANSFER IN GENERAL.

ARTICLE I.—DEFINITION OF TRANSFER.

§ 599. DEFINITION.] Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

§ 600. CONSIDERATION WHEN UNNECESSARY.] A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

ARTICLE II.—WHAT MAY BE TRANSFERRED.

§ 601. ANY PROPERTY.] Property of any kind may be transferred, except as otherwise provided by this article.

§ 602. NOT TRANSFERABLE.] A mere possibility, not coupled with an interest, cannot be transferred.

§ 603. ONLY TO PRINCIPAL OWNER.] A mere right of re-entry, or of repossession for breach of a condition subsequent, cannot be transferred to any one except the owner of the property affected thereby.

ARTICLE III.—MODE OF TRANSFER.

§ 604. WRITING ONLY WHEN REQUIRED.] A transfer may be made without writing in every case in which a writing is not expressly required by statute.

§ 605. GRANT DEFINED.] A transfer in writing is called a grant, or conveyance, or bill of sale. The term "grant" in this and the next two articles includes all these instruments, unless it is specially applied to real property.

§ 606. EFFECT BY DELIVERY.] A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor.

§ 607. PRESUMED DATE.] A grant duly executed is presumed to have been delivered at its date.

§ 608. TO GRANTEE ABSOLUTE.] A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute, and the instrument takes effect thereupon discharged of any condition on which the delivery was made.

§ 609. ESCROW.] A grant may be deposited by the grantor with a third person, to be delivered on the performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

§ 610. REDELIVERY NOT TRANSFER.] Redelivering a grant of real property to the grantor, or cancelling it, does not operate to retransfer the title.

§ 611. CONSTRUCTIVE DELIVERY.] Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown or may be presumed.

ARTICLE IV.—INTERPRETATION OF GRANTS.

§ 612. LIKE CONTRACTS.] Grants are to be interpreted in like manner with contracts in general, except so far as is otherwise provided by this article.

§ 613. RELATIVE FORCE OF PARTS.] A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

§ 614. RECITALS CLEAR DOUBTS.] If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

§ 615. INTERPRETATION.] A grant is to be interpreted in favor of the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

§ 616. FORMER PART PREVAILS.] If several parts of a grant are absolutely irreconcilable, the former part prevails.

§ 617. WITHOUT ISSUE—DEFINED.] Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors or issue living at the death of the person named as ancestor.

§ 618. REQUISITES OF FEE.] Words of inheritance or succession are not requisite to transfer a fee in real property.

ARTICLE V.—EFFECT OF TRANSFER.

§ 619. VEST ACTUAL TITLE.] A transfer vests in the transferee all the actual title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied.

§ 620. THING INCLUDES INCIDENT.] The transfer of a thing transfers also all its incidents unless expressly excepted: but the transfer of an incident to a thing does not transfer the thing itself.

§ 621. PARTY NOT NAMED.] A present interest, and the benefit of a condition or covenant respecting property, may be taken by any natural person under a grant, although not named a party thereto.

CHAPTER II.

TRANSFER OF REAL PROPERTY.

ARTICLE I.—MODE OF TRANSFER.

§ 622. BY LAW OR WRITING.] An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent, thereunto authorized by writing.

§ 623. SEAL ABOLISHED—PROOF.] The execution of a grant of such estate in real property, if it is not duly acknowledged, must, to entitle the grant to be recorded, be proved by a subscribing witness or as otherwise provided in section 648. The absence of the seal of any grantor or his agent from any grant of an estate in real property heretofore or hereafter made, shall not invalidate or in any manner impair the same.

§ 624. FORM OF GRANT.] A grant of an estate in real property may be made, in substance, as follows:

This grant, made the ..... day of ....., in the year ....., between A. B., of ...., of the first part, and C. D., of ....., of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part, in consideration of ..... dollars, now received, all the real property situated in ...., and bounded (or described) as follows: .....

Witness the hand of the party of the first part.

A. B.

§ 625. MARRIED WOMAN.] No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by her in the manner prescribed by section 660.

§ 626. POWER OF ATTORNEY BY SAME.] A power of attorney of a married woman, authorizing the execution of an instrument transferring an estate in her separate real property, has no validity for that purpose until acknowledged by her in the manner prescribed in section 660.

2. When an attorney in fact executes an instrument transferring an estate in real property he must subscribe the name of his principal to it, and his own name as attorney in fact.

ARTICLE II.—EFFECT OF TRANSFER.

§ 627. ALL EASEMENTS PASS.] A transfer of real property passes all easements attached thereto, and creates in favor thereof an easement to use other real property of the person whose estate is transferred, in the same manner and to the same extent, as such property was obviously and permanently used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

§ 628. WARRANTEES IMPLIED BY GRANT.] From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs, and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is, at the time of the execution of such conveyance, free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

§ 629. EFFECT DEFINED.] Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who, in good faith, and for a valuable consideration, acquires a title or lien by a instrument that is first duly recorded.

§ 630. VALID PRO TANTO.] A grant, made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer.

§ 631. TITLE TO HIGHWAY.] A transfer of land, bounded by a highway, passes the title of the person whose estate is transferred to the soil of the highway in front to the centre thereof, unless a different intent appears from the grant.

§ 632. TENANTS' RIGHTS.] Grants of rents, or of reversions, or of remainders are good and effectual without attornments of the tenants, but no tenant, who, before notice of the grant, shall have paid rent to the grantor must suffer any damage thereby.

§ 633. PRESUMPTIONS—CONSTRUCTIONS—LIENS.] Lineal and collateral warrantees, with all their incidents are abolished; but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property, are answerable upon such covenant or agreement to the extent of the land descended or devised to them, in the cases and in the maner prescribed by law.

2. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

3. An instrument purporting to be a grant of real property, to take effect upon condition precedent, passes the estate upon the performance of the condition.

4. Where a person purports by proper instrument to grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee, or his successors.

5. Where a grant is made upon condition subsequent, and is subsequently defeated by the non-performance of the condition, the person otherwise entitled to hold under the grant, must reconvey the property to the grantor or his successors, by grant, duly acknowledged for record.

6. The term "incumbrances" includes taxes, assessments, and all liens upon real property.

CHAPTER III.

TRANSFERS OF PERSONAL PROPERTY.

ARTICLE I.—MODE OF TRANSFER.

§ 634. TRUSTS AND SHIPS.] An interest in a ship, or in an existing trust, can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

§ 635. OTHER PERSONALTY.] The mode of transferring other personal property by sale, is regulated by the title on that subject in the third division of this code.

ARTICLE II.—WHAT OPERATES AS A TRANSFER.

§ 636. PRESENT TRANSFER.] The title to personal property, sold or exchanged, passes to the buyer whenever the parties agree upon a present transfer, and the thing itself is identified, whether it is separated from other things or not.

§ 637. FUTURE.] Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery, and offered it to the buyer, with intent to transfer the title thereto, in the manner prescribed by the chapter upon offer of performance.

§ 638. BY AGENT.] Where the possession of personal property, together with a power to dispose thereof, is transferred by its owner to another person, an executed sale by the latter while in possession, to a buyer in good faith and in the ordinary course of business, for value, transfers

to such buyer the title of the former owner, though he may be entitle to rescind, and does rescind the transfer made by him.

ARTICLE III.—GIFTS.

§ 639. NO CONSIDERATION.] A gift is a transfer of personal property, made voluntarily and without consideration.

§ 640. DELIVERY NECESSARY.] A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

§ 641. IRREVOCABLE.] A gift, other than a gift in view of death, cannot be revoked by the giver.

§ 642. IN VIEW OF DEATH.] A gift in view of death, is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

§ 643. PRESUMED—WHEN.] A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

§ 644. REVOCABLE—LIMITATION.] A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation shall not be affected by the revocation.

§ 645. WILL DOES NOT AFFECT.] A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

§ 646. DEEMED A LEGACY.] A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

CHAPTER IV.

RECORDING TRANSFERS.

ARTICLE I.—WHAT MAY BE RECORDED.

§ 647. JUDGMENTS—LETTERS PATENT, ETC.] Any instrument or judgment affecting the title to or posession of real property may be recorded under this chapter.

2. Judgments affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which such judgments were rendered, may be recorded without acknowledgment or further proof.

3. Letters patent from the United States may be recorded without acknowledgment or further proof.

§ 648. PREREQUISITES TO RECORD.] Before an instrument can be recorded, unless it belongs to the class provided for in either sections 647 or 667, its execution must be acknowledged by the person executing it, or, if executed by a corporation, by its president or secretary, or proved by a subscribing witness, or as provided in sections 663 and 664, and the acknowledgment or proof certified in the manner prescribed by article III of this chapter.

§ 649. PROVED INSTRUMENT FILED.] An instrument proved and certified pursuant to sections 663 and 664 may be recorded in the proper office, if the original is at the same time deposited therein to remain for public inspection, but not otherwise.

§ 650. CREDITOR'S TRUSTS AND LIENS.] Transfers of property in trust for the benefit of creditors, and transfers of or liens on property, by way of mortgage, are required to be recorded in the cases specified in the title on special relations of debtor and creditor, and the chapter on mortgages, respectively.

ARTICLE II.—MODE OF RECORDING.

§ 651. WHERE AND WHEN.] Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. The register must, in all cases, indorse the amount of his fee for the recording on the instrument recorded.

2. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the register's office, with the proper officer, for record.

§ 652. SEPARATE CLASSES.] Grants, absolute in terms, are to be recorded in one set of books, and mortgages in another.

§ 653. REGISTERS' DUTIES.] The duties of register of deeds, in respect to recording instruments, are prescribed by statute.

§ 654. OF VESSELS.] The mode of recording transfers of vessels, registered under the laws of the United States, is regulated by acts of congress.

ARTICLE III.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 655. WITHIN TERRITORY.] The proof or acknowledgment of an instrument may be made at any place within this territory, before a justice, clerk of the supreme court, or notary public.

§ 656. WITHIN JURISDICTION.] The proof or acknowledgment of an instrument may be made in this territory within the judicial district, county, subdivision, or city for which the officer was elected or appointed, before either:

One—A judge or clerk of a court of record; or,
Two—A mayor of a city; or,
Three—A register of deeds; or,
Four—A justice of the peace.

§ 657. WITHIN UNITED STATES.] The proof or acknowledgment of an in-

strument may be made without the territory, but within the United States. and within the jurisdiction of the officer, before either:

One—A justice, judge, or clerk of any court of record of the United States.

Two—A justice, judge, or clerk of any court of record of any state or territory; or,

Three—A notary public; or,

Four—Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

Five—A commissioner appointed for the purpose by the governor of this territory, pursuant to the political code.

§ 658. FOREIGN.] The proof or acknowledgment of an instrument may be made without the United States before either:

One—A minister, commissioner, or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,

Two—A consul, vice-consul, or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or.

Three—A judge of a court of record of the country where the proof or acknowledgment is made; or,

Four—A notary public of such country.

When any of the officers mentioned in this article are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal.

§ 659. REQUISITES OF ACKNOWLEDGMENT.] The acknowledgment of an instrument must not be taken, unless the officer taking it knows, or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation.

§ 660. MARRIED WOMAN.] The acknowledgment of a married woman to an instrument purporting to be executed by her, must not be taken, unless she is made acquainted by the officer with the contents of the instrument on an examination without the hearing of her husband; nor certified, unless she thereupon acknowledges to the officer that she executed the instrument freely, and that she does not wish to retract such execution.

§ 661. SAME.] A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner, except as mentioned in the last section; but such conveyance has no validity until so acknowledged.

§ 662. BY WHOM PROVED.] Proof of the execution of an instrument, when not acknowledged, may be made either:

One—By the party executing it, or either of them; or,

Two—By a subscribing witness; or,

Three—By other witnesses, in cases mentioned in sections 663 and 664.

1. If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

2. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

§ 663. HANDWRITING—WHEN.] The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

One—When the parties and all the subscribing witnesses are dead; or,

Two—When the parties and all the subscribing witnesses are non-residents of the territory; or,

Three—When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence: or,

Four—When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve the subpœna or attachment; or,

Five—In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

§ 664. FACTS REQUIRED.] The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

One—The existence of one or more of the conditions mentioned therein: and,

Two—That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine: and,

Three—That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine: and,

Four—The place of residence of the witness.

§ 665. CONTENTS OF CERTIFICATE.] An officer taking proof of the execution of an instrumnnt must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him, on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence.

§ 666. FORMS OF CERTIFICATE.] An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed; and such certificate of acknowledgment, unless it is otherwise in this article provided, must be substantially in the following form:

1. TERRITORY OF.....OR STATE OF....., } ss
County of..... }

On this.....day of....., in the year....., before me personally appeared....., known to me (or proved to me on the oath of.....) to be the person who is described in, and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

2. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

TERRITORY OF.....,
County of..... } ss

On this.....day of.... ..., in the year....., before me (here insert the name and quality of the officer), personally appeared....., known to me (or proved to me on the oath of.....) to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

3. The certificate of acknowledgment by a married woman must be substantially in the following form:

TERRITORY OF.... ...,
County of..... } ss

On this.....day of.....in the year..... .., before me (here insert the name and quality of the officer,) personally appeared....., known to me (or proved to me on the oath of .....) to be the person who is described as a married woman in, and whose name is subscribed to the within instrument; and upon an examination, without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same freely, and that she does not wish to retract such execution.

4. The certificate of acknowledgment by an attorney in fact, must be substantially in the following form:

TERRITORY OF.....,
County of..... } ss

On this.....day of....., in the year...., before me (here insert the name and quality of the officer) personally appeared.... known to me (or proved to me on the oath of....) to be the person who is described in, and whose name is subscribed to the within instrument as the attorney in fact of....., and acknowledged to me that he subscribed the name of..... thereto as principal, and his own name as attorney in fact.

5. Officers taking and certifying acknowledgments or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also their seals of office, if by the laws of the territory, state, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid, by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof.

6. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the district court, or of any other county court of record, of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine.

§ 667. ACTION TO CORRECT.] 1. When the acknowledgment or proof of execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

2. Any person interested under an instrument entitled to be proved for record, may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

3. A certified copy of the judgment in a proceeding instituted under either of the two preceding subdivisions, showing the proof of the instrument, and attached thereto, entitles the instrument to record, with like effect as if acknowledged.

§ 668. POWERS OF OFFICER.] Officers authorized to take the proof of instruments are authorized in such proceedings:

One—To administer oaths or affirmations.

Two—To employ and swear interpreters.

Three—To issue subpœnas, and to punish for contempt, as provided in the code of civil procedure in regard to the means of producing witnesses.

§ 669. FORMER LAWS APPLY.] The legality of the execution, acknowledgment, proof, form, or record of any conveyance or other instrument made before this amended code goes into effect, executed, acknowledged, proved or recorded, is not affected by anything contained in this chapter, but depends for its validity and legality, except as to seals, upon the laws in force when the act was performed.

§ 670. RECORD AND EFFECT OF FORMER DEEDS.] All conveyances of real property made before this amended code goes into effect, and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof, have the same force as evidence, and may be recorded in the same manner and with like effect, as conveyances executed and acknowledged in pursuance of this chapter.

ARTICLE IV.—EFFECT OF RECORDING, OR THE WANT THEREOF.

§ 671. FIRST RECORD VALID.] Every conveyance of real property, other than a lease for a term not exceeding one year, is void as against any subsequent purchaser or incumbrancer, including an assignee of a mortgage, lease, or other conditional estate, of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.

§ 672. CONVEYANCE DEFINED.] The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected; except wills, executory contracts for the sale or purchase of real property, and powers of attorney.

§ 673. REQUISITE OF REVOCATION.] No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded.

§ 674. EFFECT OF PROVED INSTRUMENTS.] The recording and deposit of an instrument proved and certified according to the provisions of sections 649, 662, 663 and 664, are constructive notice of the execution of such instrument to all purchasers and incumbrancers subsequent to the recording; but the proof, recording and deposit do not entitle the instrument or

the record thereof, or the transcript of the record, to be read in evidence.

§ 675. UNRECORDED—HOW VALID.] An unrecorded instrument is valid as between the parties thereto and those who have notice thereof.

CHAPTER V.

UNLAWFUL TRANSFERS.

§ 676. FRAUDULENT—VOID.] Every instrument other than a will, affecting an estate in real property, including every charge upon real property, or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof, or incumbrancers thereon, is void as against every purchaser or incumbrancer, for value, of the same property, or the rents or profits thereof.

§ 677. NOTICE AVOIDS FRAUD.] No instrument is to be avoided under the last preceding section, in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made, was privy to the fraud intended.

§ 678. CONSTRUCTIVE REVOCATION.] Where a power to revoke or modify an instrument affecting the title to, or the enjoyment of, an estate in real property is reserved to the grantor, or given to any other person, a subsequent grant of or charge upon the estate, by the person having the power of revocation, in favor of a purchaser or incumbrancer for value, operates as a revocation of the original instrument, to the extent of the power, in favor of such purchaser or incumbrancer.

§ 679. POWER DEEMED EXECUTED.] Where a person having a power of revocation, within the provisions of the last section, is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it.

§ 680. GOOD FAITH PROTECTED.] The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter.

§ 681. ADVERSE POSSESSION.] Every grant of real property, other than one made by the territory, or under a judicial sale, is void, if at the time of the delivery thereof, such real property is in the actual possession of a person claiming under a title adverse to that of the grantor.

§ 682. OTHER UNLAWFUL TRANSFERS.] Other provisions concerning unlawful transfers are contained in part 2 of the fourth division of this code, concerning the special relations of debtor and creditor.

TITLE V.

WILL.

CHAPTER I.

EXECUTION AND REVOCATION OF WILL.

§ 683. WHO MAY MAKE—OTHER PROPERTY.] Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in title VI of this part, being chargeable in both cases with the payment of all the decedent's debts, as provided in the code of civil procedure.

§ 684. MARRIED WOMAN—EQUAL RIGHT.] A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

§ 685. UNDUE INFLUENCE.] A will or part of a will procured to be made by duress, menace, fraud or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

§ 686. WHAT DISPOSABLE.] Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will.

§ 687. TO WHOM.] A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by its charter or by statute so to take.

§ 688. NUNCUPATIVE WILL.] To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed:

One—The estate bequeathed must not exceed in value the sum of one thousand dollars.

Two—It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

Three—The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day.

§ 689. MUTUAL WILL—REVOCATION.] A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

§ 690. PROBATE OF CONDITIONAL WILL.] A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition.

§ 691. EXECUTION OF WILLS—OLOGRAPHIC.] An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this territory and need not be witnessed.

2. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person, in his presence, and by his direction, must subscribe his name thereto.

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them, to have been made by him or by his authority.

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will: and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness, at the end of the will, at the testator's request, and in his presence.

§ 692. NOT IN WRITING.] A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities.

§ 693. METHOD OF WITNESSING WILL.] A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

§ 694. CODICIL—EFFECT.] The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil.

§ 695. LAW OF THE PLACE GOVERNS.] A will of real or personal property, or both, or a revocation thereof, made out of this territory by a person not having his domicile in this territory, is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it were made in this territory, and according to the provisions of this chapter.

§ 696. MUST BE FOLLOWED.] No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled.

§ 697. CHANGE OF DOMICILE.] Whenever a will or a revocation thereof, is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is reg-

ulated as to the validity of its execution, by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place, by the law of which such will would be void.

§ 698. DEPOSITED WILLS.] Every probate judge must deposit in his office, any will delivered to him for that purpose, and give a written receipt to the depositor; and must inclose such will in a sealed wrapper, so that it cannot be read, and indorse thereon the name of the testator, his residence, and the date of the deposit: and such wrapper must not be opened until its delivery under the provisions of the next section.

§ 699. HOW DISPOSED OF.] A will deposited under the provisions of the last section, must be delivered only:

1. To the testator in person.

2. Upon his written order, duly proved by the oath of a subscribing witness.

3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or.

4. If there is no such indorsement, and if the will was not deposited with the probate judge having jurisdiction of its probate, then to the probate judge who has jurisdiction.

§ 700. PROBATE JUDGE OPENS.] The probate judge with whom a will is deposited, or to whom it is delivered, must, after the death of the testator, publicly open and examine the will and file it in his office, there to remain until duly proved, or to deliver it to the probate judge having jurisdiction of its probate.

§ 701. PROOF OF LOST WILL.] A lost or destroyed will of real or personal property, or both, may be estabitshed in the cases provided in the probate code, or any act in force on that subject.

§ 702. REVOCATION OF WILLS.] Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered, otherwise than:

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

§ 703. PROOF OF DESTRUCTION.] When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such injury or destruction must be proved by two witnesses.

§ 704. PARTIAL ERASURE.] A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but where, in order to effect a new disposition the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected.

§ 705. DUPLICATES—REVOCATION.] The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

§ 706. WILLS VALID.] A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

§ 707. REVIVOR NOT PRESUMED.] If, after making a will, the testator duly makes and executes a subsequent will, the destruction, canceling or revocation of the latter does not revive the former, unless it appears by the terms of such revocation that it was his intention to remove the former will, or unless after such destruction, canceling or revocation, he duly republishes the prior will.

§ 708. ISSUE, OR WIFE, AFTER WILL MADE.] 1. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

2. If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision: and no other evidence to rebut the presumption of revocation must be received.

§ 709. WOMAN'S MARRIAGE REVOKES WILL.] A will executed by an unmarried woman is revoked by a subsequent marriage, and is not revived by the death of her husband.

§ 710. DEVISED PROPERTY SOLD—EFFECT.] An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise, against the devisees or legatees, as might be had against the testator's successors, if the same had passed by succession.

§ 711. INCUMBRANCE NOT REVOCATION.] A charge or incumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass subject to such charge or incumbrance.

§ 712. PARTIAL DISPOSAL AFTER WILL.] A conveyance, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

§ 713. WHEN SUCH ACT REVOKES.] If the instrument, by which an alteration is made in the testator's interest in a thing previously disposed of by his will, expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such

inconsistent provisions depend on a condition or contingency, by reason of which they do not take effect.

§ 714. CODICILS.] The revocation of a will revokes all its codicils.

§ 715. SUCCESSION SUPPLEMENTS WILL.] Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property, that he would have succeeded to if the testator had died intestate.

1. When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.

2. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific devise or bequest, or other provision in the will, would thereby be defeated; in such case such specific devise, legacy or provision, may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

3. If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding subdivisions.

4. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate.

§ 716. DEVISEE'S DESCENDANTS TAKE.] When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will, in the same manner as the devisee would have done had he survived the testator.

§ 717. GIFT TO A WITNESS VOID.] All beneficial devises, legacies or gifts whatever, made or given in any will to a subscribing witness thereto, are void unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will.

§ 718. NOT IF ENTITLED—COMPETENCY.] If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as

would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees named in the will, in proportion to and out of the parts devised or bequeathed to them.

1. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

§ 719. PROPERTY ACQUIRED AFTER WILL.] Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising, or in any other terms denoting the intent of the testator to devise all the real estate of such testator, passes all the real estate which such testator was entitled to devise at the time of his decease.

CHAPTER II.

INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS.

§ 720. INTENTION PREVAILS.] A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible.

§ 721. WILL EXCLUDES ORAL DECLARATION.] In case of uncertainty, arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

§ 722. RULES OF INTERPRETATION.] In interpreting a will, subject to the laws of this territory, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

§ 723. CONSTRUED TOGETHER, IF SEVERAL.] Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

§ 724. IRRECONCILABLE PARTS.] All the parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but where several parts are absolutely irreconcilable, the latter must prevail.

725. INACCURACIES.] A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

§ 726. AMBIGUITIES.] Where the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference thereto, or recital thereof, in another part of the will.

§ 727. WORDS IN ORDINARY USE.] The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

§ 728. CONSTRUCTION.] The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which shall render any of the expressions inoperative.

§ 729. VALIDITY.] Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

§ 730. TECHNICAL WORDS.] Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention.

§ 731. NOT NECESSARY.] Technical words are not necessary to give effect to any species of disposition by a will.

§ 732. WORDS OF INHERITANCE.] The term "heirs," or other words of inheritance, are not requisite to devise a fee, and a devise of real property passes all the estate of the testator, unless otherwise limited.

§ 733. EXECUTING POWER.] Real or personal property embraced in a power to devise, passes by a will purporting to devise all the real or personal property of the testator.

§ 734. GENERAL WORDS.] A devise or bequest of all the testator's real or personal property, in express terms, or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death.

§ 735. RESIDUE OF REALTY.] A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will.

§ 736. OF PERSONALTY.] A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

§ 737. EFFECT OF CERTAIN TERMS.] A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest," or "next of kin," of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of the title on succession, in this code.

§ 738. WORDS OF DONATION.] The terms mentioned in the last section are used as words of donation, and not limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

§ 739. POSTPONED POSSESSION.] Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

§ 740. CLASS INCLUDES ALL.] A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description, before the time to which possession is postponed.

§ 741. CONVERSION OF REALTY.] When a will directs the conversion of real property into money, such property and all its proceeds must be deemed personal property, from the time of the testator's death.

§ 742. UNBORN CHILD INCLUDED.] A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

§ 743. IMPERFECTION NOT ORALLY REMOVED.] When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received.

§ 744. VEST AT DEATH.] Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death.

§ 745. DISPOSAL DIVESTED ONLY WHEN.] A testamentary disposition, when vested, cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose.

§ 746. DEATH CAUSES FAILURE.] If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 716.

§ 747. NOT OF REMAINDER.] The death of a devisee or legatee of a limited interest, before the testator's death, does not defeat the interests of persons in remainder, who survive the testator.

§ 748. UNCERTAIN EVENT.] A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated.

§ 749. CONDITION PRECEDENT.] A condition precedent in a will, is one which is required to be fulfilled before a particular disposition takes effect.

§ 750. UNKNOWN OR UNAVOIDABLE EVENT.] Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled; except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will.

§ 751. SUBSTANTIAL COMPLIANCE.] A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally complied with.

§ 752. SUBSEQUENT DIVESTING.] A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event.

§ 753. OWNERS IN COMMON.] A devise or legacy given to more than one person, vests in them as owners in common.

§ 754. GIFTS DO NOT REDUCE LEGACIES.] Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing.

CHAPTER III.

GENERAL PROVISIONS.

§ 755. LEGACIES CLASSED AND DEFINED.] Legacies are distinguished and designated, according to their nature, as follows:

1. A legacy of a particular thing, specified, and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies.

§ 756. NON-EXEMPT PROPERTY ASSETS.] When a person dies intestate, all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the code of civil procedure.

§ 757. ORDER OF PROPERTY FOR DEBTS.] The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of debts, in the following order:

One—The property which is expressly appropriated by the will for the payment of the debts.

Two—Property not disposed of by the will.

Three—Property which is devised or bequeathed to a residuary legatee.

Four—Property which is not specifically devised or bequeathed; and

Five—All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

§ 758. FOR LEGACIES.] The property of a testator, except as otherwise specially provided in this code and the code of civil procedure, must be resorted to for the payment of legacies, in the following order:

One—The property which is expressly appropriated by the will for the payment of the legacies.

Two—Property not disposed of by the will.

Three—Property which is devised or bequeathed to a residuary legatee.

Four—Property which is specifically devised or bequeathed.

§ 759. PREFERRED LEGACIES.] Legacies to husband, widow or kindred of any class, are chargeable only after legacies to persons not related to the testator.

§ 760. CLASS ONLY AFFECTED.] Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

§ 761. REPRESENTATIVE MAY SELL.] In a specific devise or legacy, the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the probate court to sell the property devised or bequeathed, in the cases herein provided.

§ 762. PROVED DEVISE IMPAIRS DEED BY HEIR.] The rights of a purchaser or incumbrancer of real property, in good faith, and for value, derived from any person claiming the same by succession, are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the probate court having jurisdiction thereof, or unless written notice of such devise is filed with the probate judge of the county where the real property is situated, within four years after the devisor's death.

§ 763. SUCCESSION TO LIMITED DEVISES.] Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benfit of the second legatee, or to the personal representative, as the case may be.

§ 764. INCOME AFTER DEATH.] In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

§ 765. SATISFIED BEFORE DEATH.] A legacy, or a gift in contemplation, fear or peril of death, may be satisfied before death.

§ 766. DUE IN ONE YEAR.] Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

§ 767. INTEREST AFTER DUE.] Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

§ 768. INTENTION CONTROLS.] The four preceding sections are in all cases to be controlled by a testator's express intention.

§ 769. UNNAMED EXECUTOR ENTITLED.] Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

§ 770. VOID AUTHORITY.] An authority to an executor to appoint an executor is void.

§ 771. EXECUTOR'S POWER BEGINS.] No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

§ 772. LIMITATION OF POWER.] No executor of an executor, as such, has any power over the estate of the first testator.

§ 773. WILL INCLUDES CODICIL.] The term "will," as used in this code, includes all codicils as well as wills.

§ 774. LAW OF PLACE OR DOMICILE.] Except as otherwise provided, the validity and interpretation of wills is governed, when relating to real property within this territory, by the law of this territory; when relating to personal property, by the law of the testator's domicile.

§ 775. LIABILITY OF DEVISEES AND LEGATEES.] Those to whom property is given by will, are liable for the obligations of the testator in the cases and to the extent prescribed by the code of civil procedure, or the statutes in such case made and provided.

TITLE VI.

SUCCESSION.

§ 776. DEFINITION OF.] Succession is the coming in of another to take the property of one who dies without disposing of it by will.

§ 777. ALL PROPERTY TO HEIRS.] The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by that court, for the purposes of administration.

§ 778. ORDER OF, TO PROPERTY NOT WILLED.] When any person having title to any estate not otherwise limited by marriage contract, dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the probate code, subject to the payment of his debts, in the following manner:

One—If the decedent leave a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leave a surviving husband or wife, and more than one child living, or one child living, and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all of his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent they share equally, otherwise they take according to the right of representation. If the decedent leave no surviving husband or wife, but leaves issue, the whole estate goes to such issue, and if such

issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

Two—If the decedent leave no issue, the estate goes in equal shares to the surviving husband or wife, and to the decedent's father. If there be no father, then one-half goes in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if he leave a mother also, she takes an equal share with the brothers and sisters. If decedent leave no issue, nor husband, nor wife, the estate must go to the father.

Three—If there be no issue, nor husband nor wife, nor father nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children of any deceased brother or sister, by right of representation; if a mother survive, she takes an equal share with the brothers and sisters.

Four—If the decedent leave no issue, nor husband, nor wife, nor father, and no brother or sister is living at the time of his death, the estate goes to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters.

Five—If the decedent leave a surviving husband or wife, and no issue, and no father, nor mother, nor brother, nor sister, the whole estate goes to the surviving husband or wife.

Six—If the decedent leave no issue, nor husband, nor wife, and no father nor mother, nor brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claimed through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However:

Seven—If the decedent leave several children, or one child and the issue of one or more children, and any such surviving child dies under age, and not having been married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

Eight—If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them have left issue, the estate that came to such child by inheritance from his parent, descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

Nine—If the decedent leave no husband, wife, or kindred, the estate escheats to the territory for the support of common schools.

§ 779. ABOLISHED.] Dower and curtesy are abolished.

§ 780. INHERITANCE BY ILLEGITIMATE CHILD.] Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole

or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

§ 781. FROM THE SAME.] If an illegitimate child, who has not been acknowledged or adopted by his father, dies intestate, without lawful issue, his estate goes to his mother, or in case of her decease to her heirs at law.

§ 782. EACH GENERATION A DEGREE.] The degree of kindred is established by the number of generations, and each generation is called a degree.

§ 783. LINEAL AND COLLATERAL.] The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

§ 784. ASCENDING AND DESCENDING.] The direct line is divided into a direct line descending, and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that which connects a person with those from whom he descends.

§ 785. DIRECT LINE DEGREES.] In the direct line there are as many degrees as there are generations. Thus the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

§ 786. COLLATERAL DEGREES.] In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth degree, and so on.

§ 787. HALF BLOOD.] Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors, must be excluded from such inheritance.

§ 788. ADVANCEMENTS PART OF SHARE.] Any estate, real or personal, given by the decedent in his lifetime, as an advancement to any child or other lineal descendant, is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue, and must be

taken by such child, or other lineal descendant, toward his share of the estate of the decedent.

§ 789. EXCESS NOT REFUNDED.] If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

§ 790. ADVANCEMENTS DEFINED.] All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

§ 791. EXPRESSED VALUE GOVERNS.] If the value of the estate so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given, as nearly as the same can be ascertained.

§ 792. REPRESENTATION—SAME RULE.] If any child, or other lineal descendant receiving advancement, dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

§ 793. INHERITANCE BY—DEFINED.] Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

§ 794. ALIENAGE NO DISABILITY.] Aliens may take in all cases, by succession, as well as citizens; and no person, capable of succeeding under the provisions of this title, is precluded from such succession by reason of the alienage of any relative.

§ 795. ESCHEATED ESTATES.] If there is no one capable of succeeding under the preceding sections, and the title fails from a defect of heirs, the property of a decedent devolves and escheats to the territory; and an action for the recovery of such property, and to reduce it into the possession of the territory, or for its sale and conveyance, may be brought by the district attorney in the district court of the county or judicial subdivision in which the property is situated.

§ 796. SUBJECT TO CHARGES.] Real property passing to the territory under the preceding section, whether held by the territory or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession.

§ 797. LIABILITY OF HEIRS.] Those who succeed to the property of a decedent, are liable for his obligations in the cases and to the extent prescribed by the probate code.

DIVISION THIRD.

OBLIGATIONS.

PART 1.

OBLIGATIONS IN GENERAL.

TITLE I.

DEFINITION OF OBLIGATIONS.

§ 798. DEFINITION.] An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

§ 799. ORIGIN AND ENFORCEMENT.] An obligation arises either from:

One—The contract of the parties; or,

Two—The operation of law.

An obligation arising from operation of law, may be enforced in the manner provided by law, or by civil action or proceeding.

TITLE II.

INTERPRETATION OF OBLIGATIONS.

CHAPTER I.

GENERAL RULES OF INTERPRETATION.

§ 800. RULES OF INTERPRETATION.] The rules which govern the interpretation of contracts are prescribed by part 2 of this division. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

CHAPTER II.

JOINT OR SEVERAL OBLIGATIONS.

§ 801. CLASSES.] An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several.

§ 802. PRESUMED JOINT.] An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the title on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

§ 803. CONTRIBUTION.] A party to a joint, or joint and several, obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him.

CHAPTER III.

CONDITIONAL OBLIGATIONS.

§ 804. UNCERTAIN EVENT.] An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event.

§ 805. CONDITIONS CLASSED.] Conditions may be precedent, concurrent or subsequent.

§ 806. PRECEDENT.] A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

§ 807. CONCURRENT.] Conditions concurrent are those which are mutually dependent, and are to be performed at the same time.

§ 808. SUBSEQUENT.] A condition subsequent is one referring to a future event, upon happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition.

§ 809. EQUITY REQUIRES EQUITY.] Be ore any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able, and offer, to fulfill all conditions concurrent, so imposed upon him, on the like fulfillment by the other party; except as provided by the next section.

§ 810. PERFORMANCE WAIVED.] If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part, in favor of the former party.

§ 811. UNLAWFUL CONDITIONS.] A condition in a contract, the fulfillment of which is impossible or unlawful, within the meaning of the article on the object of contracts, or which is repugnant to the nature of the interest created by the contract, is void.

§ 812. FORFEITURE.] A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

CHAPTER IV.

ALTERNATIVE OBLIGATIONS.

§ 813. SELECTION ALLOWED.] If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

§ 814. NOT USED, PASSS TO OTHER.] If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose; or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

§ 815. ALTERNATIVES DISTINCT.] The party having the right of selection between alternative acts, must select one of them in its entirety, and cannot select part of one and part of another, without the consent of the other party.

§ 816. VALID ONE PREVAILS.] If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

TITLE III.

TRANSFER OF OBLIGATIONS.

§ 817. BENEFICIARY'S CONSENT.] The burden of an obligation may be transferred, with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 825.

§ 818. BY INDORSEMENT.] A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

2. A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

§ 819. COVENANTS FOLLOW LAND.] Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor, and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land.

§ 820. WHAT SO RUN.] The only covenants which run with the land, are those specified in this title, and those which are incidental thereto.

§ 821. IF IT BENEFITS PROPERTY.] Every covenant contained in a grant of an estate in real property, which is made for the direct benefit of the property, or some part of it, then in existence, runs with the land.

§ 822. COVENANTS THAT RUN WITH LAND.] The last section includes covenants of warranty, for quiet enjoyment, or for further assurance, on the part of a grantor, and covenants for the payment of rent, or of taxes or assessments upon the land, on the part of a grantee.

§ 823. LIMITED TO CERTAIN ASSIGNS.] A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property, and made by the covenantor expressly for his assigns or to the assigns of the covenantee, runs with the land so far only as the assigns thus mentioned are concerned.

§ 824. ONLY FOLLOWS WHOLE ESTATE.] A covenant running with the land binds those only who acquire the whole estate of the covenanter in some part of the property.

§ 825. LIABILITY WHILE HOLDING.] No one, merely by reason of having acquired an estate subject to a covenant running with the land, is liable for breach of the covenant before he acquired the estate, or after he has parted with it, or ceased to enjoy its benefits.

§ 826. BURDEN APPORTIONED.] Where several persons, holding by several titles, are subject to the burden, or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity.

TITLE IV.

EXTINCTION OF OBLIGATIONS.

CHAPTER I.

PERFORMANCE.

§ 827. EXTINGUISHMENT.] Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

§ 828. BY ONE FOR ALL.] Peformance of an obligation, by one of several persons who are jointly liable under it, extinguishes the liability of all.

§ 829. TO ONE FOR ALL.] An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common, or in joint ownership, which is regulated by the title on deposit.

§ 830. PARTICULAR MANNER.] If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

§ 831. ACCEPTANCE OF PART.] A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it, without injuring his own property, his retention thereof is not presumed to be voluntary.

§ 832. PAYMENT DEFINED.] Performance of an obligation for the delivery of money only, is called payment.

§ 833. PERFORMANCE HOW APPLIED.] Where a debtor, under several obligations to another, does an act, by way of performance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

One—If, at the time of the performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

Two—If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

Three—If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral undertaking.
5. Of an obligation secured by a lien or collateral undertaking.

CHAPTER II.

OFFER OF PERFORMANCE.

§ 834. OF COMPLETE PERFORMANCE.] An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

§ 835. PARTIAL.] An offer of partial performance is of no effect.

§ 836. MUST BE BY DEBTOR.] An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

§ 837. TO CREDITOR.] An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

§ 838. PLACE OF PERFORMANCE.] In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,
2. Wherever the person to whom the offer ought to be made, can be found; or,
3. If such person cannot, with reasonable diligence, be found within this territory, and within a reasonable distance from his residence or

place of business, or if he evades the debtor, then at his residence, or place of business, if the same can, with reasonable diligence, be found within the territory; or,

4. If this cannot be done, then at any place within this territory.

§ 839. TIME—REASONABLE HOURS.] Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

§ 840. TIME NOT SPECIFIED.] Where an obligation does not fix the time for its performance, an offer of performance may be made at any time, before the debtor, upon a reasonable demand, has refused to perform.

§ 841. DELAY COMPENSATED—WHEN.] Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime.

§ 842. FAVORABLE MANNER—GOOD FAITH.] An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

§ 843. FREE FROM CONDITION.] An offer of performance must be free from any conditions which the creditor is not bound on his part to perform.

§ 844. ABILITY MUST ATTEND OFFER.] An offer of performance is of no effect, if the person making it is not able and willing to perform according to the offer.

§ 845. PRODUCTION ONLY IF ACCEPTED.] The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance, unless the offer is accepted.

§ 846. THING OFFERED DISTINCT.] A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty.

§ 847. CONTINGENT OFFER.] When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

§ 848. RECEIPT OBLIGATORY.] A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

§ 849. DEPOSIT OF TENDER.] An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within this territory, of good repute, and notice thereof is given to the creditor.

§ 850. OBJECTIONS WAIVED.] All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

§ 851. PROFFERED TITLE PASSES.] The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

§ 852. DEPOSIT OF THING OFFERED.] The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence, he can find a suitable depositary therefor, until he has deposited it with such person.

§ 853. DUE OFFER STOPS INTEREST.] An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

§ 854. BAILEE OF NON-ACCEITED OFFER.] If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is gratuitous depositary thereof.

CHAPTER III.

PREVENTION OF PERFORMANCE OR OFFER.

§ 855. EXCUSES DEFINED AND LIMITED.] The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible superhuman cause, or by the act of public enemies of this territory or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

§ 856. PREVENTED BY CREDITOR] If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

§ 857. RATABLE PART OF CONSIDERATION.] If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance according to the benefit which the creditor receives from the actual performance.

§ 858. REFUSAL BEFORE OFFER] A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CHAPTER IV.

ACCORD AND SATISFACTION.

§ 859. DEFINITION.] An accord is an agreement to accept, in extinction

of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

§ 860. OBLIGATION ABIDES.] Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

§ 861. ACCORD EXTINGUISHES OBLIGATION—WHEN.] Acceptance, by the creditor, of the consideration of an accord, extinguishes the obligation, and is called satisfaction.

§ 862. PART PERFORMANCE ACCEPTED.] Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

CHAPTER V.

NOVATION.

§ 863. DEFINITION.] Novation is the substitution of a new obligation for an existing one.

§ 864. CLASSES OF SUBSTITUTION.] Novation is made:

One—By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation.

Two—By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

Three—By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

§ 865. UNDER RULES OF CONTRACT.] Novation is made by contract, and is subject to all the rules concerning contracts in general.

§ 866. RESCINDING ACCEPTANCE.] When the obligation of a third person, or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor; or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

CHAPTER VI.

RELEASE.

§ 867. EXTINGUISHES OBLIGATION.] An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

§ 868. ONLY KNOWN CLAIMS.] A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

§ 869. JOINT DEBTORS' DUTIES.] A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

PART 2.

CONTRACTS.

TITLE I.

NATURE OF CONTRACT.

CHAPTER I.

DEFINITION.

§ 870. DEFINITION.] A contract is an agreement to do or not to do a certain thing.

§ 871. REQUISITES OF.] It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. Sufficient cause or consideration.

CHAPTER II.

PARTIES.

§ 872. WHO MAY CONTRACT.] All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

§ 873. CAPACITY OF CERTAIN CLASSES.] Minors and persons of unsound mind, have only such capacity as is defined by part 1 of the first division of this code.

§ 874. IDENTITY OF PARTIES.] It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them.

§ 875. BENEFICIARY MAY ENFORCE.] A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CHAPTER III.

CONSENT.

§ 876. QUALITIES OF CONSENT.] The consent of the parties to a contract must be:

1. Free.
2. Mutual; and,
3. Communicated by each to the other.

§ 877. IF NOT FREE, RESCINDED.] A consent which is not free, is nevertheless not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission.

§ 878. CONDITIONS LIMITING FREEDOM.] An apparent consent is not real or free when obtained through:

1. Duress.
2. Menace.
3. Fraud.
4. Undue influence; or,
5. Mistake.

§ 879. CONSTRUCTION.] Consent is deemed to have been obtained through one of the causes mentioned in the last section, only when it would not have been given had such cause not existed.

§ 880. KINDS OF DURESS.] Duress consists in:

1. Unlawful confinement of the person of the party, or of husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife.
2. Unlawful detention of the property of any such person: or,
3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

§ 881. FORMS OF MENACE.] Menace consists in a threat:

1. Of such duress as is specified in the first and third subdivisions of the last section.
2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,
3. Of injury to the character of any such person.

§ 882. KINDS OF FRAUD.] Fraud is either actual or constructive.

§ 883. ACTUAL FRAUD DEFINED.] Actual fraud, within the meaning of this

chapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

3. The suppression of that which is true, by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it: or,

5. Any other act fitted to deceive.

§ 884. CONSTRUCTIVE.] Constructive fraud consists:

1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

§ 885. QUESTION OF FACT.] Actual fraud is always a question of fact.

§ 886. KINDS OF UNDUE INFLUENCE.] Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

§ 887. MISTAKE DIVIDED.] Mistake may be either of fact or of law.

§ 888. MUST NOT BE ILLEGAL.] Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

§ 889. MISTAKE OF LAW.] Mistakes of law constitute a mistake within the meaning of this article only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

§ 890. OF FOREIGN LAWS.] Mistake of foreign laws is a mistake of fact.

§ 891. MUTUAL CONSENT DEFINED.] Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain

cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

§ 892. HOW COMMUNICATED.] Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

§ 893. SPECIAL MODE OR CONDITION.] If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

§ 894. TRANSMISSION BEGUN IS FULL.] Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

§ 895. ACTS WHICH ARE IN ACCEPTANCE.] Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

§ 896. MUST BE ABSOLUTE.] An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest, and which will include the person accepting. A qualified acceptance is a new proposal.

§ 897. REVOCATION OF PROPOSAL.] A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

§ 898. REVOCATIONS CLASSED.] A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 892 and 894, before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

§ 899. SUBSEQUENT CONSENT.] A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

§ 900. BENEFITS INCLUDE OBLIGATIONS.] A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known to the person accepting.

CHAPTER IV.

OBJECT OF A CONTRACT.

§ 901. DEFINITION.] The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

§ 902. REQUISITES OF OBJECT.] The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

§ 903. IMPOSSIBILITY DEFINED.] Everything is deemed possible except that which is impossible in the nature of things.

§ 904. SINGLE UNLAWFUL OBJECT VOIDS.] Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

§ 905. LAWFUL PART VALID.] Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful in whole or in part, the contract is void as to the latter, and valid as to the rest.

CHAPTER V.

CONSIDERATION.

§ 906. GOOD CONSIDERATION DEFINED.] Any benefit conferred, or agreed to be conferred, upon the promiser, by any other person, to which the promiser is not lawfully entitled, or any prejudice suffered, or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promiser, is a good consideration for a promise.

§ 907. MORAL OR LEGAL—HOW FAR GOOD.] An existing legal obligation resting upon the promiser, or a moral obligation, originating in some benefit conferred upon the promiser, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

§ 908. LAWFUL DEFINED.] The consideration of a contract must be lawful within the meaning of section 972.

§ 909. EFFECT OF ILLEGALITY.] If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

§ 910. EXECUTED OR EXECUTORY CONSIDERATION.] A consideration may be executed or executory, in whole or in part. In so far as it is executory, it is subject to the provisions of chapter IV of this title.

§ 911. EXECUTORY—HOW DETERMINED.] When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specific standard.

§ 912. MEASURE OF VALUE.] When a contract does not determine the amount of the consideration. nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

§ 913. EXCLUSIVE IMPOSSIBILITY VOID.] Where a contract provides an exclusive method by which its consideration is to be ascertained, which method ison its face impossible of execution, the entire contract is void.

§ 914. SAME—PRESUMPTION—BURDEN.] 1. Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

2. A written instrument is presumptive evidence of a consideration.

3. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

TITLE II.

MANNER OF CREATING CONTRACTS.

§ 915. EXPRESS OR IMPLIED.] A contract is either express or implied.

§ 916. EXPRESS DEFINED.] An express contract is one, the terms of which are stated in words.

§ 917. IMPLIED.] An implied contract is one, the existence and terms of which are manifested by conduct.

§ 918. WHAT MAY BE ORAL.] All contracts may be oral, except such as are specially required by statute to be in writing.

§ 919. MAY BE ENFORCED AGAINST FRAUD.] Where a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

§ 920. CONTRACTS WHICH MUST BE WRITTEN.] The following contracts are invalid, unless the same, or some note or memorandum thereof, be in writing and subscribed by the party to be charged, or by his agent:

One—An agreement that, by its terms, is not to be performed within a year from the making thereof.

Two—A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 1653 of this code.

Three—An agreement made upon consideration of marriage, other than a mutual promise to marry.

Four—An agreement for the sale of goods, chattels, or things in action, at a price not less than fifty dollars, unless the buyer accept or receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale was made, is a sufficient memorandum.

Five—An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid,

unless the authority of the agent be in writing, subscribed by the party sought to be charged.

§ 921. WRITING EXCLUDES ORAL.] The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument.

§ 922. EFFECT ON DELIVERY.] A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

§ 923. APPLY TO ALL CONTRACTS.] The provisions of the chapter on transfers in general, concerning the delivery of grants, absolute and conditional apply to all written contracts.

§ 924. HOW SEAL AFFIXED.] A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written.

§ 925. SEALED AND UNSEALED ALIKE.] All distinctions between sealed and unsealed instruments are abolished.

TITLE III.

INTERPRETATION OF CONTRACTS.

§ 926. SAME RULES FOR PUBLIC OR PRIVATE.] All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

§ 927. EFFECT TO BE GIVEN.] A contract must be so interpreted as to give effect to the mutual intention of the parties, as it existed at the time of contracting, so far as the same is ascertainable and lawful.

§ 928. INTENTION ASCERTAINED.] For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

§ 929. LANGUAGE GOVERNS.] The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

§ 930. FROM WRITING IF POSSIBLE.] When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible, subject, however, to the other provisions of this title.

§ 931. ERROR ONLY DISREGARDED.] When through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

§ 932. EFFECT TO EVERY PART.] The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others.

§ 933. SEVERAL CONTRACTS, TOGETHER.] Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

§ 934. INTERPRETATION FAVORS VALIDITY.] A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

§ 935. WORDS IN USUAL SENSE, UNLESS.] The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

§ 936. TECHNICAL WORDS.] Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

§ 937. LAW OF PLACE.] A contract is to be interpreted according to the law and usage of the place where it is to be performed, or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

§ 938. CIRCUMSTANCES EXPLAIN.] A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

§ 939. RESTRICTED TO INTENTION.] However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

§ 940. SENSE OF BELIEF GIVEN.] If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promiser believed, at the time of making it, that the promisee understood it.

§ 941. PART SUBORDINATE TO WHOLE.] Particular clauses of a contract are subordinate to its general intent.

§ 942. WRITTEN AND ORIGINAL PARTS CONTROL.] Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts, and the parts which are purely original, control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

§ 943. REPUGNANCE—HOW RECONCILED.] Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause, subordinate to the general intent and purposes of the whole contract.

§ 944. INCONSISTENT WORDS REJECTED.] Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

§ 945. AGAINST PARTY CAUSING UNCERTAINTY.] In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promiser is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

§ 946. REASONABLE STIPULATIONS IMPLIED.] Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied in respect to matters concerning which the contract manifests no contrary intention.

§ 947. NECESSARY INCIDENTS IMPLIED.] All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

§ 948. NO TIME, REASONABLE TIME.] If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained.

§ 949. WHEN TIME IS ESSENCE.] Time is never considered as of the essence of a contract, unless by its terms expressly so provided.

§ 950. PROMISE JOINT AND SEVERAL.] Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

§ 951. SINGULAR NUMBER.] A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

§ 952. EXECUTED—DEFINED.] An executed contract is one, the object of which is fully performed. All others are executory.

TITLE IV.

UNLAWFUL CONTRACTS.

§ 953. WHAT IS UNLAWFUL.] That is not unlawful which is:

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

§ 954. CERTAIN CONTRACTS UNLAWFUL.] All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

§ 955. PENALTIES VOID.] Penalties imposed by contract for any non-performance thereof, are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses.

§ 956. FIXING DAMAGES VOID.] Every contract, by which the amount of damages to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided by the next section.

§ 957. EXCEPTION.] The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

§ 958. RESTRAINTS ON LEGAL PROCEEDINGS.] Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void.

§ 959. SAME OF EMPLOYMENT.] Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void.

§ 960. EXCEPTION OF GOOD WILL.] One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city, or a part thereof, so long as the buyer, or any person deriving title to the good will from him, carries on a like business therein.

§ 961. PARTNERS—SAME.] Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

§ 962. RESTRAINT OF MARRIAGE.] Every contract in restraint of the marriage of any person, other than a minor, is void.

TITLE V.

EXTINCTION OF CONTRACTS.

CHAPTER I.

CONTRACTS—HOW EXTINGUISHED.

§ 963. MANNER.] A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this title.

CHAPTER II.

RESCISSION.

§ 964. RESCISSION EXTINGUISHES.] A contract is extinguished by its rescission.

§ 965. CASES WHEN PARTY MAY RESCIND.] A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party.

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or

5. By consent of all the other parties.

§ 966. RESCISSION ALLOWED IN ESSENTIAL MISTAKE.] A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

§ 967. RESCISSION, HOW AND WHEN.] Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party every thing of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable, or positively refuses to do so.

CHAPTER III.

ALTERATION AND CANCELLATION.

§ 968. WRITING EXTINGUISHES ORAL.] A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

§ 969. HOW WRITING ALTERED.] A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

§ 970. DESTRUCTION BY CONSENT.] The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with in-

tent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

§ 971. BY ALTERATION—EFFECT.] The intentional destruction, cancellation or material alteration of a written contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

§ 972. OF DUPLICATE—NOT AFFECT.] Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of the last section.

PART 3.

OBLIGATIONS IMPOSED BY LAW.

§ 973. ABSTINENCE FROM INJURY.] Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

§ 974. DAMAGES FOR DECEIT.] One who willfully deceives another, with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers.

§ 975. DECEITS CLASSED.] A deceit, within the meaning of the last section, is either:

1. The suggestion as a fact, of that which is not true, by one who does not believe it to be true.

2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise, made without any intention of performing it.

§ 976. UPON THE PUBLIC.] One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

§ 977. RESTORATION.] One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

§ 978. VOLUNTARY, WHEN DEMAND.] The restoration required by the last section must be made without demand; except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

§ 979. WILLFUL ACTS—NEGLIGENCE.] Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the title on compensatory relief.

§ 980. OTHER OBLIGATIONS.] Other obligations are prescribed by the first and second divisions of this code.

PART 4.

OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS.

TITLE I.

SALE.

CHAPTER I.

GENERAL PROVISIONS.

ARTICLE I.—SALE.

§ 981. SALE DEFINED. Sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property.

§ 982. SUBJECT OF SALE.] The subject of sale must be property, the title to which can be immediately transferred from the seller to the buyer.

ARTICLE II.—AGREEMENTS FOR SALE.

§ 983. CLASSES OF SAME.] An agreement for sale is either:

1. An agreement to sell.
2. An agreement to buy; or,
3. A mutual agreement to sell and buy.

§ 984. TO SELL DEFINED.] An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing.

§ 985. TO BUY.] An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing.

§ 986. TO SELL AND BUY.] An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to accept the same from him, and to pay a price therefor.

§ 987. WHAT SUBJECT OF CONTRACT.] Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for a sale, whether in existence or not.

§ 988. SALE OF REALTY.] An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

§ 989. USUAL COVENANTS.] An agreement on the part of a seller of real property to give the usual covenants, binds him to insert in the grant, covenants of seizin, quiet enjoyment, further assurance, general warranty, and against incumbrances.

§ 990. SUBSTANCE THEREOF.] The covenants mentioned in the last section must be in substance as follows:

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part, and all persons acquiring any interest in the same through or for him, will, on demand, execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

ARTICLE III.—FORM OF THE CONTRACT.

§ 991. STATUTE OF FRAUDS—PERSONAL.] No sale of personal property, or agreement to buy or sell it for a price of fifty dollars or more is valid, unless:

One—The agreement or some note or a memorandum thereof be in writing, and subscribed by the party to be charged, or by his agent; or,

Two—The buyer accepts and receives part of the things sold, or when it consists of a thing in action, part of the evidences thereof, or some of them; or,

Three—The buyer, at the time of sale, pays a part of the price.

§ 992. CONTRACT TO MANUFACTURE.] An agreement to manufacture a thing from materials furnished by the manufacturer or by another person, is not within the provisions of the last section.

§ 993. CONTRACT FOR SALE OF REAL PROPERTY.] No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged, or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

§ 994. FORM OF TRANSFER.] The form of a transfer of real property is described by the chapter on such transfers.

CHAPTER II.

RIGHTS AND OBLIGATIONS OF THE SELLER.

ARTICLE I.—RIGHTS AND DUTIES BEFORE DELIVERY.

§ 995. SELLER ACTS AS DEPOSITARY.] After personal property has been sold, and until the delivery is completed, the seller has the rights and obligations of a depositary for hire, except that he must keep the property, without charge, until the buyer has had a reasonable opportunity to remove it.

§ 996. SELLER MAY RESELL.] If a buyer of personal property does not pay for it according to contract, and it remains in the possession of the seller, after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by the title on liens.

ARTICLE II.—DELIVERY.

§ 997. DELIVERY ON DEMAND.] One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand, unless he has a lien thereon.

§ 998. DELIVERY WHERE.] Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell, or, if it is not then in extistence, it is deliverable at the place where it is produced.

§ 999. EXPENSE OF TRANSPORTATION.] One who sells personal property must bring it to his own door, or other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

§ 1000. NOTICE OF OPTION—WAIVED.] When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time, his right of option is waived.

§ 1001. BUYER'S DIRECTIONS GOVERN SENDING.] If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions, or if, in the absence of special directions, he uses ordinary care in forwarding the thing, it is at the risk of the buyer.

§ 1002. REASONABLE HOURS. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day.

ARTICLE III.—WARRANTY.

§ 1003. DEFINITION.] A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future.

§ 1004. NOT IMPLIED BY MERE SALE.] Except as prescribed by this article, a mere contract of sale or agreement to sell does not imply a warranty.

§ 1005. WARRANTY OF TITLE TO PERSONALTY.] One who sells or agrees to sell personal property, as his own, thereby warrants that he has a good and unincumbered title thereto.

§ 1006. OF QUALITY BY SAMPLE.] One who sell or agrees to sell goods by sample, thereby warrants the bulk to be equal to the sample.

§ 1007. SELLER KNOWS BUYER RELIES, &C.] One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the extstence of any fact concerning the thing sold which would, to his knowledge, destroy the buyer's inducement to buy.

§ 1008. MERCHANDISE NOT IN EXISTENCE.] One who agrees to sell merchandise not then in existence, thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so, at the place of delivery, as can be secured by reasonable care.

§ 1009. AGAINST LATENT DEFECTS.] One who sells or agrees to sell an article of his own manufacture, thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein.

§ 1010. FIT FOR PURPOSE.] One who manufactures an article under an order for a particular purpose, warrants by the sale that it is reasonably fit for that purpose.

§ 1011. INACCESSIBLE MERCHANDISE.] One who sells or agrees to sell merchandise inaccessible to the examination of the buyer, thereby warrants that it is sound and merchantable.

§ 1012. TRADE MARK GENUINE.] One who sells or agrees to sell any article to which there is affixed or attached a trade mark, thereby warrants that mark to be genuine, and lawfully used.

§ 1013. MARKS OF QUALITY.] One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof, or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof.

§ 1014. VALIDITY OF INSTRUMENT.] One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act, thereby warrants the instrument to be what it purports to be, and to be binding according to its purport upon all the parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, where that is material, the extinction of its obligations or its invalidity for any cause.

§ 1015. FOOD SOUND AND WHOLESOME.] One who makes a business of selling provisions for domestic use, warrants, by a sale thereof, to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome.

§ 1016. SALE OF GOOD WILL.] One who sells the good will of a business, thereby warrants that he will not endeavor to draw off any of the customers.

§ 1017. UPON JUDICIAL SALE.] Upon a judicial sale, the only warranty implied is that the seller does not know that the sale will not pass a good title to the property.

§ 1018. GENERAL WARRANTY—EFFECT.] A general warranty does not extend to defects inconsistent therewith, of which the buyer was then aware, or which were then easily discernible by him, without the exercise of peculiar skill; but it extends to all other defects.

CHAPTER III.

RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 1019. BUYER TO PAY AND TAKE AWAY.] A buyer must pay the price of the thing sold on its delivery; and must take it away within a reasonable time after the seller offers to deliver it.

§ 1020. RIGHT TO INSPECT.] On an agreement for sale, with warranty, the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it; and may rescind the contract if the seller refuses to permit him to do so.

§ 1021. BUYER MAY RESCIND FOR BREACH, ETC.] The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition.

CHAPTER IV.

SALE BY AUCTION.

§ 1022. DEFINITION.] A sale by auction is a sale by public outcry to the highest bidder on the spot.

§ 1023. WHEN SALE COMPLETE.] A sale by auction is complete when the auctioneer publicly announces, by the fall of his hammer, or in any other customary manner, that the thing is sold.

§ 1024. WITHDRAWAL OF BID.] Until the announcement mentioned in the last section has been made, any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer.

§ 1025. WITHIN CONDITIONS.] When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit.

§ 1026. ABSOLUTE RIGHT OF BIDDER.] If, at a sale by auction, the auctioneer having authority to do so, publicly announces that the sale will be without reserve, or makes any announcement equivalent thereto, the highest bidder in good faith has an absolute right to the completion of the sale to him; and upon such a sale, bids by the seller or any agent for him are void.

§ 1027. BY BIDDING—FRAUD.] The employment by a seller at a sale at auction, without the knowledge of the buyer, of any person to bid at the sale, without an intention on the part of such bidder to buy, and on the part of the seller to enforce his bid, is a fraud upon the buyer, which entitles him to rescind his purchase.

§ 1028. AUCTIONEER'S MEMORANDUM.] When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both parties in the same manner as if made by themselves.

TITLE II.

EXCHANGE.

§ 1029. DEFINITION.] Exchange is a contract by which the parties mutually give, or agree to give, one thing for another, neither thing, or both things, being money only.

§ 1030. VALIDITY OF CONTRACT.] The provisions of section 991 apply to all exchanges in which the value of the thing to be given by either party is fifty dollars or more.

§ 1031. EACH PARTY A SELLER.] The provisions of the title on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives, and of a buyer as to that which he takes.

§ 1032. WARRANTY THAT MONEY GENUINE.] On an exchange of money, each party thereby warrants the genuineness of the money given by him.

TITLE III.

DEPOSIT.

CHAPTER I.

DEPOSIT IN GENERAL.

ARTICLE I.—NATURE AND CREATION OF DEPOSIT.

§ 1033. TWO CLASSES.] A deposit may be voluntary or involuntary; and for safe keeping or for exchange.

§ 1034. VOLUNTARY.] A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

§ 1035. INVOLUNTARY—KINDS.] An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

§ 1036. MUST TAKE CHARGE.] The person with whom a thing is deposited, in the manner described in the last section, is bound to take charge of it, if able to do so.

§ 1037. FOR KEEPING—SPECIFIC.] A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

§ 1038. FOR EXCHANGE—KIND.] A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

ARTICLE II.—OBLIGATIONS OF THE DEPOSITARY.

§ 1039. DELIVERY ON DEMAND.] A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 1042.

§ 1040. DEMAND NECESSARY.] A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

§ 1041. PLACE OF DELIVERY.] A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

§ 1042. NOTICE TO OWNER OF ADVERSE CLAIM.] A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited which may tend to excuse the depositary from delivering the thing to him.

§ 1043. SAME OF WRONGFUL DETENTION.] A depositary, who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

§ 1044. DELIVERY TO DISAGREEING OWNERS.] If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

CHAPTER II.

DEPOSIT FOR KEEPING.

ARTICLE I.—GENERAL PROVISIONS.

§ 1045. INDEMNITY.] A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

§ 1046. CARE OF ANIMALS.] A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

§ 1047. USE OF DEPOSIT FORBIDDEN.] A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

§ 1048. DAMAGES FOR WRONGFUL USE.] A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof,

unless such damage must inevitably have happened though the property had not been thus used.

§ 1049. SALE OF PERISHING THING.] If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable, and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

§ 1050. PRESUMED NEGLIGENCE FOR INJURY, ETC.] If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur.

§ 1051. SERVICES BY DEPOSITARY.] So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by the title on employment and service.

§ 1052. MEASURE OF DAMAGES.] The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

ARTICLE II.—GRATUITOUS DEPOSIT.

§ 1053. DEFINITION.] Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

§ 1054. INVOLUNTARY.] An involuntary deposit is gratuitous, the depositary being entitled to no reward.

§ 1055. SLIGHT CARE AT LEAST.] A gratuitous depositary must use at least slight care for the preservation of the thing deposited.

§ 1056. WHEN DUTIES CEASE.] The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision 2 of section 1035, cannot give such notice until the emergency that gave rise to the deposit is past.

ARTICLE III.—STORAGE.

§ 1057. DEPOSITARY FOR HIRE.] A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

§ 1058. ORDINARY CARE.] A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

§ 1059. RATE OF COMPENSATION.] In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half month.

§ 1060. TERMINATION OF DEPOSIT.] In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

§ 1061. SAME—FULL TIME PAID.] Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

ARTICLE IV.—INNKEEPERS.

§ 1062. LIABILITY OF KEEPER OF INN OR BOARDING HOUSE.] An innkeeper or keeper of a boarding house, is liable for all losses of, or injuries to, personal property placed by his guests or boarders under his care, unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of some one whom he brought into the inn or boarding house, and upon such property, the innkeeper or keeper of a boarding house, has a lien and a right of detention for the payment of such amount as may be due him for lodging, fare, boarding, or other necessaries by such guest or boarder; and the said lien may be enforced by a sale of the property in the manner prescribed in this code for the sale of pledged property.

§ 1063. HOW EXEMPTED FROM.] If any innkeeper or boarding house keeper keeps a fire-proof safe, and gives notice to a guest or boarder, either personally, or by putting up a printed notice in a prominent place in the room occupied by the guest or boarder, that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless placed therein, he is not liable except so far as his own acts contribute thereto, for any loss of, or injury to, such article, if not deposited with him, and not required by the guest or boarder for present use.

ARTICLE V.—FINDING.

§ 1064. FINDER A DEPOSITARY.] One who finds a thing lost, is not bound to take charge of it; but if he does so, he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

§ 1065. MUST NOTIFY OWNER.] If the finder of a thing knows or suspects who is the owner, he must, with reasonable diligence, give him notice of the finding; and if he fails to do so, he is liable in damages to the owner, and has no claim to any reward offered by him for the recovery of the thing, or to any compensation for his trouble or expenses.

§ 1066. CLAIMANT MUST PROVE.] The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

§ 1067. REWARD FOR SERVICES.] The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

§ 1068. EXONERATION BY STORAGE.] The finder of a thing may exonerate himself from liability at any time, by placing it on storage with any responsible person of good character, at a reasonable expense.

§ 1069. MAY SELL—WHEN.] The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing, or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two-thirds of its value.

§ 1070. MANNER OF SALE.] A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged.

§ 1071. SURRENDER OF THING TO FINDER.] The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof.

§ 1072. INTENTIONALLY ABANDONED.] The provisions of this article have no application to things which have been intentionally abandoned by their owners.

CHAPTER III.

DEPOSIT FOR EXCHANGE.

§ 1073. TRANSFERS TITLE.] A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

TITLE IV.

LOAN.

CHAPTER I.

LOAN FOR USE.

§ 1074. DEFINITION.] A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

§ 1075. TITLE AND INCREASE TO LENDER.] A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

§ 1076. CARE BY BORROWER.] A borrower for use must use great care for the preservation in safety in good condition of the thing lent.

§ 1077. OF LIVING ANIMAL.] One who borrows a living animal for use must treat it with great kindness, and provide everything necessary and suitable for it.

§ 1078. DEGREE OF SKILL.] A borrower for use is bound to have and to exercise such skill in the care of the thing lent, as he causes the lender to believe him to possess.

§ 1079. REPAIR OF INJURIES.] A borrower for use must repair all deteriorations or injuries to the thing lent, which are occasioned by his negligence, however slight.

§ 1080. USES LIMITED.] The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

§ 1081. RE-LENDING FORBIDDEN.] The borrower of a thing for use must not part with it to a third person without the consent of the lender.

§ 1082. EXPENSES DURING LOAN.] The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

§ 1083. LENDER LIABLE FOR DEFECTS.] The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

§ 1084. LENDER MAY REQUIRE RETURN.] The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

§ 1085. RETURNABLE WITHOUT DEMAND.] If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

§ 1086. PLACE OF RETURN.] The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at that time.

CHAPTER II.

LOAN FOR EXCHANGE.

§ 1087. DEFINITION.] A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

§ 1088. SAME.] A loan, which the borrower is allowed by the lender to

treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this chapter.

§ 1089. TITLE IN BORROWER—RIGHTS.] By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

§ 1090. LENDER CANNOT MODIFY CONTRACT.] A lender for exchange cannot require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

§ 1091. SECTIONS APPLICABLE.] Sections 1083, 1085 and 1086, apply to a loan for exchange.

CHAPTER III.

LOAN OF MONEY.

§ 1092. DEFINITION—FOR MERE USE.] A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the chapter on loan for use.

§ 1093. REPAYMENT IN CURRENT FUNDS.] A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

§ 1094. LOAN PRESUMES INTEREST.] Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

§ 1095. INTEREST DEFINED.] Interest is the compensation allowed for the use, or forbearance, or detention of money, or its equivalent.

§ 1096. ANNUAL RATE.] When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

§ 1097. LEGAL INTEREST SEVEN PER CENT.] Under an obligation to pay interest, no rate being specified, interest is payable at the rate of seven per centum per annum, and in the like proportion for a longer or shorter time; but in the computation of interest for less than a year, three hundred and sixty days are deemed to constitute a year.

§ 1098. HIGHEST RATE, TWELVE.] 1. The highest rate of interest which it shall be lawful for any person to take, receive, retain, or contract for in this territory, shall be twelve per cent. per annum, and at the same rate for a shorter time.

2. Unless, within the above limitation, there is an express contract in writing fixing a different rate, interest is payable on all moneys at the rate of seven per cent. per annum, after they become due on any instrument of writing, except a judgment, and on moneys lent, or due on any settlement of accounts, from the day on which the balance is ascertained, and on moneys received to the use of another and detained from him.

§ 1099. DISCOUNT—LIMITATION.] The interest which would become due at

the end of the term for which a loan is made, not exceeding one year's interest in all, may be deducted from the loan in advance if the parties thus agree.

§ 1100. USURY FORFEITS INTEREST ONLY.] A person taking, receiving, retaining, or contracting for any higher rate of interest than the rate of twelve per cent. per annum, shall forfeit all the interest so taken, received, retained, or contracted for; it being the intent and meaning of this section not to provide a forfeiture of any portion of the principal. When a greater rate of interest has been paid than twelve per cent. per annum, the person paying it, or his personal representative, may recover the excess from the person taking it, or his personal representative, in an action in the proper court.

§ 1101. JUDGMENTS—SEVEN PER CENT.] Interest is payable on judgments recovered in the courts of this territory, at the rate of seven per cent. per annum, and no greater rate, but such interest must not be compounded in any manner or form.

§ 1102. SAME RATE AFTER BREACH.] Any legal rate of interest stipulated by a contract, remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.

TITLE V.

HIRING.

CHAPTER I.

HIRING IN GENERAL.

§ 1103. DEFINITION.] Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

§ 1104. INCREASE TO HIRER.] The products of a thing hired, during the hiring, belong to the hirer.

§ 1105. QUIET POSSESSION.] An agreement to let upon hire, binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same.

§ 1106. ORDINARY CARE.] The hirer of a thing must use ordinary care for its preservation in safety and in good condition.

§ 1107. REPAIRS BY HIRER.] The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

§ 1108. USE FOR PURPOSE LET.] When a thing is let for a particular purpose, the hirer must not use it for any other purpose; and if he does, the letter may hold him responsible for its safety during such use, in all events, or may treat the contract as thereby rescinded.

§ 1109 HIRING TERMINATED BY LETTER.] The letter of a thing may terminate the hiring, and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses, or permits a use of the thing hired, in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

§ 1110. BY HIRER.] The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was, and which the latter had, at the time of the hiring, reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the ordinary negligence of the hirer.

§ 1111. BY OTHER EVENTS.] The hiring of a thing terminates:

1. At the end of the term agreed upon.

2. By the mutual consent of the parties.

3. By the hirer acquiring a title to the thing hired, superior to that of the letter; or,

4. By the destruction of the thing hired.

§ 1112. BY DEATH OF PARTY, OR.] If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

§ 1113. PROPORTIONATE PART.] When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal, and of no benefit to him.

CHAPTER II.

HIRING OF REAL PROPERTY.

§ 1114. DWELLING MADE FIT BY LESSOR.] The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof; except that the lessee must repair all deteriorations or injuries thereto occasioned by his ordinary negligence.

§ 1115. WHEN LESSEE MAY REPAIR.] If, within a reasonable time after notice to the lessor of dilapidations which he ought to repair, he neglects to do so, the lessee may repair the same himself, and deduct the expense

of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent, or performance of other conditions.

§ 1116. PRESUMED FOR ONE YEAR.] A hiring of real property, other than lodgings, in places where there is no usage on the subject, is presumed to be for one year from its commencement, unless otherwise expressed in the hiring.

§ 1117. RENT TERM LIMITS LODGING.] A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

§ 1118. CONTINUED POSSESSION RENEWS LEASE.] If a lessee of real property remains in possession thereof, after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

§ 1119. PRESUMED UNLESS NOTICED.] A hiring of real property, for a term not specified by the parties, is deemed to be renewed, as stated in the last section, at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month.

§ 1120. RENT—WHEN PAYABLE.] When there is no contract or usage to the contrary, the rent of agricultural and wild land is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than the periods herein specified is payable at the termination of the hiring.

§ 1121. MUST INFORM LANDLORD—TO STRANGER.] Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same, and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice, or to deliver it to him if in writing.

2. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord, or in consequence of a judgment of a court of competent jurisdiction.

§ 1122. PART OF ROOM INCLUDES ALL.] One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon, and every tenant in the building, under the same landlord, is relieved from all obli-

gation to pay rent to him while such double letting of any room continues.

CHAPTER III.

HIRING OF PERSONAL PROPERTY.

§ 1123. LETTER'S OBLIGATIONS.] One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer, and not the natural result of its use.

§ 1124. ORDINARY EXPENSES.] A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

§ 1125. EXTRAORDINARY EXPENSES.] If a letter fails to fulfill his obligations as prescribed by section 1123 the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

§ 1126. RETURN OF THING HIRED.] At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place which it was at that time.

§ 1127. CHARTER-PARTY.] The contract by which a ship is let is termed a charter-party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer.

TITLE VI.

SERVICE.

CHAPTER I.

SERVICE WITH EMPLOYMENT.

ARTICLE I.—DEFINITION OF EMPLOYMENT.

§ 1128. DEFINITION.] The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employe, to do something for the benefit of the employer or of a third person.

ARTICLE II.—OBLIGATIONS OF THE EMPLOYER.

§ 1129. INDEMNITY TO EMPLOYE.] An employer must indemnify his employe, except as prescribed in the next section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employe, at the time of obeying such directions, believed them to be unlawful.

§ 1130. CO-EMPLOYES.] An employer is not bound to indemnify his employe for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employe.

§ 1131. EMPLOYER'S NEGLIGENCE.] An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care.

ARTICLE III.—OBLIGATIONS OF THE EMPLOYE.

§ 1132. GRATUITOUS EMPLOYE.] One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance he must use at least slight care and diligence therein.

§ 1133. SAME.] One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time.

§ 1134. SAME—POWER OF ATTORNEY.] A gratuitous employe, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

§ 1135. DUTIES OF EMPLOYE FOR REWARD.] One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

§ 1136. SAME FOR HIS OWN BENEFIT.] One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

§ 1137. PERSONAL SERVICE CONTRACT LIMITED.] A contract to render personal service, other than a contract of apprenticeship, as provided in the title on master and servant, cannot be enforced against the employe beyond the term of two years from the commencement of service under it, but if the employe voluntarily continues his service under it beyond that

time, the contract may be referred to as affording a presumptive measure of the compensation.

§ 1138. MUST OBEY EMPLOYER.] An employe must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this title, except where such obedience is impossible, or unlawful, or would impose new and unreasonable burdens upon the employe, or in case of an emergency which, according to the best information which the employe can with reasonable diligence obtain, the employer did not contemplate, in which he cannot, with reasonable diligence, be consulted, and in which non-compliance is judged by the employe, in good faith, and in the exercise of reasonable discretion, to be absolutely necessary for the protection of the employer's interests. In all such cases, the employe must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter.

§ 1139. MUST CONFORM TO USAGE.] An employe must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so.

§ 1140. REASONABLE SKILL, UNLESS.] An employe is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

§ 1141. SUCH SKILL AS HE POSSESSES.] An employe is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

§ 1142. WHAT BELONGS TO EMPLOYER.] Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during, or after the expiration of, the term of his employment.

§ 1143. DUTY TO ACCOUNT.] An employe must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

§ 1144. NOT TO DELIVER WITHOUT DEMAND.] An employe, who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand, in any mode involving greater risk than its retention by the employe himself.

§ 1145. PREFERENCE TO EMPLOYER.] An employe, who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him.

§ 1146. SUBSTITUTE DIRECTLY RESPONSIBLE.] An employe, who is expressly authorized to employ a substitute, is liable to his principal only for

want of ordinary care in his selection. The substitute is directly responsible to the principal.

§ 1147. RESPONSIBILITY FOR NEGLIGENCE.] An employe, who is guilty of a culpable degree of negligence, is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

§ 1148. SURVIVING EMPLOYE.] Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

§ 1149. CONFIDENTIAL RELATIONS—TRUSTS.] The obligations peculiar to confidential employments are defined in the title on trusts.

ARTICLE IV. — TERMINATION OF EMPLOYMENT.

§ 1150. DEATH AND INCAPACITY OF EMPLOYER—OTHER EVENTS.] Every employment, in which the power of the employe is not coupled with an interest in its subject, is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe; or,
4. By his legal incapacity to act as such.

§ 1151. CONTINUANCE IN CERTAIN CASES.] An employe, unless the term of his service has expired, or unless he has a right to discontinue it at any time, without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service, according to the terms of the contract of employment.

§ 1152. TERMINATION AT WILL.] An employment having no specified term may be terminated at the will of either party, on notice to the other, except where otherwise provided by this title.

§ 1153. FOR FAULT BY EMPLOYE.] An employment, even for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employe, in the course of his employment, or in case of his habitual neglect of his duty, or continued incapacity to perform it.

§ 1154. SAME BY EMPLOYER.] An employment, even for a specified term, may be terminated by the employe at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee.

§ 1155. COMPENSATION WHEN DISMISSED.] An employe, dismissed by his

employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

§ 1156. SERVICE QUIT FOR CAUSE.] An employe, who quits the service of his employer for good cause, is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance.

CHAPTER II.

PARTICULAR EMPLOYMENTS.

ARTICLE I.—MASTER AND SERVANT.

§ 1157. SERVANT DEFINED.] A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

§ 1158. PRESUMED TERM—WAGES.] A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece work, for no specified term.

§ 1159. MONTH PRESUMED.] In the absence of any agreement or custom as to the rate or value of wages, the term of service or the time of payment, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

§ 1160. RENEWAL PRESUMED.] Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

§ 1161. TIME OF DOMESTIC SERVICE.] The entire time of a domestic servant belongs to the master; and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in the day.

§ 1162. SERVANT MUST ACCOUNT.] A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound without orders from his master, to send anything to him through another person.

§ 1163. CAUSES FOR DISCHARGE.] A master may discharge any seryant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

ARTICLE II.—AGENTS.

§ 1164. AUTHORITY.] An agent must not exceed the limits of his actual authority, as defined by the title on agency.

§ 1165. MUST INFORM PRINCIPAL.] An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

§ 1166. COLLECTING AGENT.] An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

§ 1167. SUB-AGENT'S RESPONSIBILITY.] A mere agent of an agent is not responsible as such to the principal of the latter.

ARTICLE III.—FACTORS.

§ 1168. FACTOR DEFINED.] The factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property, for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

§ 1169. MUST OBEY PRINCIPAL.] A factor must obey the instructions of his principal, to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may nevertheless sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

§ 1170. MAY GIVE USUAL CREDIT.] A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the terms of credit, may not extend it.

§ 1171. LIABILITY UNDER GUARANTY COMMISSION.] A factor who charges his principal with a guaranty commission upon a sale thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

§ 1172. RELIEVED ONLY BY CONSENT.] A factor who receives property for sale under a general agreement or usage to guaranty the sales, or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal.

ARTICLE IV.—SHIPMASTERS.

§ 1173. APPOINTED AT PLEASURE OF OWNER.] The master of a ship is appointed by the owner, and holds during his pleasure. The word "ship,"

as used in this code, shall be construed to mean any boat, vessel, or structure fitted for navigation.

§ 1174. MUST BE ON BOARD—WHEN.] The master of a ship is bound to be always on board when entering or leaving port. The word "port," as used in this code, shall be construed to mean any place on a navigable river or lake where a vessel lands to receive or put off freight or passengers, or for any other purpose, and when a vessel has made a landing it is said to be in port.

§ 1175. PILOTAGE.] Before leaving a port the master of a ship must take a pilot on board, and the navigation of the vessel devolves on him.

§ 1176. POWER OF MASTER OVER SEAMEN.] The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment, not prohibited by law, being responsible for the abuse of his power.

§ 1177. OVER PASSENGERS.] The master of a ship may confine any person on board, during a voyage, for willful disobedience to his lawful commands.

§ 1178. PRIVATE STORES TAKEN.] If, during a voyage, the ship's supplies fail, the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want, on payment of their value or giving security therefor.

§ 1179. MAY ABANDON SHIP—WHEN.] The master of a ship must not abandon it during the voyage, without the advice of the other officers.

§ 1180. MUST TAKE TREASURE.] The master of a ship, upon abandoning it, must carry with him, so far as it is in his power, the money and the most valuable of the goods on board, under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control, he is exonerated from liability.

§ 1181. NOT TRADE ON OWN ACCOUNT.] The master of a ship, who engages for a common profit on the cargo, must not trade on his own account, and if he does, he must account to his employer for all profits thus made by him.

§ 1182. CARE AND DILIGENCE.] The master of a ship must use great care and diligence in the performance of his duties, and is responsible for all damage occasioned by his negligence, however slight.

§ 1183. AUTHORITY OF MASTER.] The authority and liability of the master of a ship, as an agent for the owners of the ship and cargo, are regulated by the title on agency.

ARTICLE V.—MATES AND SEAMEN.

§ 1184. MATE DEFINED.] The mate of a ship is the officer next in command to the master.

§ 1185. SEAMEN.] All persons employed in the navigation of a ship, or upon a voyage, other than the master and mate, are to be deemed seamen, within the provisions of this code.

§ 1186. MASTER ENGAGES AND DISCHARGES.] The mate and seamen of a

ship are engaged by the master, and may be discharged by him at any period of the voyage, for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage.

§ 1187. UNSEAWORTHY VESSEL.] A mate or seaman is not bound to go on a voyage in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness, he may refuse to proceed until a proper survey has been had.

§ 1188. WAGES AND LIEN NOT LOST.] A seaman cannot, by reason of any agreement, be deprived of his lien upon the ship, or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship, or to abandon any right he may have or obtain in the nature of salvage, is void.

§ 1189. LAW FIXES RIGHTS—UNLESS.] No special agreement entered into by a seaman can impair any of his rights, or add to any of his obligations, as defined by law, unless he fully understands the effect of the agreement, and receives a fair compensation therefor.

§ 1190. WAGES DEPEND ON FREIGHTAGE.] Except as hereinafter provided, the wages of seamen are due when, and so far only as freightage is earned, unless the loss of freightage is owing to the fault of the owner or master.

§ 1191. WHEN WAGES BEGIN.] The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens.

§ 1192. VOYAGE BROKEN UP.] Where a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served, and may retain for their indemnity such advances as they have received.

§ 1193. WRONGFUL DISCHARGE—FULL WAGES.] When a mate or seaman is wrongfully discharged, or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him, and he may thereupon recover his full wages.

§ 1194. WAGES NOT LOST BY WRECK.] In case of loss or wreck of the ship, a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores.

§ 1195. CERTIFICATE.] A certificate from the master or chief surviving officer of a ship, to the effect that a seaman exerted himself to the utmost to save the ship, cargo, and stores, is presumptive evidence of the fact.

§ 1196. DISABLED IN DUTY.] Where a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage, or by being wrongfully discharged, or by a capture of the ship, he is entitled to wages notwithstanding.

§ 1197. EXPENSE OF SICKNESS.] If a mate or seaman becomes sick or disabled during the voyage without his fault, the expense of furnishing him

with suitable medical advice, medicine, attendance, and other provision for his wants, must be borne by the ship till the close of the voyage.

§ 1198. DEATH DURING VOYAGE.] If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage.

§ 1199. THEFT, ETC., FORFEITS WAGES.] Desertion of the ship without cause, or a justifiable discharge by the master during the voyage for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship, forfeits all wages due for the voyage to a mate or seaman thus in fault.

§ 1200. CANNOT SHIP GOODS.] A mate or seaman may not, under any pretext, ship goods on his own account, without permission from the master.

§ 1201. EMBEZZLEMENT OR INJURY.] If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or, if it is not known which is the offender, all those of whom negligence or fault may be presumed, must make good the loss.

§ 1202. FURTHER REGULATIONS.] The shipment of officers and seamen, and their rights and duties, are further regulated by law.

ARTICLE VI.—SHIPS' MANAGERS.

§ 1203. MANAGER.] The general agent for the owners, in respect to the care of a ship and freight, is called the manager; if he is a part owner, he is also called the managing owner.

§ 1204. DUTIES.] Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew, and supplies of provisions and stores.

§ 1205. MANAGING OWNER.] A managing owner is presumed to have no right to compensation for his own services.

CHAPTER III.

SERVICE WITHOUT EMPLOYMENT.

§ 1206. VOLUNTARY INTERFERENCE.] One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession, for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses, incurred by him about such service, from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

§ 1207. SALVAGE.] Any person, other than the master, mate, or a seaman thereof, who rescues a ship, her appurtenances, or cargo, from dan-

ger, is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has a lien for such claim, which is regulated by the title on liens.

TITLE VII.

CARRIAGE.

CHAPTER I.

CARRIAGE IN GENERAL.

§ 1208. CONTRACT FOR—KINDS.] The contract of carriage is a contract for the conveyance of property, persons or messages, from one place to another.

§ 1209. INLAND OR MARINE.] Carriage is either:

1. Inland; or,
2. Marine.

§ 1210. CLASSES DEFINED.] Carriers upon the ocean, upon arms of the sea, upon the great lakes, or such other navigable waters or rivers as are within the admiralty jurisdiction of the United States, are marine carriers. All others are inland carriers.

§ 1211. CARRIERS BY SEA.] Rights and duties peculiar to carriers by sea are defined by acts of congress.

§ 1212. GRATUITOUS CARRIERS.] Carriers without reward are subject to the same rules as employes without reward, except so far as is otherwise provided by this title.

§ 1213. SAME—MUST COMPLETE.] A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CHAPTER II.

CARRIAGE OF PERSONS.

ARTICLE I.—GRATUITOUS CARRIAGE OF PERSONS.

§ 1214. ORDINARY CARE.] A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

ARTICLE II.—CARRIAGE FOR REWARD.

§ 1215. UTMOST CARE—SKILL.] A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

§ 1216. VEHICLES SAFE AND FIT.] A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

§ 1217. NOT OVERLOAD.] A carrier of persons for reward must not overcrowd or overload his vehicle.

§ 1218. TREATMENT OF PASSENGERS.] A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, must treat them with civility, and give them a reasonable degree of attention.

§ 1219. SPEED AND DELAYS.] A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

CHAPTER III.

CARRIAGE OF PROPERTY.

ARTICLE I.—GENERAL DEFINITIONS.

§ 1220. FREIGHT—CONSIGNOR.] Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor, and the person to whom it is to be delivered is called the consignee.

ARTICLE II.—OBLIGATIONS OF THE CARRIER.

§ 1221. DEGREES OF CARE] A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

§ 1222. MUST OBEY DIRECTIONS.] A carrier must comply with the directions of the consignor or consignee, to the same extent that an employe is bound to comply with those of his employer.

§ 1223. WHEN CONFLICTING] When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

§ 1224. STORAGE—DEVIATION.] A marine carrier must not stow freight upon deck during the voyage, except where it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight.

§ 1225. MANNER OF DELIVERY.] A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

§ 1226. PLACE OF DELIVERY.] If there is no usage to the contrary at the place of delivery, freight must be delivered as follows:

1. If carried upon a railway owned and managed by the carrier, it may be delivered at the station nearest the place to which it is addressed.

2. If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

§ 1227. NOTICE TO CONSIGNEE.] If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest postoffice.

§ 1228. MAY TERMINATE LIABILITY.] If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

ARTICLE III.—BILL OF LADING.

§ 1229. DEFINITION.] A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place.

§ 1230. BILL OF LADING NEGOTIABLE.] All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee thereof in good faith and for value, in the ordinary course of business, with like effect and in like manner as in the case of a bill of exchange.

§ 1231. BY DELIVERY.] When a bill of lading is made to bearer, or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement.

§ 1232. EFFECTS OF BILL ON CARRIER.] A bill of lading does not alter the rights or obligation of the carrier, as defined in this chapter, unless it is plainly inconsistent therewith.

§ 1233. SETS OF BILLS TO CONSIGNOR.] A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him besides all damages thereby occasioned.

§ 1234. DELIVERY ACCORDING TO BILL.] A carrier is exonerated from liability for freight by delivery thereof, in good faith, to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer.

§ 1235. SURRENDER OF BILL ON DELIVERY.] When a carrier has given a bill of lading, or other instrument substantially equivalent thereto, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

ARTICLE IV.—FREIGHTAGE.

§ 1236. FREIGHTAGE WHEN DUE.] A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot until he is ready to deliver the freight to the consignee.

§ 1237. CONSIGNOR PRESUMED LIABLE.] The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

§ 1238. CONSIGNEE—WHEN LIABLE.] The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it.

§ 1239. NATURAL INCREASE.] No freightage can be charged upon the natural increase of freight.

§ 1240. APPORTIONMENT BY CONTRACT.] If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

§ 1241. BY ACCEPTANCE OF PART.] If a part of the freight is accepted by a consignee, without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

§ 1242. ACCORDING TO DISTANCE.] If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

§ 1243. EXTRA CARRIAGE.] If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to

additional compensation, and cannot refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

§ 1244. LIEN.] A carrier has a lien for freightage, which is regulated by the title on liens.

ARTICLE V.—GENERAL AVERAGE.

§ 1245. JETTISON AND GENERAL AVERAGE.] A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard, or otherwise sacrifice, any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

§ 1246. ORDER OF.] A jettison must begin with the most bulky and least valuable articles, so far as possible.

§ 1247. WHO MAY ORDER.] A jettison can be made only by authority of the master of a ship, except in case of his disability, or of an overruling necessity, when it may be made by any other person.

§ 1248. LOSS PROPORTIONED.] The loss incurred by a jettison, when lawfully made, must be borne in due proportion by all that part of the ship, appurtenances, freightage and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the thing sacrificed.

§ 1249. RATIO OF ADJUSTMENT.] The proportions in which a general average loss is to be borne, must be ascertained by an adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost, as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of the voyage, if valid there, is valid everywhere.

§ 1250. VALUES DETERMINED.] In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

§ 1251. DECK STOWAGE.] The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage.

§ 1252. OTHER APPLICATION.] The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship, or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils.

CHAPTER IV.

CARRIAGE OF MESSAGES.

§ 1253. CARRIER DELIVERS MESSAGES.] A carrier of messages for reward must deliver them at the place to which they are addressed, or to the persons for whom they are intended.

§ 1254. MUST USE CARE.] A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein.

CHAPTER V.

COMMON CARRIERS.

ARTICLE I.—COMMON CARRIERS IN GENERAL.

§ 1255. DEFINITION.] Every one who offers to the public to carry persons, property or messages, is a common carrier of whatever he thus offers to carry.

§ 1256. MUST ACCEPT ALL.] A common carrier must, if able to do so, accept and carry whatever is offered to him, at a reasonable time and place, of a kind that he undertakes or is accustomed to carry.

§ 1257. NO PREFERENCE.] A common carrier must not give preference, in time, price or otherwise, to one person over another, except where expressly authorized by statute.

§ 1258. GOVERNMENT PREFERRED.] A common carrier must always give a preference in time, and may give a preference in price, to the United States and to this territory.

§ 1259. STARTING.] A common carrier must start at such time and place as he announces to the public, unless detained by accident or the elements, or in order to connect with carriers on other lines of travel.

§ 1260. COMPENSATION.] A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

§ 1261. OBLIGATIONS HOW LIMITED.] The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract.

§ 1262. VOID AGREEMENTS.] A common carrier cannot be exonerated by any agreement made in anticipation thereof, from liability for the gross negligence, fraud or willful wrong, of himself or his servants.

§ 1263. CONSTRUCTION OF CONTRACT.] A passenger, consignor or consignee, by accepting a ticket, bill of lading or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations contained in such instrument can only be manifested by his signature to the same.

ARTICLE II.—COMMON CARRIERS OF PERSONS.

§ 1264. MUST CARRY BAGGAGE.] A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive

and carry a reasonable amount of luggage for each passenger, without any charge except for an excess of weight over one hundred pounds to a passenger.

§ 1265. DEFINITION.] Luggage may consist of any articles intended for the use of a passenger while traveling, or for his personal equipment.

§ 1266. LIABILITY FOR LUGGAGE.] The liability of a carrier for luggage received by him with a passenger, is the same as that of a common carrier of property.

§ 1267. CARRIAGE AND DELIVERY OF SAME.] A common carrier must deliver every passenger's luggage, whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs; except that where luggage is transported by rail, it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported, it is carried at their risk.

§ 1268. MUST PROVIDE VEHICLES.] A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time.

§ 1269. SEATS FOR PASSENGERS.] A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows.

§ 1270. BUSINESS RULES.] A common carrier of persons may make rules for the conduct of his business, and may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

§ 1271. FARE—WHEN PAYABLE.] A common carrier may demand the fare of passengers either at starting or at any subsequent time.

§ 1272. EJECTION OF PASSENGERS.] A passenger who refuses to pay his fare, or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place, or near some dwelling house.

§ 1273. NO FARE DUE.] After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

§ 1274. LIEN ON LUGGAGE.] A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the title on liens.

ARTICLE III.—COMMON CARRIERS OF PROPERTY.

§ 1275. LIABILITY OF INLAND CARRIER.] Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections "1103 to 1107," for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice or weakness, or a spontaneous action, of the property itself.
2. The act of a public enemy of the United States, or of this territory.
3. The act of the law; or,
4. Any irresistible superhuman cause.

§ 1276. WHEN NOT EXEMPT.] A common carrier is liable, even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss.

§ 1277. LIABILITY FOR DELAY.] A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

§ 1278. MARINE CARRIER.] A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire.

§ 1279. REV. STAT. UNITED STATES, PAGE 831.] The liability of a common carrier by sea is further regulated by acts of congress.

§ 1280. PERILS OF SEA.] Perils of the sea are from:
1. Storms and waves.
2. Rocks, shoals and rapids.
3. Other obstacles, though of human origin.
4. Changes of climate.
5. The confinement necessary at sea.
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea.

§ 1281. VALUABLES TO BE DECLARED.] A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state, of time-pieces of any description, of negotiable paper or other valuable writings, of pictures, glass or china ware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight.

§ 1282. BEYOND USUAL ROUTE.] If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

§ 1283. PROOF OF LOSS.] If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

§ 1284. OTHER SERVICES.] In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the titles on deposit and service.

ARTICLE IV.—COMMON CARRIERS OF MESSAGES.

§ 1285. ORDER OF MESSAGES.] A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its

receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States, or of this territory, on public business.

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

3. Messages giving information relating to the sickness or death of any person.

4. Other messages, in the order in which they were received.

§ 1286. IN OTHER CASES.] A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he receives them, except messages from agents of the United States or of this territory, on public business, to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received.

§ 1287. DAMAGES.] Every person whose message is refused or postponed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages, and fifty dollars in addition thereto.

TITLE VIII.

TRUST.

CHAPTER I.

TRUSTS IN GENERAL.

ARTICLE I.—NATURE AND CREATION OF A TRUST.

§ 1288 TRUSTS CLASSED.] A trust is either:

1. Voluntary; or,

2. Involuntary.

§ 1289. VOLUNTARY.] A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by one, for the benefit of another.

§ 1290. INVOLUNTARY.] An involuntary trust is one which is created by operation of law.

§ 1291. TRUSTOR AND TRUSTEE.] The person whose confidence creates a trust, is called the trustor; the person in whom the confidence is reposed,

is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

§ 1292. WHAT CONSTITUTES TRUSTEE.] Every one who voluntarily assumes a relation of personal confidence with another, is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

§ 1293. PURPOSES OF TRUST.] A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the titles on uses and trusts and on transfers.

§ 1294. CREATION AS TO TRUSTOR.] Subject to the provisions of section 279, a voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,

2. The subject, purpose and beneficiary of the trust.

§ 1295. AS TO TRUSTEE.] Subject to the provisions of section 279, a voluntary trust is created, as to the trustee, by any words or acts of his, indicating with reasonable certainty:

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and,

2. The subject, purpose and beneficiary of the trust.

§ 1296. TRUSTEE BY HIS OWN WRONG.] One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner.

§ 1297. BY NEGLIGENCE.] One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it.

ARTICLE II.—OBLIGATIONS OF TRUSTEES.

§ 1298. GOOD FAITH.] In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter, by the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

§ 1299. NOT FOR HIS PROFIT.] A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner.

§ 1300. TRANSACTIONS FORBIDDEN.] Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust, in which he, or any one for whom he acts as agent, has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary not having power to contract, the district court, upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the district court for the latter, in the manner above prescribed.

§ 1301. INFLUENCE.] A trustee may not use the influence, which his position gives him, to obtain any advantage from his beneficiary.

§ 1302. ADVERSE TRUST.] No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

§ 1303. ADVERSE INTEREST.] If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

§ 1304. VIOLATION A FRAUD.] Every violation of the provisions of the preceding sections of this article, is a fraud against the beneficiary of a trust.

§ 1305. PRESUMPTION AGAINST TRUSTEE.] All transactions between a trustee and his beneficiary, during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration and under undue influence.

§ 1306. MINGLING PROPERTY.] A trustee who wilfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events.

§ 1307. LIABILITY.] A trustee who uses or disposes of the trust property, contrary to section 1299 may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

§ 1308. SAME—GOOD FAITH.] A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

§ 1309. CO-TRUSTEES.] A trustee is responsible for the wrongful acts of a co-trustee, to which he consented, or which by his negligence he enabled the latter to commit, but for no others.

ARTICLE III.—OBLIGATIONS OF THIRD PERSONS.

§ 1310. WHEN INVOLUNTARY TRUSTEES.] Every one to whom property is transferred, in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration.

§ 1311. THIRD PERSONS WHEN NOT BOUND.] One who actually and in good faith transfers any money or other property to a trustee, as such, is not

bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them.

CHAPTER II.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE I.—NATURE AND CREATION OF THE TRUST.

§ 1312. EXPRESS TRUSTS ONLY.] The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians, as such.

§ 1313. MUTUAL CONSENT.] The mutual consent of a trustor and trustee creates a trust, of which the beneficiary may take advantage at any time prior to its rescission.

§ 1314. APPOINTED BY COURT.] When a trustee is appointed by a court or public officer as such, such court or officer is the trustor, within the meaning of the last section.

§ 1315. DECLARATION.] The nature, extent and object of a trust are expressed in the declaration of trust.

§ 1316. SAME BY TRUSTOR.] All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

ARTICLE II.—OBLIGATIONS OF TRUSTEES.

§ 1317. MUST OBEY DECLARATION.] A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employe.

§ 1318. DEGREE OF CARE.] A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

§ 1319. APPOINTMENT OF SUCCESSOR.] If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use

at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

§ 1320. INVESTMENT BY TRUSTEE.] A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

§ 1321. OMITTED INVESTMENT—PENALTY.] If a trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

§ 1322. PURCHASED CLAIMS.] A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

ARTICLE III.—POWERS OF TRUSTEES.

§ 1323. TRUSTEE, GENERAL AGENT.] A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust, and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

§ 1324. ALL MUST ACT.] Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

§ 1325. DISCRETIONARY POWERS.] A discretionary power conferred upon a trustee, is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

ARTICLE IV.—RIGHTS OF TRUSTEES.

§ 1326. INDEMNIFICATION.] A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

§ 1327. COMPENSATION.] When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified, and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances.

§ 1328. NOT INCLUDED.] An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article.

ARTICLE V.—TERMINATION OF THE TRUST.

§ 1329. BY FULFILLMENT.] A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

§ 1330. IRREVOCABLE.] A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

§ 1331. VACATED.] The office of a trustee is vacated:

1. By his death; or,
2. By his discharge.

§ 1332. DISCHARGE OF TRUSTEE.] A trustee can be discharged from his trust only, as follows:

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.
4. By the consent of the beneficiary, if he has capacity to contract.
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the district court.

§ 1333. REMOVAL BY COURT.] The district court may remove any trustee who has violated or is unfit to execute the trust.

ARTICLE VI.—SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 1334. WHEN BY COURT.] The district court may appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practicable method of appointment.

§ 1335. SURVIVES TO CO-TRUSTEES.] On the death, renunciation or discharge of one of several co-trustees, the trust survives to the others.

§ 1336. COURT POWERS.] When a trust exists without any appointed trustee, or where all the trustees renounce, die or are discharged, the district court of the county, or judicial subdivision, where the trust property, or some portion thereof, is situated, must appoint another trustee, and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

TITLE IX.

AGENCY.

CHAPTER I.

AGENCY IN GENERAL.

ARTICLE I.—DEFINITION OF AGENCY.

§ 1337. AGENCY DEFINED.] An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

§ 1338. QUALIFICATIONS.] Any person, having capacity to contract, may appoint an agent; and any person may be an agent.

§ 1339. SPECIAL AND GENERAL.] An agent for a particular act or transaction is called a special agent. All others are general agents.

§ 1340. CLASSIFIED.] An agency is either actual or ostensible.

§ 1341. ACTUAL AGENCY.] An agency is actual when the agent is really employed by the principal.

§ 1342. OSTENSIBLE.] An agency is ostensible when the principle intentionally, or by want of ordinary care, causes a third person to believe another to be his agent, who is not really employed by him.

ARTICLE II.—AUTHORITY OF AGENTS.

§ 1343. WHAT POWERS.] An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

§ 1344. ANY LAWFUL ACT.] Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

§ 1345. NOT TO DEFRAUD PRINCIPAL.] An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

§ 1346. HOW AUTHORIZED] An agency may be created, and an authority may be conferred, by a precedent authorization, or a subsequent ratification.

§ 1347. NO CONSIDERATION.] A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

§ 1348. FORM OF AUTHORITY.] An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

§ 1349. FORM OF RATIFICATION.] A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or, where an oral authorization would suffice, by accepting or retaining the benefit of the act, with notice thereof.

§ 1350. PART INCLUDES WHOLE.] Ratification of part of an indivisible transaction is a ratification of the whole.

§ 1351. WHEN VOID.] A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

§ 1352. RETROACTIVE, LIMITED.] No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

§ 1353. RESCISSION OF RATIFICATION.] A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

§ 1354. AUTHORITY.] An agent has such authority as the principal, actually or ostensibly, confers upon him.

§ 1355. ACTUAL.] Actual authority is such as a principal intentionally confers upon the agent, or intentionally or by want of ordinary care, allows the agent to believe himself to possess.

§ 1356. OSTENSIBLE.] Ostensible authority is such as a principal intentionally, or by want of ordinary care, causes or allows a third person to believe the agent to possess.

§ 1357. LEGAL CONSTRUCTION.] Every agent has actually such authority as is defined by this title, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

§ 1358. NECESSARY AUTHORITY.] An agent has authority:

1. To do everything necessary, or proper and usual in the ordinary course of business, for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

§ 1359. MAY DISOBEY.] An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

§ 1360. CONSTRUCTION.] When an authority is given partly in general and partly in specific terms the general authority gives no higher powers than those specifically mentioned.

§ 1361. EXCEPTIONS TO GENERAL POWER.] An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so.

2. To define the scope of his agency; or,

3. To do any act which a trustee is forbidden to do by article II, of chapter I, of the last title.

§ 1362. IMPLIED AUTHORITY.] An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

§ 1363. SAME AS TO REALTY.] An authority to sell and convey real property includes authority to give the usual covenants of warranty.

§ 1364. RECEIVE PRICE.] A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

§ 1365. LIMITED.] A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

ARTICLE III.—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 1366. PRINCIPAL AFFECTED BY AGENT.] An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

§ 1367. INCOMPLETE EXECUTION.] A principal is bound by an incomplete execution of an authority, when it is consistent with the whole purpose and scope thereof, but not otherwise.

§ 1368. NOTICE TO BOTH PRESUMED.] As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

§ 1369. EXCEEDED AUTHORITY.] When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

§ 1370. BOUND BY CERTAIN ACTS.] A principal is bound by acts of his agent, under a merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability, or parted with value, upon the faith thereof.

§ 1371. PRINCIPAL EXONERATED.] If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent, in good faith, before receiving notice of the creditor's election to hold him responsible.

§ 1372. SET-OFFS AGAINST.] One who deals with an agent, without knowing or having reason to believe that the agent acts as such in the transaction, may set-off, against any claim of the principal arising out of the same, all claims which he might have set-off against the agent before notice of the agency.

§ 1373. CONSTRUCTION OF CONTRACT.] Any instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

§ 1374. AGENTS NEGLIGENCE.] Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in, and as a part of the transaction of such business; and for his willful omission to fulfill the obligations of the principal

§ 1375. FOR OTHER WRONGS.] A principal is responsible for no other wrongs committed by his agent, than those mentioned in the last section,

unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

ARTICLE IV.—OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 1376. WARRANTY OF AUTHORITY.] One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

§ 1377. AGENT TO THIRD PERSONS.] One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction:

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or,

3. When his acts are wrongful in their nature.

§ 1378. SURRENDER TO THIRD PARTY.] If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal in good faith, on account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

§ 1379. INCAPACITY TO CONTRACT.] The provisions of this article are subject to the provisions of part 1 of the first division of this code.

ARTICLE V.—DELEGATION OF AGENCY.

§ 1380. WHEN AUTHORIZED.] An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.

2. When it is such as the agent cannot himself, and the sub-agent can, lawfully perform.

3. When it is the usage of the place to delegate such powers; or

4. When such delegation is specially authorized by the principal.

§ 1381. AGENT IS PRINCIPAL.] If an agent employs a sub-agent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter.

§ 1382. RIGHTFUL SUB-AGENT.] A sub-agent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent.

ARTICLE VI.—TERMINATION OF AGENCY.

§ 1383. CLASSIFIED CAUSES.] An agency is terminated, as to every person having notice thereof, by:

1. The expiration of its term.

2. The extinction of its subject.

3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such.

§ 1384. OTHER CAUSES.] Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated as to every person having notice thereof, by:

1. Its revocation by the principal.
2. His death; or,
3. His incapacity to contract.

CHAPTER II.

PARTICULAR AGENCIES.

ARTICLE I.—AUCTIONEERS.

§ 1385. FROM SELLER, LIMITED.] An auctioneer, in the absence of special authorization or usage to the contrary, has authority from the seller, only as follows:

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell, according to section 1362.
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold, upon payment of the price.
6. To collect the price; and,
7. To do whatever else is necessary, or proper and usual, in the ordinary course of business, for effecting these purposes.

§ 1386. TO BIND BOTH PARTIES.] An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of the contract as prescribed in the title on sale.

ARTICLE II.—FACTORS.

§ 1387. DEFINED.] A factor is an agent, who is employed to buy or sell property in his own name, and who is intrusted by his principal with the possession thereof, as defined in section 1168.

§ 1388. POWER BEYOND AGENT.] In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured.
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and,

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

§ 1389. OSTENSIBLE AUTHORITY.] A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

ARTICLE III.—SHIP MASTERS AND PILOTS.

§ 1390. GENERAL AGENT.] The master of a ship is a general agent for its owner in all matters concerning the same.

§ 1391. BORROW MONEY.] The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay.

§ 1392. AGENT FOR OWNER OF CARGO.] The master of a ship, during a voyage, is a general agent for each of the owners of the cargo, and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same.

§ 1393. TO CONTRACT.] The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage, and in foreign port may enter into a charter-party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage.

§ 1394. TO HYPOTHECATE.] The master of a ship may hypothecate the ship, freightage and cargo, in the cases prescribed by the chapters on bottomry and respondentia, and in no others.

§ 1395. TO SELL SHIP.] When a hip, whether foreign or domestic, is seriously injured, or the voyage is otherwise broken up, beyond the possibility of pursuing it, the master, in case of necessity, may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners, and await their instructions.

§ 1396. TO SELL CARGO.] The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination, and the sale is otherwise absolutely necessary.

§ 1397. TO PAY RANSOM.] The master of a ship, in case of its capture, may engage to pay a ransom for it, in money or in part of the cargo, and his engagement will bind the ship, freightage and cargo.

§ 1398. WHEN POWER CEASES.] The power of the master of a ship to bind its owner, or the owners of the cargo, ceases upon the abandonment of the ship and freightage to insurers.

§ 1399. MASTER'S PERSONAL LIABILITY.] Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable.

§ 1400. SAME TO THIRD PERSONS.] The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation,

whether appointed by him or not, to the same extent as the owner of the ship.

§ 1401. RESPONSIBILITY FOR PILOT.] The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot whether he employs him or not, he is responsible to third persons.

ARTICLE IV.—SHIP'S MANAGERS.

§ 1402. POWER TO CONTRACT.] A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter-parties, or make contracts for carriage; and to settle for freightage and adjust averages.

§ 1403. LIMITATION OF SAME.] Without special authority, a ship's manager cannot borrow money, or give up the lien for freightage, or purchase a cargo, or bind the owners of the ship to an insurance.

TITLE X.

PARTNERSHIP.

CHAPTER I.

PARTNERSHIP IN GENERAL.

ARTICLE I.—WHAT CONSTITUTES A PARTNERSHIP.

§ 1404. DEFINITION.] Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

§ 1405. SHIP OWNERS.] Part owners of a ship do not, by simply using it in joint enterprise, become partners as to the ship.

§ 1406. CONSENT NECESSARY.] A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

ARTICLE II.—PARTNERSHIP PROPERTY.

§ 1406. CONSIST OF WHAT.] The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and of all that is subsequently acquired thereby.

§ 1408. INTEREST IN ALL.] The interest of each member of a partnership extends to every portion of its property.

§ 1409. SHARE IN PROFITS AND LOSSES.] In the absence of an agreement on the subject, the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

§ 1410. IMPLIED DIVISION OF LOSS.] An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

§ 1411. PROPERTY APPLIES TO DEBTS.] Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

§ 1412 PRESUMPTION.] Property, whether real or personal, acquired with partnership funds, is presumed to be partnership property.

ARTICLE III.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 1413. ARE TRUSTEES.] The relations of partners are confidential. They are trustees for each other, within the meaning of chapter I of the title on trusts. Their obligations, as such trustees, are defined by that chapter.

§ 1414. GOOD FAITH REQUIRED.] In all proceedings connected with the formation, conduct, dissolution, and liquidation of the partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

§ 1415. MUTUAL LIABILITY.] Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

§ 1416. NO COMPENSATION.] A partner is not entitled to any compensation for services rendered by him to the partnership.

ARTICLE IV.—RENUNCIATION OF PARTNERSHIP.

§ 1417. OF PROFITS—EXONERATES.] A partner may exonerate himself from all future liability to a third person on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dis-

solves the partnership, and does not intend to be liable on account thereof for the future.

§ 1418. EFFECT OF.] After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CHAPTER II.

GENERAL PARTNERSHIP.

ARTICLE I.—WHAT IS A GENERAL PARTNERSHIP.

§ 1419. DEFINITION.] Every partnership that is not formed in accordance with the law concerning special partnership, and every special partnership, so far only as the general partners are concerned, is a general partnership.

ARTICLE II.—POWERS AND AUTHORITY OF PARTNERS.

§ 1420. MAJORITY GOVERN.] Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

§ 1421. EACH A GENERAL AGENT.] Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

§ 1422. LIMITATIONS CLASSIFIED.] A partner, as such, has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him, or are incapable of acting:

1. To make an assignment of the partnership property, or any portion thereof, to a creditor, or to a third person in trust for the benefit of a creditor or of all creditors.
2. To dispose of the good will of the business.
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise.
4. To do any act which would make it impossible to carry on the ordinary business of the partnership.
5. To confess a judgment.
6. To submit a partnership claim to arbitration; or,
7. To do any other act not within the scope of the preceding section.

§ 1423. BAD FAITH INEFFECTUAL.] A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a part-

ner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

ARTICLE III.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 1424. PROFITS TO FIRM.] All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

§ 1425. NO ADVERSE INTEREST.] A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it.

§ 1426. EXCEPTION.] A partner may engage in any separate business, except as otherwise provided by the last two sections.

§ 1427. MUST ACCOUNT.] A general partner, transacting business contrary to the provisions of this article, may be required by any copartner to account to the partnership for the profits of such business.

ARTICLE IV.—LIABILITY OF PARTNERS.

§ 1428. LIABLE TO THIRD PERSON.] Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

§ 1429. FOR EACH OTHERS ACTS.] The liability of general partners for each other's acts is defined by the title on agency.

§ 1430. OF ONE HELD OUT AS PARTNERS.] Any one permitting himself to be represented as a partner, general or special, is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the partnership.

§ 1431. NOT LIABLE.] No one is liable as a partner, who is not such in fact, except as provided by the last section.

ARTICLE V.—TERMINATION OF PARTNERSHIP.

§ 1432. DURATION.] If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

§ 1433. CAUSES OF DISSOLUTION.] A general partnership is dissolved, as to all the partners:

1. By lapse of the time prescribed by agreement for its duration.
2. By the expressed will of any partner, if there is no such agreement.
3. By the death of a partner.
4. By the transfer, to a person not a partner, of the interest of any partner in the partnership property.
5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides: or,
6. By a judgment of dissolution.

§ 1434. PARTIAL DISSOLUTION.] A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his co-partners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

§ 1435. JUDGMENT OF DISSOLUTION.] A general partner is entitled to a judgment of dissolution:

1. When he, or another partner, becomes legally incapable of contracting.

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or,

3. When the business of the partnership can be carried on only at a permanent loss.

§ 1436. NOTICE OF TERMINATION] The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with, and given credit to, the partnership, during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership, at the time of its dissolution, had a place of business; to the extent, in either case, to which such persons part with value, in good faith, and in the belief that such partner is still a member of the firm.

§ 1437. NOTICE OF CHANGE.] A change of the partnership name, which plainly indicates the withdrawal of a partner, is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication is not notice of the withdrawal of any partner.

ARTICLE VI.—LIQUIDATION.

§ 1438. POWERS AFTER DISSOLUTION.] After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this article.

§ 1439. WHO MAY ACT.] Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section.

§ 1440. WHO NOT.] If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon the credit thereof.

§ 1441. POWER WHILE ACTING.] A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property.

§ 1442. PARTNER'S POWER IN LIQUIDATION.] 1. A partner authorized to act in liquidation, may indorse, in the name of the firm, promissory notes, or other obligations held by the partnership, for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive

a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of the code of civil procedure.

2. On the death of a partner, the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purposes of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property.

ARTICLE VII.—OF THE USE OF FICTITIOUS NAMES.

§ 1443. CERTIFICATE OF TRUE NAMES.] Except as otherwise provided in the next section, every partnership transacting business in this territory under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the district court of the county or subdivision in which its principal place of business is situated, a certificate, stating the names in full of all the members of such partnership, and their places of residence, and publish the same once a week for four successive weeks, in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county.

§ 1444. FOREIGN PARTNERSHIP.] A commercial or banking partnership, established and transacting business in a place without the United States, may, without filing the certificate or making the publication prescribed in the last section, use in this territory the partnership name used by it there, although it be fictitious, or do not show the names of the persons interested as partners in such business.

§ 1445. ACKNOWLEDGMENT—PENALTY.] The certificate filed with the clerk of the district court, as provided in section 1443, must be signed by the partners, and acknowledged before some officer authorized to take acknowledgment of conveyances of real property. Where the partnership is hereafter formed, the certificate must be filed, and the publication designated in that section must be made within one month after the formation of the partnership, or within one month from the time designated in the agreement of its members for the commencement of the partnership; where the partnership has been heretofore formed, the certificate must be filed and the publication made within six months after the passage of this act. Persons doing business as partners contrary to the provisions of this article, shall not maintain any action upon or on account of any contracts made or transactions had in their partnership name, in any court of this territory, until they have first filed the certificate and made the publication herein required.

§ 1446. NEW CERTIFICATE.] On every change in the members of a partnership transacting business in this territory under a fictitious name, or designation which does not show the names of the persons interested as partners in the business, except in the cases mentioned in section 1444, a new certificate must be filed with the clerk of the district court, and a

new publication made as required by this article on the formation of such partnership.

§ 1447. REGISTRY OF FIRMS.] Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to this article, entering in alphabetical order the name of every such partnership and of each partner therein.

§ 1448. COPIES EVIDENCE.] Copies of the entries of a clerk of the district court, as herein directed, when certified by him, and affidavits of publication, as herein directed, made by the printer, publisher, or chief clerk of a newspaper, are presumptive evidence of the facts therein stated.

CHAPTER III.

SPECIAL PARTNERSHIP.

ARTICLE I.—FORMATION OF THE PARTNERSHIP.

§ 1449. HOW FORMED.] A special or limited partnership may be formed by two or more persons in the manner and with the effect prescribed in this chapter, for the transaction of any business, except banking or insurance.

§ 1450. CONSTITUTION OF.] A special partnership may consist of one or more persons, called general partners, and one or more persons called special partners.

§ 1451. CERTIFIED STATEMENT.] Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which such partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the partners, and their residences, specifying which are general and which are special partners.
4. The amount of capital which each special partner has contributed to the common stock: and,
5. The periods at which such partnership will begin and end.

§ 1452. ACKNOWLEDGED AND FILED.] Certificates under the last section must be acknowledged by all the partners, before some officer authorized to take acknowledgment of deeds, one to be filed in the office of the clerk of the district court of the county or subdivision, and the other recorded in the office of the register of deeds of the county in which the principal place of business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds in whose office it is recorded, must be filed in the clerk's office as aforesaid, and recorded in like manner in the office of the

register of deeds in every such county. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

§ 1453. SUMS CONTRIBUTED.] An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate.

§ 1454. COMPLIANCE REQUIRED.] No special partnership is formed until the provisions of the last five sections are complied with.

§ 1455. CERTIFICATE PUBLISHED.] The certificate mentioned in this article, or a statement of its substance, must be published in a newspaper printed in the county where the original certificate is filed, and if no newspaper is there printed, then in a newspaper in the territory nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing such certificate. In case the publication is not so made, the partnership must be deemed general.

§ 1456. AFFIDAVIT FILED] An affidavit of publication pursuant to the preceding section, made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed, and is presumptive evidence of the facts therein stated.

§ 1457. RENEWAL—SAME METHOD.] Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation.

ARTICLE II.—POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

§ 1458. STYLE OF SPECIAL PARTNERSHIP.] The business of a special partnership must be conducted under a name, consisting of the names or surnames of one or more of the general partners only, with or without the addition of the words "and company," or "& Co." Such partnership shall put up in some conspicuous place, on the outside, and in front of the building in which it has its chief place of business, some sign on which shall be painted, in legible English characters, all the names of all the members of such partnership, designating the special partners.

§ 1459. WHO DO BUSINESS.] The general partners only have authority to transact the business of a special partnership.

§ 1460. RELATIONS OF SPECIAL PARTNER.] A special partner may at all times investigate the partnership affairs, and advise his partners or their agents as to their management.

§ 1461. MAY LOAN TO FIRM.] A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances, has the same rights as any other creditor; but, in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

§ 1462. WHO SUE AND ARE SUED.] In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

§ 1463. WITHDRAWAL OF CAPITAL.] No special partner under any pretense, may withdraw any part of the capital invested by him in the partnership during its continuance.

§ 1464. MAY DRAW PROFITS.] A special partner may receive such lawful interest, and such proportion of profits, as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

§ 1465. BECOMES GENERAL PARTNER.] If a special partner withdraws capital from the firm, contrary to the provisions of this article, he thereby becomes a general partner.

§ 1466. PREFERENTIAL TRANSFERS.] Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership, or partner, over any other creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

ARTICLE III.—LIABILITY OF PARTNERS.

§ 1467. LIABILITY GENERAL PARTNERS.] The general partners in a special partnership are liable to the same extent as partners in a general partnership.

§ 1468. OF SPECIAL PARTNERS.] The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable as a general partner to all the creditors of the firm.

2. If he has willfully interfered with the business of the firm, except as permitted in article II of this chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of article II of this chapter, he is liable in like manner.

§ 1469. SAME.] When a special partner has unintentionally done any of the acts mentioned in the last section, he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice.

§ 1470. QUESTIONING EXISTENCE OF.] One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract, by reason of any error or defect

in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by law.

ARTICLE IV.—ALTERATION AND DISSOLUTION.

§ 1471. SPECIAL BECOMES GENERAL] A special partnership becomes general, if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court and the register of deeds, with whom the original certificate of the partnership was filed, and notice thereof published as is provided in article I of this chapter for the publication of the certificate.

§ 1472. NEW PARTNERS [New special partners may be admitted into a special partnership, upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged or proved, and filed with the clerk, and recorded in the register's office in which the original certificate was filed, according to the provisions of article I of this chapter.

§ 1473. DISSOLUTION—NOTICE.] A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete, until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded, and filed in the office of the clerk of the district court, and published once in each week, for four successive weeks, in a newspaper printed in each county where the partnership has a place of business.

TITLE XI.

INSURANCE.

CHAPTER I.

INSURANCE IN GENERAL.

ARTICLE I.—DEFINITION OF INSURANCE.

§ 1474. CONTRACT TO INDEMNIFY.] Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability, arising from an unknown or contingent event.

ARTICLE II.—WHAT MAY BE INSURED.

§ 1475. INSURABLE INTEREST.] Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against him, may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

§ 1476. INSURANCE CLASSED.] The most usual kinds of insurance are:

One—Marine insurance.

Two—Fire insurance.

Three—Life insurance.

Four—Health insurance; and

Five—Accident insurance.

§ 1477. LAW GENERAL.] All kinds of insurance are subject to the provisions of this chapter.

ARTICLE III.—PARTIES TO THE CONTRACT.

§ 1478. INSURER.] The person who undertakes to indemnify another, by a contract of insurance, is called the insurer, and the person indemnified is called the insured.

§ 1479. WHO MAY INSURE.] Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others.

§ 1480. WHO BE INSURED.] Any one except a public enemy may be insured.

§ 1481. OF MORTGAGED PROPERTY.] Where a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee.

§ 1482. SAME.] If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his rights.

ARTICLE IV.—INSURABLE INTEREST.

§ 1483. DEFINITION.] Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured, is an insurable interest.

§ 1484. CLASSIFIED.] An insurable interest in property may consist in:

1. An existing interest.

2. An inchoate interest founded on an existing interest; or,

3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

§ 1485. CARRIER, &C., HAS.] A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

§ 1486. NOT INSURABLE.] A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

§ 1487. MEASURE OF INTEREST.] The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

§ 1488. WITHOUT INTEREST VOID.] The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

§ 1489. MUST EXIST—WHEN.] An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

§ 1490. EFFECT OF TRANSFER.] Except in the cases specified in the next four sections, and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

§ 1491. TRANSFER AFTER LOSS.] A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

§ 1492. EXCEPTION.] A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

§ 1493. SAME BY DEATH.] A change of interest, by will or succession, on the death of the insured, does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured.

§ 1494. BY JOINT OWNERS—EVIDENCE.] 1. A transfer of interest by one of several partners, joint owners or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

2. Every stipulation in a policy of insurance for the payment of loss, whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest, and every policy executed by way of gaming or wagering, is void.

ARTICLE V.—CONCEALMENT AND REPRESENTATION.

§ 1495. DEFINITION.] A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

§ 1496. EFFECT OF.] A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

§ 1497. MUTUAL DISCLOSURES.] Each party to a contract of insurance must communicate to the other in good faith, all facts within his knowledge which are, or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

§ 1498. NOT BOUND TO DISCLOSE.] Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows.

2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant.

3. Those of which the other waives communication.

4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and,

5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

§ 1499. LEGAL CONSTRUCTION.] Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

§ 1500. PRESUMED KNOWLEDGE.] Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may effect either the political or material perils contemplated, and all general usages of trade.

§ 1501. RIGHT WAIVED.] The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

§ 1502. ONLY ON INQUIRY.] Information of the nature or amount of the interest of one insured need not be communicated unless in answer to inquiry, except as prescribed by section 1518.

§ 1503. FRAUD.] An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

§ 1504. MATTERS OF OPINION.] Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

§ 1505. FORM.] A representation may be oral or written.

§ 1506. WHEN MADE.] A representation may be made at the same time with issuing the policy, or before it.

§ 1507. INTERPRETATION.] The language of a representation is to be interpreted by the same rules as the language of contracts in general.

§ 1508. AS TO FUTURE.] A representation as to the future is to be

deemed a promise, unless it appears that it was merely a statement of belief or expectation.

§ 1509. QUALIFY IMPLIED WARRANTY.] A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty.

§ 1510. WHEN WITHDRAWN.] A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

§ 1511. REFERENCE.] The completion of the contract of insurance is the time to which a representation must be presumed to refer.

§ 1512. INFORMATION AND BELIEF.] When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence.

§ 1513. FALSITY.] A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

§ 1514. EFFECT OF FALSITY.] If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

§ 1515. RULE.] The materiality of a representation is determined by the same rule as the materiality of a concealment.

§ 1516. PROVISIONS APPLY—RESCISSION.] 1. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation.

2. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

ARTICLE VI.—THE POLICY.

§ 1517. DEFINITION.] The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

§ 1518. ESSENTIAL SPECIFICATIONS.] A policy of insurance must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue.

§ 1519. EFFECT OF NAME.] When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

§ 1520. BY TRUSTEE OR AGENT.] When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really

insured, may be indicated by describing him as an agent or trustee, or by other general words in the policy.

§ 1521. TERMS MUST INCLUDE.] To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

§ 1522. SPECIFIC PERSON.] When the description of the insured in a policy is so general that it may comprehend any person, or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

§ 1523. MAY RUN TO WHOMSOEVER.] A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

§ 1524. TRANSFER.] The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both policy and the thing insured.

§ 1525. CLASSES.] A policy is either open or valued.

§ 1526. TO BE ASCERTAINED.] An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

§ 1527. AGREED VALUE.] A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

§ 1528. SUCCESSIVE INSURANCE.] A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

§ 1529. EFFECT OF RECEIPT.] An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

§ 1530. VOID AGREEMENT.] An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

ARTICLE VII.—WARRANTIES.

§ 1531. CLASSIFIED.] A warranty is either express or implied.

§ 1532. NO FORM.] No particular form of words is necessary to create a warranty.

§ 1533. EXPRESS TO BE WRITTEN.] Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it.

§ 1534. TIME.] A warranty may relate to the past, present, the future, or to any or all of these.

§ 1535. CONSTRUCTION.] A statement in a policy, of a matter relating to

the person or thing insured, or to the risk, as a fact, is an express warranty thereof.

§ 1536. INTENTION MEANS ACT.] A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place.

§ 1537. OMISSION DOES NOT VOID.] When, before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy.

§ 1538. MAY RESCIND.] The violation of a material warranty, or other material provisions of a policy, on the part of either party thereto, entitles the other to rescind.

§ 1539. WHAT AVOIDS.] A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy.

§ 1540. BREACH WITHOUT FRAUD.] A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception, prevents the policy from attaching to the risk.

CHAPTER VIII.

PREMIUM.

§ 1541. WHEN PAYABLE.] An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against.

§ 1542. RETURN WHEN.] A person insured is entitled to a return of premium, as follows:

One—To the whole premium, if no part of his interest in the thing insured be exposed to any of the perils insured against.

Two—Where the insurance is made for a definite period of time, and the insured surrenders his policy to such proportion of the premium as corresponds with the unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

§ 1543. SAME.] A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

§ 1544. NOT SO FAR AS RISK.] If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.

§ 1545. RATABLE RETURN.] In case of an over-insurance by several insurers, the insurer is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

§ 1546. CONTRIBUTION.] When an over-insurance is affected by simultaneous policies, the insurers contribute to the premium to be returned, in proportion to the amount insured by their respective policies.

§ 1547. SAME.] When an over-insurance is effected by successive policies, those only contribute to a return of the premium, who are exonerated by prior insurances from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

ARTICLE IX.—Loss.

§ 1548. WHEN INSURER LIABLE.] An insurer is liable for a loss of which a peril insured against was the proximate cause; although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

§ 1549. IN OTHER CASES.] An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

§ 1550. EXCEPTION INCLUDES CONSEQUENCES.] Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted; although the immediate cause of the loss was a peril, which was not excepted.

§ 1551. ACTS OF INSURED—EFFECT OF.] An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

ARTICLE X.—Notice of loss.

§ 1552. NO UNNECESSARY DELAY.] In case of loss upon an insurance against fire, an insurer is exonerated, if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

§ 1553. BEST IN HIS POWER.] Where preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

§ 1554. WAIVER OF DEFECTS.] All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

§ 1555. WAIVER OF DELAYS.] Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

§ 1556. REASONABLE DILIGENCE.] If a policy requires, by way of prelim-

inary proof of loss, the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

ARTICLE XI.—DOUBLE INSURANCE.

§ 1557. DEFINITION.] A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

§ 1558. ORDER OF LIABILITY.] In case of double insurance, the several insurers are liable to pay losses thereon as follows:

One—In fire insurance, each insurer must contribute ratably towards the loss, without regard to the dates of the several policies.

Two—In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies; no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day, they are deemed to be simultaneous, and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss, is to contribute ratably.

ARTICLE XII.—RE-INSURANCE.

§ 1559. DEFINITION.] A contract of re-insurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

§ 1560. DISCLOSURES REQUIRED.] Where an insurer obtains re-insurance, he must communicate all the representations of the original insurer, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk.

§ 1561. PRESUMED NATURE OF.] A re-insurance is presumed to be a contract of indemnity against liability, and not merely against damage.

§ 1562. WHO INCLUDED.] The original insured has no interest in a contract of re-insurance.

CHAPTER II.

MARINE INSURANCE.

ARTICLE I.—DEFINITION OF MARINE INSURANCE.

§ 1563. DEFINITION.] Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interest in movable property, may be exposed during a certain voyage or a fixed period of time.

ARTICLE II.—INSURABLE INTEREST.

§ 1564. OWNER RETAINS.] The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

§ 1565. HYPOTHECATION REDUCES.] The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry.

§ 1566. DEFINITION.] Freightage, in the sense of a policy of marine insurance, signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

§ 1567. EXPECTED EARNINGS.] The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against.

§ 1568. SAME.] The interest mentioned in the last section exists, in the case of a charter-party, when the ship has broken ground on the chartered voyage; and, if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board, and both ship and goods are ready for the specified voyage.

§ 1569. IN PROFITS.] One who has an interest in the thing from which profits are expected to proceed, has an insurable interest in the profits.

§ 1570. CHARTERER.] The charterer of a ship has an insurable interest in it, to the extent that he is liable to be damnified by its loss.

ARTICLE III.—CONCEALMENT.

§ 1571. DISCLOSURES.] In marine insurance each party is bound to communicate, in addition to what is required by section 1497, all the information which he possesses, material to the risk, except such as is mentioned in section 1498, and to state the exact and whole truth in relation to all matters that he represents, or upon inquiry assumes to disclose.

§ 1572. BELIEF MATERIAL.] In marine insurance information of the belief or expectation of a third person, in reference to a material fact, is material.

§ 1573. PRESUMED KNOWLEDGE.] A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insur-

ing, of a prior loss, if the information might possibly have reached him in the usual mode of transmission, and at the usual rate of communication.

§ 1574. PARTIAL EXONERATION.] A concealment in marine insurance, in respect to any of the following matters, does not vitiate the entire contract but merely exonerates the insurer from a loss resulting from the risk concealed:

One—The national character of the insured.

Two—The liability of the thing insured to capture and detention.

Three—The liability to seizure from breach of foreign laws of trade.

Four—The want of necessary documents; and,

Five—The use of false and simulated papers.

ARTICLE IV.—REPRESENTATIONS.

§ 1575. FALSITY RESCINDS.] If a representation, by a person insured by contract of marine insurance, is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract.

§ 1576. SAME.] The eventual falsity of a representation as to expectation does not, in the absence of fraud, avoid a contract of insurance.

ARTICLE V.—IMPLIED WARRANTIES.

§ 1577. SEAWORTHINESS.] In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

§ 1578. DEFINITION OF.] A ship is seaworthy, when reasonably fit to perform the services, and to encounter the ordinary perils of the voyage, contemplated by the parties to the policy.

§ 1579. WHEN SEAWORTHY—EXCEPTIONS.] An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencememt of the risk, except in the following cases:

One—When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship be seaworthy at the commencement of every voyage she may undertake during that time; and,

Two—When the insurance is upon the cargo, which by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped, or transhipped, be seaworthy at the commencement of its particular voyage.

§ 1580. WHAT INCLUDED IN.] A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as cables and anchors, food, fuel and lights, and other necessary or proper stores and implements for the voyage.

§ 1581. DEGREES OF IN PARTS.] Where different portions of the voyage, contemplated by a policy, differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if, at the commencement of each portion, the ship is seaworthy with reference to that portion.

§ 1582. DELAYED REPAIRS.] When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect, exonerates the insurer from liability for any loss arising therefrom.

§ 1583. SEAWORTHINESS FOR CARGO.] A ship which is seaworthy for the purpose of an insurance upon the ship, may, nevertheless, by reason of being unfitted to receive the cargo, be unseaworthy for the purpose of insurance upon the cargo.

§ 1584. NEUTRAL PAPERS.] Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

ARTICLE VI.—THE VOYAGE AND DEVIATION.

§ 1585. MERCANTILE USAGE.] When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places.

§ 1586. SAME—EXCEPTION.] If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which, to a master of ordinary skill and discretion, would seem the most natural, direct and advantageous.

§ 1587. DEVIATION DEFINED.] Deviation is a departure from the course of the voyage insured, mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage.

§ 1588. PROPER DEVIATIONS.] A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control.

2. When necessary to comply with a warranty, or to avoid a peril, whether insured against or not.

3. When made in good faith, and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith, for the purpose of saving human life, or relieving another vessel in distress.

§ 1589. OTHERS IMPROPER.] Every deviation, not specified in the last section, is improper.

§ 1590. EXONERATES INSURER.] An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation.

ARTICLE VII.—Loss.

§ 1591. CLASSIFIED.] A loss may be either total or partial.

§ 1592. PARTIAL.] Every loss which is not total is partial.

§ 1593. TOTAL.] A total loss may be either actual or constructive.

§ 1594. CAUSES OF SAME.] An actual total loss is caused by:

1. A total destruction of the thing insured.

2. The loss of the thing by sinking, or by being broken up.

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession, at the port of destination of the thing insured.

§ 1595. CONSTRUCTIVE TOTAL LOSS.] A constructive total loss is one which gives to a person insured a right to abandon under section 1603.

§ 1596. ACTUAL PRESUMED.] An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case.

§ 1597. VOYAGE BROKEN UP.] When a ship is prevented, at an intermediate port, from completing the voyage, by the perils insured against, the master must make every exertion to procure, in the same or contiguous port, another ship, for the purpose of conveying the cargo to its destination; and the liability of a marine insurer thereon continues after they are thus reshipped.

§ 1598. COST OF RESHIPMENT.] In addition to the liability mentioned in the last section, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving cargo reshipped pursuant to the last section, up to the amount insured.

§ 1599. PAYMENT WITHOUT NOTICE.] Upon an actual total loss a person insured is entitled to payment without notice of abandonment.

§ 1600. GENERAL AVERAGE LOSS.] Where it has been agreed that an insurance upon a particular thing, or class of things, shall be free from particular average, a marine insurer is not liable for any particular average loss not depriving the insured of the possession, at the port of destination, of the whole of such thing, or class of things, even though it become entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured.

§ 1601. INSURANCE AGAINST TOTAL LOSS.] An insurance confined in terms to an actual total loss, does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession, at the port of destination, of the entire thing insured.

ARTICLE VIII.—ABANDONMENT.

§ 1602. DEFINITION.] Abandonment is the act by which, after a constructive total loss, a person insured by a contract of marine insurance, declares to the insurer that he relinquishes to him his interest in the thing insured.

§ 1603. WHEN AUTHORIZED.] A person insured by a contract of marine

insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against:

1. If more than half thereof, in value, is actually lost, or would have to be expended to recover it from the peril.

2. If it is injured to such an extent as to reduce its value more than one-half.

3. If, the thing insured being a ship, the contemplated voyage cannot be lawfully performed, without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo or freightage, the voyage cannot be performed, nor another ship procured by the master within a reasonable time, and with reasonable diligence, to forward the cargo, without incurring the like expenses or risk. But freightage cannot in any case be abandoned, unless the ship is also abandoned.

§ 1604. MUST BE ABSOLUTE.] An abandonment must be neither partial nor conditional.

§ 1605. WHEN MADE.] An abandonment must be made within a reasonable time after information of the loss, and after the commencement of the voyage, and before the party abandoning has information of its completion.

§ 1606. WHEN INEFFECTUAL.] Where the information upon which an abandonment has been made proves incorrect, or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

§ 1607. FORM OF NOTICE.] Abandonment is made by giving notice thereof to the insurer, which may be done orally or in writing.

§ 1608. REQUISITES OF.] A notice of abandonment must be explicit, and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor, and need not be accompanied with proof of interest or of loss.

§ 1609. NOTICE GOVERNS.] An abandonment can be sustained only upon the cause specified in the notice thereof.

§ 1610. IS A TRANSFER.] An abandonment is equivalent to a transfer by the insured, of his interest, to the insurer, with all the chances of recovery and indemnity.

§ 1611. PAYMENT ENTITLES TO SALVAGE.] If a marine insurer pays for a loss as if it were an actual total loss, he is entitled to whatever may remain of the thing insured, or its proceeds or salvage, as if there had been a formal abandonment.

§ 1612. AGENTS OF INSURER.] Upon an abandonment acts done in good faith by those who were agents of the insured, in respect to the thing insured, subsequent to the loss, are at the risk of the insurer, and for his benefit.

§ 1613. ACCEPTANCE UNNECESSARY.] An acceptance of an abandonment is not necessary to the rights of the insured, and is not to be presumed from the mere silence of the insurer, upon his receiving notice of abandonment.

§ 1614. CONCLUSIVE.] The acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and sufficiency of the abandonment.

§ 1615. IRREVOCABLE.] An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded.

§ 1616. EFFECT ON FREIGHTAGE.] On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned, belongs to the insurer of the ship.

§ 1617. REFUSAL TO ACCEPT.] If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured.

§ 1618. OMISSION.] If a person insured omits to abandon, he may, nevertheless, recover his actual loss.

ARTICLE IX.—MEASURE OF INDEMNITY.

§ 1619. VALUATION CONCLUSIVE.] A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

§ 1620. PARTIAL LOSS.] A marine insurer is liable, upon a partial loss, only for such proportion of the amount insured by him, as the loss bears to the value of the whole interest of the insured in the property insured.

§ 1621. PROFITS.] Where profits are separately insured in a contract of marine insurance, the insured is entitled to recover, in case of loss, a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole.

§ 1622. VALUATION PROPORTIONED.] In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

§ 1623. PRESUMPTION.] When profits are valued and insured by a contract of marine insurance, a loss of them is couclusively presumed from a loss of the property out of which they were expected to arise, and the valuation fixes their amount.

§ 1624. RULES FOR ESTIMATE.] In estimating a loss under an open policy of marine insurance, the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk, including

all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured.

2. The value of cargo is its actual cost to the insured, when laden on board, or where that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way, or on arrival.

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated.

§ 1625. ARRIVAL DAMAGED.] If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port of the thing so damaged bears to the market price it would have brought if sound.

§ 1626. EXPENSES.] A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense, in either case, being in addition to the total loss, if that afterwards occurs.

§ 1627. GENERAL AVERAGE.] A marine insurer is liable for a loss falling upon the insured, through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against.

§ 1628. CONTRIBUTION.] Where a person insured by a contract of marine insurance has a demand against others for contribution, he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

§ 1629. NEW FOR OLD.] In the case of a partial loss of a ship, or its equipments, the old materials are to be applied toward payment for the new, and whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent. for each month that it has been fastened to the ship.

CHAPTER III.

FIRE INSURANCE.

§ 1630. INCREASING RISK.] An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, made without

the consent of the insurer, by means within the control of the insured, and increasing the risk entitles an insurer to rescind a contract of fire insurance.

§ 1631. SAME IN USE.] An alteration in the use or condition of a thing insured, from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

§ 1632. ACT OF INSURED.] A contract of fire insurance is not affected by any act of the insured, subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk, and is the cause of a loss.

§ 1633. MEASURE OF INDEMNITY.] If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

CHAPTER IV.

LIFE AND HEALTH INSURANCE.

§ 1634. WHEN PAYABLE.] An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

§ 1635. INSURABLE INTEREST.] Every person has an insurable interest in the life and health:

1. Of himself.

2. Of any person on whom he depends wholly or in part for education or support.

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest, vested in him, depends.

§ 1636. ASSIGNEE.] A policy of insurance upon life or health may pass by transfer, will or succession, to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

§ 1637. NOTICE OF TRANSFER.] Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health unless thereby expressly required.

§ 1638. MEASURE OF INDEMNITY.] Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

§ 1639. INDEMNITY DEFINED.] Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

§ 1640. UNLAWFUL.] An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

§ 1641. VALID.] An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

§ 1642. INCLUDES AGENTS.] An agreement to indemnify against the acts of a certain person, applies not only to his acts, and their consequences, but also to those of his agents.

§ 1643. SEVERAL MEANS EACH.] An agreement to indemnify several persons applies to each unless a contrary intention appears.

§ 1644. JOINT AND SEPARATE.] One who indemnifies another against an act to be done by the latter, is liable jointly with the person indemnified, and separately to every person injured by such act.

§ 1645. RULES OF INTERPRETATION.] In the interpretation of a contract of indemnity, the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith, and in the exercise of reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to conduct such defenses, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith, is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is applicable if he had a good defense upon the merits, which by want of ordinary care he failed to established in the action.

§ 1646. WHEN A SURETY.] Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

§ 1647. BAIL.] Upon those contracts of indemnity which are taken in legal proceedings, as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

§ 1648. HOW REGULATED.] The obligations of bail are governed by the statutes specially applicable thereto.

TITLE XIII.

GUARANTY.

CHAPTER I.

GUARANTY IN GENERAL.

ARTICLE I.—DEFINITION OF GUARANTY.

§ 1649. DEFINITION.] A guaranty is a promise to answer for the debt, default or miscarriage of another person.

§ 1650. WITHOUT CONSENT.] A person may become guarantor even without the knowledge or consent of the principal.

ARTICLE II.—CREATION OF GUARANTY..

§ 1651. CONSIDERATION.] Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation, a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

§ 1652. IN WRITING.] Except as prescribed by the next section, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

§ 1653. EXCEPTION.] A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promiser, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by

one who has received a discharge from an obligation in whole or in part, in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promiser, whether moving from either party to the antecedent obligation, or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guaranty the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

§ 1654. ACCEPTANCE NECESSARY.] A mere offer to guaranty is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

ARTICLE III.—INTERPRETATION OF GUARANTY.

§ 1655. IMPLIED GUARANTY.] In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common, in similar contracts, at the place where the principal contract is to be performed.

§ 1656. OF SOLVENCY.] A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent, and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

§ 1657. RECOVERY.] A guaranty, such as is mentioned in the last section, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

§ 1658. INSOLVENCY PRESUMED.] In the cases mentioned in section 1656, the removal of the principal from the territory leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal, in its effect upon the rights and obligations of the guarantor.

ARTICLE IV.—LIABILITY OF GUARANTORS.

§ 1659. GUARANTY CONSTRUED.] A guaranty is to be deemed unconditional, unless its terms import some condition precedent to the liability of the guarantor.

§ 1660. LIABILITY—WHEN AND HOW.] A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

§ 1661. OF CONDITIONAL OBLIGATION.] Where one guaranties a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

§ 1662. LIMITATION OF OBLIGATION.] The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if, in its terms, it exceeds it, it is reducible in proportion to the principal obligation.

§ 1663. ILLEGAL CONTRACT—VOID.] A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

ARTICLE V.—CONTINUING GUARANTY.

§ 1664. DEFINITION.] A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

§ 1665. REVOCATION.] A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

ARTICLE VI.—EXONERATION OF GUARANTORS.

§ 1666. EXONERATION.] A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

§ 1667. VOID PROMISE.] A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of the last section.

§ 1668. ALTERATION RESCINDED.] The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

§ 1669. PART PERFORMANCE.] The acceptance, by a creditor, of any thing in partial satisfaction of an obligation, reduces the obligation of a

guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

§ 1670. DELAY NO DISCHARGE.] Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

§ 1671. INDEMNITY.] A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

§ 1672. ACT OF LAW.] A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

CHAPTER II.

SURETYSHIP.

ARTICLE I.—WHO ARE SURETIES.

§ 1673. DEFINITION.] A surety is one who, at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

§ 1674. SURETY WHO APPEARS PRINCIPAL.] One who appearsto be a principal, whether by the terms of a written instrument, or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

ARTICLE II.—LIABILITY OF SURETIES.

§ 1675. OBLIGATION.] A surety cannot be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty.

§ 1676. LIKE OTHER CONTRACTS.] In interpreting the terms of a contract of suretyship, the same rules are to be observed in the case of other contracts.

§ 1677. CONTINUES AS SURETY.] Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

§ 1678. EXONERATION.] Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

§ 1679. SAME.] A surety is exonerated:

1. In like manner with a guarantor.

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights, or which lessens his security; or,

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

ARTICLE III.—RIGHTS OF SURETIES.

§ 1680. RIGHTS OF A GUARANTOR.] A surety has all the rights of a guarantor, whether he becomes personally responsible or not.

§ 1681. PROCEEDINGS AGAINST PRINCIPAL.] A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety cannot himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced.

§ 1682. MAY COMPEL PRINCIPAL.] A surety may compel his principal to perform the obligation when due.

§ 1683. REIMBURSEMENT.] If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefitted by his act, except as prescribed by the next section.

§ 1684. SAME.] A surety, upon satisfying the obligations of the principal, is entitled to enforce every remedy which the creditor then has against the principal, to the extent of reimbursing what he has expended; and also to require all his co-sureties to contribute thereto, without regard to the order of time in which they became such.

§ 1685. ENTITLED TO ALL SECURITIES.] A surety is entitled to the benefit of every security for the performance of the principal obligation, held by the creditor, or by a co-surety, at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not.

§ 1686. PRINCIPAL'S PROPERTY FIRST.] Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation.

ARTICLE IV.—RIGHTS OF CREDITORS.

§ 1687. RIGHT TO EVERY SECURITY.—A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation; and may, upon the maturity of the obligation, compel the application of such security to its satisfaction.

ARTICLE V.—LETTER OF CREDIT.

§ 1688. DEFINITION.] A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

§ 1689. TO SEVERAL.] A letter of credit may be addressed to several persons in succession.

§ 1690. WHEN WRITER LIABLE.] The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

§ 1691. CLASSES DEFINED]. A letter of credit is either general or special. When the request for credit, in a letter, is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

§ 1692. GENERAL.] A general letter of credit gives any person to whom it may be shown, authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

§ 1693. SUCCESSIVE CREDITS ON.] Several persons may successively give credit upon a general letter.

§ 1694. CONTINUING GUARANTY.] If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor; but is to be deemed a continuing guaranty.

§ 1695. NOTICE TO WRITER.] The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

§ 1696. CREDIT MUST AGREE WITH LETTER.] If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

TITLE XIV.

LIEN.

CHAPTER I.

LIENS IN GENERAL.

ARTICLE I.—DEFINITION OF LIENS.

§ 1697. DEFINITION.] A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

§ 1698. CLASSIFIED.] Liens are either general or special.

§ 1699. GENERAL LIEN.] A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

§ 1700. SPECIAL—PRIOR LIENS.] 1. A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

2. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

§ 1701. THIS CHAPTER APPLIES.] Contracts of mortgage, pledge, bottomry, or respondentia, are subject to all the provisions of this chapter.

ARTICLE II.—CREATION OF LIENS.

§ 1702. TWO METHODS.] A lien is created:

1. By contract of the parties; or,

2. By operation of law.

§ 1703. WHEN BY LAW.] No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

§ 1704. ON FUTURE INTEREST.] An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent of such interest.

§ 1705. IMMEDIATE EFFECT.] A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

ARTICLE III.—EFFECT OF LIENS.

§ 1706. TRANSFERS NO TITLE.] Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

§ 1707. VOID CONTRACTS.] All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in section 1071.

§ 1708. DOES NOT IMPLY OBLIGATION.] The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

§ 1709. EXTENT LIMITED.] The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

§ 1710. NO COMPENSATION TO HOLDER.] One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 1082 and 1083.

ARTICLE IV.—PRIORITY OF LIENS.

§ 1711. ACCORDING TO DATE.] Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

§ 1712. PRIORITY OF PURCHASE PRICE.] A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

§ 1713. ORDER OF RESORT.] Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

First—To the things upon which he has an exclusive lien.

Second—To the things which are subject to the fewest subordinate liens.

Third—In like manner inversely to the number of subordinate liens upon the same thing; and,

Fourth—When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:

1. To the things which which have not been transferred since the prior lien was created.

2. To the things which have been so transferred without a valuable consideration; and,

3. To the things which have been so transferred for a valuable consideration.

ARTICLE V.—REDEMPTION OF LIEN.

§ 1714. RIGHT OF EVERY OWNER.] Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

§ 1715. INFERIOR—SUBROGATION.] One who has a lien, inferior to another upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

§ 1716. HOW MADE.] Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

ARTICLE VI.—EXTINCTION OF LIENS.

§ 1717. DEEMED ACCESSORY.] A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

§ 1718. SALE OR CONVERSION BY LIENOR.] The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

1719. NOT BY MERE LAPSE OF TIME.] A lien is not extinguished by the mere lapse of the time within which, under the provisions of the code of civil procedure, an action can be brought upon the principal obligation.

§ 1720. APPORTIONMENT OF LIEN.] The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

§ 1721. WHEN RESTORATION EXTINGUISHES.] The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith, and for a good consideration.

CHAPTER II.

MORTGAGE.

ARTICLE I.—MORTGAGE IN GENERAL.

§ 1722. DEFINITION—WRITTEN FORMALITIES.] 1. Mortgage is a contract, by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

2. A mortgage of real property can be created, renewed or extended, only by writing, executed with the formalities required in the case of a grant of real property.

§ 1723. SPECIAL LIEN.] The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

§ 1724. WHAT DEEMED A MORTGAGE.] Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when in the case of personal property it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

§ 1725. EXCEPTIONS.] Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

§ 1726. DEFEASIBILITY MAY BE PROVED.] The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer, for value and without notice, though the fact does not appear by the terms of the instrument.

§ 1727. RULES GOVERNING MORTGAGE.] 1. Any interest in property, which is capable of being transferred may be mortgaged.

2. Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

3. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

4. The assignment of a debt secured by mortgage carries with it the security.

§ 1728. ON PROPERTY ADVERSELY HELD.] A mortgage may be created upon property held adversely to the mortgagor.

2. A mortgage of property held adversely to the mortgagor takes effect from the time at which he, or one claiming under him, obtains possession of the property; but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage.

§ 1729. POWER OF SALE.] A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

§ 1730. POWER OF ATTORNEY.] 1. A power of sale under a mortgage is a trust, and as to real property, can be executed only in the manner prescribed by the code of civil procedure.

2. A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, certified, and recorded in like manner as powers of attorney for grants of real property.

§ 1731. LIEN OF MORTGAGE.] A mortgage is a lien upon everything that would pass by a grant of the property, and upon nothing more.

§ 1732. AGAINST WHOM.] A mortgage is a lien upon the property mortgaged, in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers or incumbrancers in good faith, without notice and for value, and except as otherwise provided by article III of this chapter.

§ 1733. POSSESSION—IMPAIRING SECURITY.] 1. A mortgage does not entitle the mortgagee to the possession of the property unless authorized by the express terms of the mortgage; but after the execution of the mortgage, the mortgagor may agree to such change of possession without a new consideration.

2. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the moregagee's security.

§ 1734. FORECLOSURE.] A mortgagee may foreclose the right of redemption of the mortgagor, in the manner prescribed by the code of civil procedure.

§ 1735. ASSIGNMENT—RECORD—DISCHARGE.] 1. An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

2. When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument, designated in the mortgage, the record of the assignment of the mortgage is not, of itself, notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond or other instrument.

3. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the register, who must certify the acknowledgment in form substantially as follows:

Signed and acknowledged before me, this ..... day of ....., in the year....
A B, Register.

4. A recorded mortgage, if not discharged as provided in the preceding subdivision, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged, or proved and certified, as prescribed by the chapter on recording transfers, stating that the mortgage has been paid, or otherwise satisfied and discharged.

5. A certificate of the discharge of a mortgage, and a proof or acknowledgment thereof, must be recorded at length, and a reference made in the record to the book and page where the mortgage is recorded, and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded.

6. When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on demand of the mortgagor, execute and deliver to him a certificate of the discharge thereof, and must, at the expense of the

mortgagor, acknowledge the execution thereof so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgage, who refuses to execute and deliver to the mortgagor the certificate of discharge, and to acknowledge the execution thereof, or to enter satisfaction or cause satisfaction to be entered of the mortgage, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and also forfeit to him or them the sum of one hundred dollars.

ARTICLE II.—MORTGAGE OF REAL PROPERTY.

§ 1736. FORM.] A mortgage of real property may be made in substantially the following form:

This mortgage, made the .....day of ....., in the year ....., by A B, of ....., mortgagor, to C D, of ....., mortgagee, witnesseth:
That the mortgagor mortgages to the mortgagee (here describe the property,) as security for the payment to him of ..... dollars, on or before the ..... day of ....., in the year....., with interest thereon (or as security for the payment of an obligation, describing it, etc.)
A B.

§ 1737. MORTGAGE FOLLOWS PROPERTY.] When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property, without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid.

§ 1738. EXECUTED LIKE GRANTS.] Mortgages of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect, as grants thereof.

§ 1739. NOTICE BY RECORD.] The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers.

§ 1740. RECORD OF ACCOMPANYING PAPER.] Every grant of real property, or of any estate therein, which appears, by any other writing, to be intended as a mortgage within the meaning of chapter I of this title, must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together, at the same time and place, the grantee can derive no benefit from such record.

§ 1741. DEFEASANCE MUST BE RECORDED.] When a grant of real property purports to be an absolute conveyance, but is intended to be defeasable on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated.

ARTICLE III.—MORTGAGE OF PERSONAL PROPERTY.

§ 1742. FORM.] A mortgage of personal property may be made in substantially the following form:

This mortgage, made the ..... day of ....., in the year ....., by A B, of ..... by occupation a ..... mortgagor, to C D, of ....., by occupation a ....., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of ..... dollars, on (or before) the ..... day of ....., in the year ....., with interest thereon (or as security for the payment of a note or obligation, describing it, etc.)

A B.

§ 1743. TWO METHODS OF FORECLOSURE.] A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by the title on pledge, or by proceedings under the code of civil procedure.

§ 1744. VOID UNLESS FILED—HOW.] A mortgage of personal property is void as against creditors of the mortgagor, and subsequent purchasers and incumbrancers of the property in good faith for value, unless the original, or an authenticated copy thereof, be filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated.

§ 1745. NOTICE OF FILING.] The filing of a mortgage of personal property, in conformity to the provisions of this article, operates as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section situated in the county or counties wherein such mortgage or authenticated copy thereof, is filed.

§ 1746. PROPERTY IN TRANSIT—OF CARRIER.] 1. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor, or to a location for use, is, during a reasonable time for transportation, to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used.

2. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located.

§ 1747. VALID ONLY WHERE DULY FILED.] A single mortgage of personal property, embracing several things of such character or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties, is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in whose office it is filed, and such copy be filed in any other county with the same effect as to the property therein that the original could have been.

§ 1748. FILING VALID THREE YEARS—RENEWAL.] A mortgage of personal property ceases to be valid, as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith, after the expiration of three years from the filing thereof, unless, within thirty days next preceding the expiration of such term, a copy of the mortgage, and a statement of the amount of existing debt for which the mortgagee claims a lien, sworn to and subscribed by him, are filed anew in the office of the register of deeds, in the county in which the mortgagor then resides. And in like manner the mortgage and statement of debt must be again filed

every three years, or it ceases to be valid, as against the parties above mentioned.

§ 1749. EXECUTION—TWO WITNESSES.] A mortgage of personal property must be signed by the mortgagor in the presence of two persons who must sign the same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed.

§ 1750. HOW FILED—CAREFUL CUSTODY—CANCELLATION.] The register of deeds of each of the several counties must receive and file all such instruments as are offered to him, and must keep the same in his office in regular and orderly file, for the public information, and must not permit them or any of them to be removed from his office until canceled. Every such mortgage may be canceled by the register of deeds upon the presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof signed by the mortgagee.

§ 1751. REGISTRY INDEX—ENTRIES.] Every register of deeds with whom any such mortgage or authenticated copy thereof is filed, must indorse a number upon the same in regular order, together with the time of receiving the same, and must enter the name of every party thereto in a book kept for that purpose, alphabetically, placing mortgagors and mortgagees under a separate head, and stating in separate columns, opposite each name, the number indorsed upon the mortgage, the date thereof, and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered, and the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed, which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee.

§ 1752. WHEN MORTGAGOR MAY TAKE PROPERTY.] If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due.

§ 1753. MAY BE ATTACHED.] Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor.

§ 1754. MORTGAGEE'S RIGHTS.] Before the property is so taken, the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the amount thereof with the county treasurer, payable to the order of the mortgagee.

§ 1755. PROCEEDS HOW APPLIED.] When the property thus taken is sold under process, the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and,

2. The balance, if any, in like manner as the proceeds of sales under execction are applied in other cases.

§ 1756. SHIP MORTGAGES.] No mortgage of any ship or vessel, or part thereof, of the United States, shall be valid against any person, (other

than the mortgagor, his heirs and devisees, and persons having actual notice thereof), unless such mortgage is recorded in the office of the collector of the customs where such vessel is registered or enrolled. [Sec. 4192 R. S. of U. S.]

2. Sections 1744 to 1755 inclusive, of this article, do not therefore apply to any mortgage of a ship or vessel (or any part thereof) which is required as above, by act of congress, to be recorded in a particular place or manner.

CHAPTER III.

PLEDGE.

§ 1757. DEFINITION.] Pledge is a deposit of personal property by way of security for the performance of another act.

§ 1758. CONSTRUCTION.] Every contract by which the possession of personal property is transferred, as a security only, is to be deemed a pledge.

§ 1759. POSSESSION NECESSARY.] The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledgeholder, as hereafter prescribed.

§ 1760. INCREASE.] The increase of property pledged is pledged with the property.

§ 1761. LIEN UPON LIEN.] One who has a lien upon property may pledge it to the extent of his lien.

§ 1762. PLEDGE BY APPARENT OWNER.] One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, cannot set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

§ 1763. FOR OTHER PERSON.] Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

§ 1764. PLEDGEHOLDER.] A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged; who, if he accepts the deposit, is called a pledgeholder.

§ 1765. CANNOT WITHDRAW.] One who pledges property as security for the obligation of another, cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent.

§ 1766. EXONERATION OF HOLDER.] A pledgeholder for reward cannot exonerate himself from his undertaking; and a gratuitous pledgeholder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledgeholder, and, in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

§ 1767. DUTIES.] A pledgeholder must enforce all the rights of the pledgee, unless authorized by him to waive them.

§ 1768. DEPOSITARY.] A pledgee, or a pledgeholder for reward, assumes the duties and liabilities of a depositary for reward.

§ 1769. SAME.] A gratuitous pledgeholder assumes the duties and liabilities of a gratuitous depositary.

§ 1770. MISREPRESENTATION.] Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

§ 1771. SALE—WHEN.] When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

§ 1772. DEMAND REQUIRED.] Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

§ 1773. NOTICE TO PLEDGOR.] A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale, as will enable the pledgor to attend.

§ 1774. WAIVER.] Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

§ 1775. HOW DONE.] A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due, but cannot waive it in any other manner except by contract.

§ 1776. AUCTION.] The sale by a pledgee, of property pledged, must be made by public auction, in the manner and upon the notice to the public usual at the place of sale, in respect to auction sales of similar property; and must be for the highest obtainable price.

§ 1777. SECURITIES.] A pledgee cannot sell any evidence of debt pledged to him, except the obligations of governments, states or corporations; but he may collect the same when due.

§ 1778. SALE REQUIRED.] Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

§ 1779. ACCOUNT.] After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obligation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

§ 1780. SAME.] When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

§ 1781. CANNOT PURCHASE.] A pledgee or pledgeholder cannot purchase the property pledged except by direct dealing with the pledgor.

§ 1782. FORECLOSURE.] Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

CHAPTER IV.

BOTTOMRY.

§ 1783. DEFINITION.] Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage or period.

§ 1784. OWNER MAY.] The owner of a ship may hypothecate it or its freightage, upon bottomry, for any lawful purpose, and at any time and place.

§ 1785. MASTER MAY.] The master of a ship may hypothecate it upon bottomry, only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage, or for securing the safety of the ship.

§ 1786. SAME—LIMITED.] The master of a ship can hypothecate it upon bottomry, only when he cannot otherwise relieve the necessities of the ship, and is unable to reach adequate funds of the owner, or to obtain any upon the personal credit of the owner, and when previous communication with him is precluded by the urgent necessity of the case.

§ 1787. SAME—FREIGHTAGE.] The master of a ship may hypothecate freightage upon bottomry, under the same circumstances as those which authorize an hypothecation of the ship by him.

§ 1788. INTEREST.] Upon a contract of bottomry, the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant.

§ 1789. FORECLOSURE.] A lender upon a contract of bottomry, made by the master of a ship as such, may enforce the contract, though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if, after due diligence and inquiry, the lender had reasonable grounds to believe, and did in good faith believe, in the existence of such circumstances.

§ 1790. VOID.] A stipulation, in a contract of bottomry, imposing any liability for the loan independent of the maritime risks, is void.

§ 1791. NO RECOVERY.] In case of a total loss of the thing hypothecated, from a risk to which the loan was subject, the lender upon bottomry can recover nothing; in case of a partial loss, he can recover only to the extent of the net value to the owner of the part saved.

§ 1792. WHEN LOAN DUE.] Unless it is otherwise expressly agreed, a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract.

§ 1793. LOST BY OMISSION.] A bottomry lien is independent of possession, and is lost by omission to enforce it within a reasonable time.

§ 1794. PREFERENCE OVER OTHER LIEN.] A bottomry lien, if created out of a real or apparent necessity, in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of materialmen for supplies or repairs, indispensable to the safety of the ship, and a subsequent lien for salvage.

§ 1795. AMONG EACH OTHER.] Of two or more bottomry liens on the same subject, the latter in date has preference, if created out of necessity.

CHAPTER V.

RESPONDENTIA.

§ 1796. DEFINITION.] Respondentia is a contract by which a cargo, or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maratime risk.

§ 1797. BY OWNER.] The owner of cargo may hypothecate it upon respondentia, at any time and place, and for any lawful purpose.

§ 1798. BY MASTER.] The master of a ship may hypothecate its cargo upon respondentia, only in a case in which he would be authorized to hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies, which are necessary for the successful accomplishment of the voyage; and he cannot do so, even in such case, if there is no reasonable prospect of benefiting the cargo thereby.

§ 1799. REFERENCE.] The provisions of sections 1788 to 1795 apply equally to loans on respondentia.

§ 1800. CARGO OWNER.] The owner of a ship is bound to repay to the owner of its cargo all which the latter is compelled to pay, under a contract of respondentia made by the master, in order to discharge its lien.

CHAPTER VI.

OTHER LIENS.

§ 1801. FOR PRICE OF REALTY.] One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid, and unsecured otherwise than by the personal obligation of the buyer.

§ 1802. WAIVER OF SAME.] Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

§ 1803. CERTAIN LIENS VALID.] The liens defined in sections 1801 and 1805 are valid against every one claiming under the debtor, except a purchaser or incumbrancer in good faith and for value.

§ 1804. SAME AS PLEDGE.] One who sells personal property has a special

lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price.

§ 1805. PURCHASER'S LIEN.] One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

§ 1806. FOR SERVICES.] Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service.

§ 1807. OF FACTOR.] A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

§ 1808. BANKER.] A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

§ 1809. SHIP MASTER.] The master of a ship has a general lien, independent of possession, upon the ship and freightage, for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages.

§ 1810. SEAMEN.] The mate and seamen of a ship have a general lien, independent of possession, upon the ship and freightage for their wages, which is superior to every other lien.

§ 1811. BY LEVY.] An officer, who levies an attachment or execution upon personal property, acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

§ 1812. VARIOUS LIENS.] Innkeepers, boarding-house keepers, attorneys-at-law, and others, have liens which are defined and regulated by and in the various codes.

§ 1813. JUDGMENT.] The lien of a judgment is regulated by the code of civil procedure.

§ 1814. MECHANICS.] 1. The liens of mechanics, for materials and services upon real property, are regulated by the code of civil procedure.

2. A person who makes, alters, or repairs any article of personal property, at the request of the owner or legal possessor of the property, has a lien on the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two months after the work is done, the person may proceed to sell the property at public auction, by giving ten days public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper pub-

lished in the county, then by posting up notices of the sale in three of the most public places in the town where the work was done, for ten days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien, and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

CHAPTER VII.

STOPPAGE IN TRANSIT.

§ 1815. WHEN OPERATIVE.] A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof.

§ 1816. INSOLVENCY DEFINED.] A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so.

§ 1817. TRANSIT ENDS.] The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless such agent is employed merely to forward the property to the consignee.

§ 1818. HOW EFFECTED.] Stoppage in transit can be effected only by notice to the carrier or depositary of the property, or by taking actual possession thereof.

§ 1819. EFFECT OF.] Stoppage in transit does not of itself rescind a sale, but is a means of enforcing the lien of the seller.

TITLE XV.

NEGOTIABLE INSTRUMENTS.

CHAPTER I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE I.—GENERAL DEFINITIONS.

§ 1820. SCOPE OF TITLE.] The provisions of this title apply only to negotiable instruments, as defined in this article.

§ 1821. DEFINITION.] A negotiable instrument is a written promise or request for the payment of a certain sum of money, to order or bearer, in conformity to the provisions of this article.

§ 1822. PAYABLE IN MONEY—CERTAIN.] A negotiable instrument must be made payable in money only, and without any condition not certain of fulfillment.

§ 1823. PAYEE CERTAIN.] The person to whose order a negotiable instrument is made payable, must be ascertainable at the time the instrument is made.

§ 1824. NOT INCLUDED.] A negotiable instrument may give to the payee an option between the payment of the sum specified therein, and the performance of another act; but as to the latter, the instrument is not within the provisions of this title.

§ 1825. DATE, PLACE AND TIME.] A negotiable instrument may be with or without date, and with or without designation of the time or place of payment.

§ 1826. COLLATERAL.] A negotiable instrument may contain a pledge of collateral security, with authority to dispose thereof.

§ 1827. SINGLE CONTRACT.] A negotiable instrument must not contain any other contract than such as is specified in this article.

§ 1828. NOMINAL DATE.] Any date may be inserted by the maker of a negotiable instrument, whether past, present or future, and the instrument is not invalidated by his death or incapacity at the time of the nominal date.

§ 1829. CLASSIFIED.] There are six classes of negotiable instruments, namely:

1. Bills of exchange.
2. Promissory notes.
3. Bank notes.
4. Cheques.
5. Bonds.
6. Certificates of deposit.

ARTICLE II.—INTERPRETATION OF NEGOTIABLE INSTRUMENTS.

§ 1830. WHEN PAYABLE.] A negotiable instrument which does not specify the time of payment, is payable immediately.

§ 1831. WHERE.] A negotiable instrument which does not specify a place of payment, is payable at the residence or place of business of the maker, or wherever he may be found.

§ 1832. TO WHOM.] An instrument, otherwise negotiable in form, payable to a person named, but adding the words, "or to his order," or "or to bearer," or words equivalent thereto, is in the former case payable to the written order of such person, and the latter case, payable to the bearer.

§ 1833. SAME AS TO BEARER.] A negotiable instrument, made payable to the order of the maker, or of a fictitious person, if issued by the maker for a valid consideration, without indorsement, has the same effect against him and all other persons having notice of the facts, as if payable to the bearer.

§ 1834. SAME.] A negotiable instrument, made payable to the order of a person obviously fictitious, is payable to the bearer.

§ 1835. CONSIDERATION PRESUMED.] The signature of every drawer, acceptor and indorser of a negotiable instrument, is presumed to have been made for a valuable consideration, before the maturity of the instrument, and in the ordinary course of business.

ARTICLE III.—INDORSEMENT.

§ 1836. DEFINITION.] One who writes his name upon a negotiable instrument, otherwise than as a maker or acceptor, and delivers it with his name thereon to another person, is called an indorser, and his act is called indorsement.

§ 1837. AGREEMENT TO INDORSE.] One who agrees to indorse a negotiable instrument is bound to write his signature upon the back of the instrument, if there is sufficient space thereon for that purpose.

§ 1838. ON ANNEXED PAPER.] When there is not room for a signature upon the back of a negotiable instrument, a signature equivalent to an indorsement thereof may be made upon a paper annexed thereto.

§ 1839. CLASSIFID.] An indorsement may be general or special.

§ 1840. GENERAL.] A general indorsement is one by which no indorsee is named.

§ 1841. SPECIAL.] A special indorsement specifies the indorsee.

§ 1842. CHANGED TO SPECIAL.] A negotiable instrument bearing a general indorsement, cannot be afterwards specially indorsed; but any lawful holder may turn a general indorsement into a special one by writing above it a direction for payment to a particular person.

§ 1843. NOT NEGOTIABLE.] A special indorsement may, by express words for that purpose, but not otherwise, be so made as to render the instrument not negotiable.

§ 1844. WARRANTIES IMPLIED.] Every indorser of a negotiable instrument warrants to every subsequent holder thereof, who is not liable thereon to him:

1. That it is in all respects what it purports to be.
2. That he has a good title to it.
3. That the signatures of all prior parties are binding upon them.
4. That if the instrument is dishonored, the indorser will, upon notice thereof duly given to him, or without notice, where it is excused by law, pay the same in full, with interest; unless exonerated under the provisions of sections 1894, 1932 or 1934.

§ 1845. LIABILITY.] One man who indorses a negotiable instrument before it is delivered to the payee, is liable to the payee, thereon, as an indorser.

§ 1846. QUALIFIED INDORSEMENT.] An indorser may qualify his indorsement with the words, "without recourse," or equivalent words; and upon such indorsement he is responsible only to the same extent as in the case of a transfer without indorsement.

§ 1847. SAME.] Except as otherwise prescribed by the last section, an indorsement without recourse has the same effect as any other indorsement.

§ 1848. PRIOR INDORSERS.] An indorsee of negotiable instrument has the same rights against every prior party thereto, that he would have had if the contract had been made directly between them in the first instance.

§ 1849. RIGHTS OF GUARANTOR.] An indorser has all the rights of a guarantor, as defined by the chapter on guaranty in general, and is exonerated from liability in like manner.

§ 1850. ACCOMMODATION.] One who indorses a negotiable instrument, at the request, and for the accommodation of another party to the instrument, has all the rights of a surety, as defined by the chapter on suretyship, and is exonerated in like manner, in respect to every one having notice of the facts, except that he is not entitled to contribution from subsequent indorsers.

§ 1851. NOT EXONERATED.] The want of consideration for the undertaking of a maker, acceptor, or indorser of a negotiable instrument, does not exonerate him from liability thereon to an indorsee in good faith for a consideration.

§ 1852. DEFINITION.] An indorsee in due course is one who, in good faith, in the ordinary course of business, and for value, before its apparent maturity or presumptive dishonor, and without knowledge of its actual dishonor, acquires a negotiable instrument duly indorsed to him, or indorsed generally, or payable to the bearer.

§ 1853. ABSOLUTE TITLE.] An indorsee of a negotiable instrument, in due course, acquires an absolute title thereto, so that it is valid in his hands, notwithstanding any provision of law making it generally void or voidable, and notwithstanding any defect in the title of the person from whom he acquired it.

§ 1854. BLANK INDORSEMENT.] One who makes himself a party to an instrument intended to be negotiable, but which is left wholly or partly in blank, for the purpose of filling afterwards, is liable upon the instrument to an indorsee thereof in due course, in whatever manner and at whatever time it may be filled, so long as it remains negotiable in form.

ARTICLE IV.—PRESENTMENT FOR PAYMENT.

§ 1855. DEMAND.] It is not necessary to make a demand of payment upon the principal debtor in a negotiable instrument, in order to charge him; but if the instrument is by its terms payable at a specified place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to an offer of payment upon his part.

§ 1856. HOW PRESENTED.] Presentment of a negotiable instrument for

payment when necessary must be made as follows, as nearly as by reasonable diligence it is practicable:

One—The instrument must be presented by the holder.

Two—The instrument must be presented to the principal debtor, if he can be found at the place where presentment should be made; and if not, then it must be presented to some other person having charge thereof, or employed therein, if one can be found there.

Three—An instrument which specifies a place for its payment must be presented there; and if the place specified includes more than one house, then at the place of residence or business of the principal debtor, if it can be found therein.

Four—An instrument which does not specify a place for its payment must be presented at the place of residence or business of the principal debtor, or wherever he may be found, at the option of the presentor; and,

Five—The instrument must be presented upon the day of its maturity, or, if it be payable on demand, it may be presented upon any day. It must be presented within reasonable hours; and, if it be payable at a banking house, within the usual banking hours of the vicinity, but, by the consent of the person to whom it should be presented, it may be presented at any hour of the day.

Six—If the principal debtor have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for payment is excused.

§ 1857. APPARENT MATURITY.] The apparent maturity of a negotiable instrument, payable at a particular time, is the day on which by its terms it becomes due; or, when that is a holiday, the next business day.

§ 1858. PRESUMED DISHONOR.] A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance, is presumed to have been dishonored.

§ 1859. MATURITY DEFINED.] The apparent maturity of a bill of exchange, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, ten days after its date, in addition to the time which would suffice, with ordinary diligence, to forward it for acceptance.

§ 1860. SAME OF NOTE.] The apparent maturity of a promissory note, payable at sight or on demand, is:

1. If it bears interest, one year after its date; or,

2. If it does not bear interest, six months after its date.

§ 1861. ADDED TIME.] Where a promissory note is not payable at a certain time after sight or demand, such time is to be added to the periods mentioned in the last section.

§ 1862. CONDITIONS REQUIRED.] A party to a negotiable instrument may require, as a condition concurrent to its payment by him:

One—That the instrument be surrendered to him, unless it is lost or destroyed, or the holder has other claims upon it; or,

Two—If the holder has a right to retain the instrument, and does retain it, then that a receipt for the amount paid, or an exoneration of the party paying, be written thereon; or,

Three—If the instrument is lost or destroyed, then that the holder give to him a bond, executed by himself and two sufficient sureties, to indemnify him against any lawful claim thereon.

ARTICLE V.—DISHONOR OF NEGOTIABLE INSTRUMENTS.

§ 1863. DISHONOR DEFINED.] A negotiable instrument is dishonored, when it is either not paid, or not accepted, according to its tenor, on presentment for the purpose, or without presentment, where that is excused.

§ 1864. NOTICE HOW GIVEN.] Notice of the dishonor of a negotiable instrument may be given:

1. By a holder thereof; or,

2. By any party to the instrument who might be compelled to pay it to the holder, and who would, upon taking it up, have a right to reimbursement from the party to whom the notice is given.

§ 1865. FORM OF NOTICE.] A notice of dishonor may be given in any form which describes the instrument with reasonable certainty, and substantially informs the party receiving it that the instrument has been dishonored.

§ 1866. HOW SERVED.] A notice of dishonor may be given:

1. By delivering it to the party to be charged, personally, at any place; or,

2. By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or,

3. By properly folding the notice, directing it to the party to be charged at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

§ 1867. SERVICE AFTER DEATH.] In case of the death of a party to whom notice of dishonor should otherwise be given, the notice must be given to one of his personal representatives; or if there are none, then to any member of his family who resided with him at his death; or if there is none, then it must be mailed to his last place of residence, as prescribed by subdivision 3 of the last section.

§ 1868. SAME VALID.] A notice of dishonor sent to a party after his death, but in ignorance thereof, and in good faith, is valid.

§ 1869. IF NOT BY MAIL, WHEN.] Notice of dishonor, when given by the holder of an instrument, or his agent, otherwise than by mail, must be given on the day of dishonor, or on the next business day thereafter.

§ 1870. NOTICE BY MAIL.] When notice of dishonor is given by mail, it must be deposited in the post office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the instrument was dishonored, for the place to which the notice should be sent.

§ 1871. BY AGENT.] When the holder of a negotiable instrument, at the time of its dishonor, is a mere agent for the owner, it is sufficient for him to give notice to his principal in the same manner as to an indorser, and his principal may give notice to any other party to be charged, as if he were himself an indorser. And if an agent of the owner employs a sub-agent, it is sufficient for each successive agent or sub-agent to give notice in like manner to his own principal.

§ 1872. NOTICE TO PRIOR PARTIES.] Every party to a negotiable instrument receiving notice of its dishonor, has the like time thereafter to give similar notice to prior parties, as the original holder had after its dishonor. But this additional time is available only to the particular party entitled thereto.

§ 1873. BENEFITS ALL PARTIES.] A notice of the dishonor of a negotiable instrument, if valid in favor of the party giving it, inures to the benefit of all other parties thereto, whose right to give the like notice has not then been lost.

ARTICLE VI.—EXCUSE OF PRESENTMENT AND NOTICE.

§ 1874. EXCUSES CLASSIFIED.] Notice of dishonor is excused:

1. When the party by whom it should be given cannot, with reasonable diligence, ascertain either the place of residence or business of the party to be charged; or,

2. When there is no post office communication between the town of the party by whom the notice should be given, and the town in which the place of residence or business of the party to be charged is situated; or,

3. When the party to be charged is the same person who dishonors the instrument; or,

4. When the notice is waived by the party entitled thereto.

§ 1875. PRESENTMENT EXCUSED.] Presentment and notice are excused as to any party to a negotiable instrument, who informs the holder, within ten days before its maturity, that it will be dishonored.

§ 1876. SECURITY EXCUSES.] If, before or after the maturity of an instrument, an indorser has received full security for the amount thereof, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused.

§ 1877. DELAY EXCUSED.] Delay in presentment, or in giving notice of dishonor, is excused, when caused by circumstances which the party delaying could not have avoided by the exercise of reasonable care and diligence.

§ 1878. EXTENT OF WAIVER.] A waiver of presentment waives notice of dishonor, also, unless the contrary is expressly stipulated; but a waiver of notice does not waive presentment.

§ 1879. WAIVER OF PROTEST.] A waiver of protest on any negotiable instrument other than a foreign bill of exchange, waives presentment and notice.

ARTICLE VII.—EXTINCTION OF NEGOTIABLE INSTRUMENTS.

§ 1880. WHAT DOES.] The obligation of a party to a negotiable instrument is extinguished:

1. In like manner with that of parties to contracts in general; or,

2. By payment of the amount due upon the instrument, at or after its maturity, in good faith and in the ordinary course of business, to any person having actual possession thereof, and appearing, by its terms, to be entitled to payment.

§ 1881. REVIVOR.] If, after its extinction, a negotiable instrument comes into the possession of an indorsee in due course, the obligation thereof revives in his favor.

CHAPTER II.

BILLS OF EXCHANGE.

ARTICLE I.—FORM AND INTERPRETATION OF A BILL.

§ 1882. FORM OF BILL.] A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money.

§ 1883. ADDITIONAL DRAWEE.] A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

§ 1884. PARTS OF A SET.] A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set.

§ 1885. IN THREE PARTS.] An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it.

§ 1886. ONE PART FOR WHOLE.] Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

§ 1887. PLACE OF PAYMENT.] A bill of exchange is payable:

One—At the place where, by its terms, it is made payable; or,

Two—If it specify no place of payment, then at the place to which it is addressed; or,

Three—If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

§ 1888. DRAWER.] The rights and obligations of the drawer of a bill of exchange, are the same as those of the first indorser of any other negotiable instrument.

ARTICLE II.—DAYS OF GRACE.

§ 1889. WHAT INSTRUMENTS HAVE GRACE.] Days of grace are allowed, unless there be an express stipulation to the contrary, as follows:

One—On all bills of exchange, or drafts, payable at sight, whether foreign or inland, the party or parties upon whom the same are drawn shall have three days of grace after presentation for payment of the same; but Sundays and holidays are excluded from the computation of the aforesaid days of grace.

Two—The like days of grace, to be computed as above, shall be allowed for the payment of all promissory notes, bills of exchange, and drafts, on the face of which time is given or specified; and,

Three—Notes due on demand shall also be subject to the like days of grace, in manner as aforesaid, after demand is made for the payment of the same.

ARTICLE III.—PRESENTMENT FOR ACCEPTANCE.

§ 1890. BEFORE PAYMENT.] At any time before a bill of exchange is payable the holder may present it to the drawee for acceptance, and if acceptance is refused the bill is dishonored.

§ 1891. MANNER OF PRESENTMENT.] Presentments for acceptance must be made in the following manner, as nearly as by reasonable diligence it is practicable:

One—The bill must be presented by the holder or his agent.

Two—It must be presented on a business day, and within reasonable hours.

Three—It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and,

Four—The drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance.

§ 1892. JOINT DRAWEES.] Presentment for acceptance to one of several joint drawees, and refusal by him, dispenses with presentment to the others.

§ 1893. DRAWEE IN NEED.] A bill of exchange, which specifies a drawee in case of need, must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

§ 1894. WHEN MADE.] When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated, if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

ARTICLE IV.—ACCEPTANCE.

§ 1895. HOW MADE.] An acceptance of a bill must be made in writing, by the drawee, or by an acceptor for honor; and may be made by the acceptor writing his name across the face of the bill, with or without other words.

§ 1896. HOLDER ENTITLED TO.] The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored, if the drawee refuses to write across its face an unqualified acceptance.

§ 1897. WHAT DEEMED SUFFICIENT.] The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance:

1. An acceptance written upon any part of the bill, or upon a separate paper.

2. An acceptance qualified so far only as to make the bill payable at a particular place within the city or town, in which, if the acceptance was unqualified, it would be payable; or,

3. A refusal by the drawee to return the bill to the holder after presentment; in which case the bill is payable immediately, without regard to its terms.

§ 1898. UPON SEPARATE PAPER.] The acceptance of a bill of exchange, by a separate instrument, binds the acceptor to one, who, upon the faith thereof, has the bill for value or other good consideration.

§ 1899. PROMISE TO ACCEPT.] An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance thereof, in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration.

§ 1900. CANCELLATION OF.] The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person who has given value for it upon the faith of such acceptance.

§ 1901. ADMISSIONS BY.] The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine.

ARTICLE V.—ACCEPTANCE OR PAYMENT FOR HONOR.

§ 1902. WHEN MAY BE DONE.] On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party thereto.

§ 1903. WHAT HOLDER MUST ACCEPT.] The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor.

§ 1904. FOR HONOR, HOW MADE.] An acceptor or payer for honor must write a memorandum upon the bill, stating therein for whose honor he

accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact of such acceptance or payment. Having done so, he is entitled to reimbursement from such parties, and from all parties prior to them.

§ 1905. HOW ENFORCED.] A bill of exchange which has been accepted for honor, must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill.

§ 1906. NOTICE BY HOLDER REQUIRED.] The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

ARTICLE VI.—PRESENTMENT FOR PAYMENT.

§ 1907. PLACE.] If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment, when presentment for payment is necessary.

§ 1908. PRESENTED WHEN ACCEPTED.] A bill of exchange, accepted payable at a particular place, must be presented at that place for payment when presentment for payment is necessary, and need not be presented elsewhere.

§ 1909. REASONABLE DILIGENCE.] If a bill of exchange, payable at sight, or on demand, without interest, is not duly presented for payment, within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused.

§ 1910. NO EXONERATION.] Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party thereto.

ARTICLE VII.—EXCUSE OF PRESENTMENT AND NOTICE.

§ 1911. LACK OF CAPACITY TO ACCEPT.] The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it.

§ 1912. BEYOND CONTROL.] Delay in the presentment of a bill of exchange for acceptance is excused, when caused by circumstances over which the holder has no control.

§ 1913. WHEN FORBIDDEN.] Presentment of a bill of exchange for acceptance or payment, and notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept, or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay the same.

ARTICLE VII.—FOREIGN BILLS.

§ 1914. DEFINITION.] An inland bill of exchange is one drawn and payable within this territory. All others are foreign.

§ 1915. PROTEST NECESSARY.] Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest.

§ 1916. BY WHOM PROTESTED.] Protest must be made by a notary public, if with reasonable diligence one can be obtained; and if not, then by any reputable person in the presence of two witnesses.

§ 1917. FORM OF PROTEST.] Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept, or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and finally protesting against all the parties to be charged.

§ 1918. PLACE OF PROTEST.] A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance; and a protest for non-payment in the city or town in which it is presented for payment.

§ 1919. WHEN NOTED.] A protest must be noted on the day of the presentment, or on the next business day; but it may be written out at any time thereafter.

§ 1920. PROTEST EXCUSED.] The want of protest of a foreign bill of exchange or delay in making the same, is excused in like cases with the want or delay of presentment.

§ 1921. NOTICE HOW GIVEN.] Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest.

§ 1922. PROTEST WAIVED BY BILL.] If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto, in like manner as of an inland bill; except that if any indorser of such a bill expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice thereof given to him and to all subsequent indorsers.

§ 1923. DECLARATION FOR HONOR.] One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

§ 1924. DAMAGES INCLUDE.] Damages are allowed as hereinafter prescribed, as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses, and all other damages in favor of holders for value only, upon bills of exchange drawn or negotiated within this territory, and protested for non-acceptance or non-payment.

§ 1925. RATES OF DAMAGES.] Damages are allowed under the last section upon bills drawn upon any person:

One—If drawn upon any person in this territory, two dollars upon each one hundred dollars of the principal sum specified in the bill.

Two—If drawn upon any person out of this territory, but in the states

of Nebraska, Iowa, Minnesota, Wisconsin, Illinois and Missouri, or in the territory of Montana, three dollars upon each hundred dollars of the principal sum specified in the bill.

Three—If drawn upon any person in any of the United States or territories other than those above named, five dollars upon each hundred dollars of the principal sum specified in the bill.

Four—If drawn upon any person in any place in a foreign country, ten dollars upon each hundred dollars of the principal sum specified in the bill.

And from the time of notice of dishonor and demand of payment, lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned as above.

§ 1926. IN UNITED STATES MONEY.] If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

§ 1927. IN FOREIGN MONEY.] If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

CHAPTER III.

PROMISSORY NOTES.

§ 1928. DEFINITION.] A promissory note is an instrument, negotiable in form, whereby the signer promises to pay a specified sum of money.

§ 1929. CERTAIN BILL A NOTE.] An instrument in the form of a bill of exchange, but drawn upon and accepted by the drawer himself, is to be deemed a promissory note.

§ 1930. CONVERTED INTO NOTE.] A bill of exchange, if accepted, with the consent of the owner, by a person other than the drawee, or an acceptor for honor, becomes in effect the promissory note of such person, and all prior parties thereto are exonerated.

§ 1931. LAWS APPLICABLE.] Chapter I of this title, and sections 1889 and 1910, of this code, apply to promissory notes.

§ 1932. DELAY EXONERATES.] If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated unless such presentment is excused.

CHAPTER IV.

CHEQUES.

§ 1933. DEFINITION.] A cheque is a bill of exchange drawn upon a bank or banker, or a person described as such upon the face thereof, and payable on demand, without interest.

§ 1934. LIKE BILL, EXCEPT.] A cheque is subject to all the provisions of this code concerning bills of exchange, except that:

One—The drawer and indorsers are exonerated by delay in presentment, only to the extent of the injury which they suffer thereby.

Two—An indorsee, after its apparent maturity, but without actual notice of its dishonor, acquires a title equal to that of an indorsee before such period.

Three—No days of grace are allowed on cheques.

CHAPTER V.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

§ 1935. CONTINUING NEGOTIABILITY.] A bank note remains negotiable, even after it has been paid by the maker.

§ 1936. KNOWN DISHONOR.] A transferree of a bond, bank note or certificate of deposit, after its apparent maturity or actual dishonor within his knowledge, acquires a title equal to that of a transferree before such event.

TITLE XVI.

GENERAL PROVISIONS.

§ 1937. THE CONTRACT MAY WAIVE THESE TITLES.] Except where it is otherwise declared the provisions of the foregoing fifteen titles of this part, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

DIVISION FOURTH.

GENERAL PROVISIONS.

APPLICABLE TO PERSONS, PROPERTY AND OBLIGATIONS, OR TO TWO OF THOSE SUBJECTS.

PART 1.

RELIEF.

TITLE I.

RELIEF IN GENERAL.

§ 1938. SPECIES OF RELIEF.] As a general rule, compensation is the relief or remedy provided by the law of this territory for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this part of the civil code.

§ 1939. RELIEF FROM FORFEITURE.] Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeit-

ure, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty.

TITLE II.

COMPENSATORY RELIEF.

CHAPTER I.

DAMAGES IN GENERAL.

ARTICLE I.—GENERAL PRINCIPLES.

§ 1940. DAMAGES FOR ANY INJURY.] Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

§ 1941. DEFINITION.] Detriment is a loss or harm suffered in person or property.

§ 1942. FUTURE DETRIMENT.] Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof, or certain to result in the future.

ARTICLE II.—INTEREST AS DAMAGES.

§ 1943. INTEREST UPON DAMAGES.] Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

§ 1944. JURY MAY ALLOW.] In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud or malice, interest may be given, in the discretion of the jury.

§ 1945. WAIVER OF INTEREST.] Accepting payment of the whole principal, as such, waives all claim to interest.

ARTICLE III.—EXEMPLARY DAMAGES.

§ 1946. WHEN JURY MAY GIVE.] In any action for the breach of an obligation not arising from contract, where the defendant has been guilty of

oppression, fraud or malice, actual or presumed, the jury, in addition to the actual damages, may give damages for the sake of example, and by way of punishing the defendant.

CHAPTER II.

MEASURE OF DAMAGES.

ARTICLE I.—DAMAGES FOR BREACH OF CONTRACT.

§ 1947. PROXIMATE RESULTS.] For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

§ 1948. MUST BE CERTAIN.] No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin.

§ 1949. PRINCIPAL AND INTEREST.] The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation, with interest thereon.

§ 1950. FOREIGN BILLS.] For the dishonor of foreign bills of exchange, the damages are prescribed by sections 1925, 1926 and 1927 of this code.

§ 1951. COVENANTS IN GRANTS.] The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty, or of quiet enjoyment, in a grant of an estate in real property, is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach, bore, at the time of the grant, to the value of the whole property.

2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,

3. Any expenses properly incurred by the covenantee in defending his possession.

§ 1952. INCUMBRANCES.] The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property, is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value, at the time of the grant, of the property affected by the breach, as compared with the whole; or, in the latter case, interest on a like amount.

§ 1953. AGREEMENT TO CONVEY.] The detriment caused by the breach of an agreement to convey an estate in real property, is deemed to be the

price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest thereon; but adding thereto, in case of bad faith, the difference between the price agreed to be paid, and the value of the estate agreed to be conveyed, at the time of the breach, and the expenses properly incurred in preparing to enter upon the land.

§ 1954. SAME OF BUY.] The detriment caused by the breach of an agreement to purchase an estate in real property, is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

§ 1955. DELIVERY OF PERSONALITY.] The detriment caused by the breach of a seller's agreement to delivery personal property, the price of which has not been fully paid in advance, is deemed to be the excess, if any, of the value of the property to the buyer, over the amount which would have been due to the seller under the contract, if it had been fulfilled.

§ 1956. SAME.] The detriment caused by the breach of a seller's agreement to deliver personal property, the price of which has been fully paid to him in advance, is deemed to be the same as in case of a wrongful conversion.

§ 1957. AGREEMENT TO ACCEPT AND PAY.] The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is vested in him, is deemed to be the contract price.

§ 1958. TO BUY PERSONALTY.] The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him is deemed to be:

1. If the property has been resold, pursuant to section 1804, the excess, if any, of the amount due from the buyer, under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 1804, the excess, if any, of the amount due from the buyer, under the contract, over the value to the seller, together with the excess, if any, of the expenses properly incurred in carrying the property to market, over those which would have been incurred for the carriage thereof, if the buyer had accepted it.

§ 1959. BREACH OF WARRANTY TO TITLE.] The detriment caused by the breach of a warranty of the title of personal property sold, is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay, in an action brought for the property by the true owner.

§ 1960. AS TO QUALITY.] The detriment caused by the breach of a warranty of the quality of personal property, is deemed to be the excess, if any, of the value which the property would have had, at the time to which the warranty referred, if it had been complied with, over its actual value at that time.

§ 1961. FITNESS.] The detriment caused by the breach of a warranty of the fitness of an article of personal property for a particular purpose, is deemed to be that which is defined by the last section, together with a

fair compensation for the loss incurred by an effort in good faith to use it for such purpose.

§ 1962. BY CARRIER TO ACCEPT.] The detriment caused by the breach of a carrier's obligation to accept freight, messages or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage, and the amount it would be necessary to pay for the same service, when it ought to be performed.

§ 1963. TO DELIVER.] The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof, at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled, if he had completed the delivery.

§ 1964. DELAY BY CARRIER.] The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered and the day of its actual delivery.

§ 1965. BY AGENT OF AUTHORITY.] The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

§ 1966. OF MARRIAGE.] The damages for the breach of a promise of marriage rest in the sound discretion of the jury.

CHAPTER II.

DAMAGES FOR WRONGS.

§ 1967. PROXIMATE DETRIMENT.] For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

§ 1968. WRONGFUL OCCUPATION.] The detriment caused by the wrongful occupation of real property, in cases not embraced in sections 1969, 1975, 1976 and 1977, is deemed to be the value of the use of the property for the time of such occupation, not exceeding six years next preceding the commencement of the action or proceeding to enforce the right to damages, and the costs, if any, of recovering the possession.

§ 1969. DETAINER BY TRUSTEE.] For willfully holding over real property by a person who entered upon the same, as guardian or trustee for an infant, or by right of an estate terminable with any life or lives, after the termination of the trust or particular estate, without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over.

§ 1970. CONVERSION OF PERSONALTY.] The detriment caused by the wrongful conversion of personal property is presumed to be:

One—The value of the property at the time of the conversion, with the interest from that time; and,

Two—A fair compensation for the time and money properly expended in pursuit of the property.

§ 1971. SAME—PRESUMPTION.] The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

§ 1972. DAMAGES TO LIENOR.] One having a mere lien on personal property, cannot recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 1970 for loss of time and expenses.

§ 1973. FOR SEDUCTION.] The damages for seduction rest in the sound discretion of the jury.

§ 1974. EXEMPLARY DAMAGES.] For wrongful injuries to animals, being subjects of property, committed willfully, or by gross negligence, in disregard of humanity, exemplary damages may be given.

ARTICLE III.—PENAL DAMAGES.

§ 1975. DOUBLE RENT.] For the failure of a tenant to give up the premises held by him, when he has given notice of his intention to do so, the measure of damages is double the rent which he ought otherwise to pay.

§ 1976. FOR WILLFUL HOLDING OVER.] For willfully holding over real property, by a tenant after the end of his term, and after notice to quit has been duly given, and demand of possession made, the measure of damages is double the yearly value of the property, for the time of withholding, in addition to compensation for the detriment occasioned thereby.

§ 1977. FOR FORCIBLE EXCLUSION.] For forcibly ejecting or excluding a person from the possession of real property, the measure of damages is three times such a sum as would compensate for the detriment caused to him by the act complained of.

§ 1978. INJURIES TO TIMBER.] For wrongful injuries to timber, trees or underwood upon the land of another, or removal thereof, the measure of damages is three times such a sum as would compensate for the actual detriment, except where the trespass was casual and involuntary, or committed under the belief that the land belonged to the trespasser, or where the wood was taken by the authority of highway officers for the purposes of a highway; in which cases the damages are a sum equal to the actual detriment.

ARTICLE IV.—GENERAL PROVISIONS.

§ 1979. RULE OF VALUE TO SELLER.] In estimating damages, the value of property, to a seller thereof, is deemed to be the price which he could have

obtained therefor in the market nearest to the place at which it should have been accepted by the buyer, and at such time after the breach of the contract as would have sufficed, with reasonable diligence, for the seller to effect a resale.

§ 1980. VALUE OF EQUIVALENT.] In estimating damages, except as provided by sections 1981 and 1982, the value of property, to a buyer or owner thereof, deprived of its possession, is deemed to be the price at which he might have bought an equivalent thing, in the market nearest to the place where the property ought to have been put into his possession, and at such time after the breach of duty upon which his right to damages is founded as would suffice, with reasonable diligence, for him to make such a purchase.

§ 1981. PECULIAR VALUE.] Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

§ 1982. TITLE PAPERS.] For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

§ 1983. EXPLANATION.] The damages prescribed by this chapter are exclusive of exemplary damages and interest, except where those are expressly mentioned.

§ 1984. LIMITATION.] Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereo on both sides, except in the cases specified in the articles on exemplary damages and penal damages, and in section 1966, 1973 and 1974.

§ 1985. DAMAGES MUST BE REASONABLE.] Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

§ 1986. NOMINAL DAMAGES.] When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

TITLE III.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER I.

GENERAL PRINCIPLES.

§ 1987. CERTAIN RELIEF—WHEN.] Specific or preventive relief may be given in the cases specified in this title, and in no others.

§ 1988. METHODS OF GIVING SPECIFIC RELIEF.] Specific relief is given:

1. By taking possession of a thing, and delivering it to a claimant.

2. By compelling a party himself to do that which ought to be done; or,

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

§ 1989. SAME—PREVENTIVE.] Preventive relief is given by prohibiting a party from doing that which ought not to be done.

§ 1990. LIMITATION.] Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

CHAPTER II.

SPECIAL RELIEF.

ARTICLE I.—POSSESSION OF REAL PROPERTY.

§ 1991. HOW ENFORCED.] A person entitled to specific real property, by reason either of a perfected title, or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession, to be executed by the sheriff, or by a judgment requiring the other party to perfect the title, and to deliver possession of the property.

ARTICLE II.—POSSESSION OF PERSONAL PROPERTY.

§ 1992. JUDGMENT OF RECOVERY.] A person entitled to the immediate

possession of specific personal property may recover the same in the manner provided by the code of civil procedure.

§ 1993. SPECIFIC DELIVERY.] Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

ARTICLE III.—SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 1994. MAY BE COMPELLED.] Except as otherwise provided in this article, the specific performance of an obligation may be compelled.

§ 1995. REMEDY MUTUAL.] Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

§ 1996. DIFFERENT PRESUMPTIONS.] It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation, and that the breach of an agreement to transfer personal property can be thus relieved.

§ 1997. WHEN ONLY ONE SIGNED.] A party, who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

§ 1998. PERFORMANCE INSTEAD OF DAMAGES.] A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

§ 1999. NOT ENFORCEABLE.] The following obligations cannot be specifically enforced:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.
5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

§ 2000. NOT AGAINST PARTY.[Specific performance cannot be enforced against a party to a contract, in any of the following cases:

1. If he has not received an adequate consideration for the contract.
2. If it is not, as to him, just and reasonable.
3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

§ 2001. NOT IN FAVOR OF PARTY.] Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial or capable of being fully compensated; in which case specific performance may be compelled, upon full compensation being made for the default.

§ 2002. NOT IF TITLE FAILS.] An agreement for the sale of property cannot be specifically enforced in favor of a seller who cannot give to the buyer a title free from reasonable doubt.

§ 2003. AGAINST SUBSEQUENT HOLDER.] Whenever an obligation in respect to real property would be specifically enforced against a particular person, it may be in like manner enforced against any other person claiming under him by a title created subsequently to the obligation, except a purchaser or incumbrancer in good faith and for value, and except, also, that any such person may exonerate himself by conveying all his estate to the person entitled to enforce the obligation.

ARTICLE IV.—REVISION OF CONTRACTS.

§ 2004. FOR MISTAKE OR FRAUD.] When through fraud, or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith, and for value.

§ 2005. INTENTION PRESUMED.] For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

§ 2006. SUBSTANCE NOT LANGUAGE.] In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

§ 2007. ORDER OF ACTIONS.] A contract may be first revised and then specifically enforced.

ARTICLE V.—RESCISSION OF CONTRACTS.

§ 2008. WHEN RESCISSION ADJUDGED.] The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in section 965; or,

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or,

3. When the public interest will be prejudiced by permitting it to stand.

§ 2009. NOT FOR MERE MISTAKE.] Rescission cannot be adjudged for mere

mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

§ 2010. COMPENSATION.] On adjudging the rescission of a contract the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

ARTICLE VI.—CANCELLATION OF INSTRUMENTS.

§ 2011. WHEN TO BE ADJUDGED.] A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may upon his application, be so adjudged and ordered to be delivered up or cancelled.

§ 2012. CONSTRUCTION.] An instrument, the validity of which is apparent upon its face, or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury within the provisions of the last section.

§ 2013. PART CANCELLATION.] Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

CHAPTER III.

PREVENTIVE RELIEF.

§ 2014. BY INJUNCTION.] Preventive relief is granted by injunction, provisional or final.

§ 2015. HOW REGULATED.] Provisional injunctions are regulated by the code of civil procedure.

§ 2016. WHEN INJUNCTION ALLOWED.] Except where otherwise provided by this title, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. Where pecuniary compensation would not afford adequate relief.
2. Where it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.
3. Where the restraint is necessary to prevent a multiplicity of judicial proceedings; or,
4. Where the obligation arises from a trust.

§ 2017. WHEN NOT GRANTED.] An injunction cannot be granted:

One—To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless such restraint is necessary to prevent a multiplicity of such proceedings.

Two—To stay proceedings in a court of the United States.

Three—To stay proceedings in a state upon a judgment of a court of that state.

Four—To prevent the execution of a public statute, by officers of the law, for the public benefit.

Five—To prevent the breach of a contract, the performance of which would not be specifically enforced.

Six—To prevent the exercise of a public or private office, in a lawful manner, by the person in possession.

Seven—To prevent a legislative act by a municipal corporation.

PART 2.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

TITLE I.

GENERAL PRINCIPLES.

§ 2018. DEBTOR DEFINED.] A debtor, within the meaning of this title, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

§ 2019. CREDITOR.] A creditor, within the meaning of this title, is one in whose favor an obligation exists, by reason of which he is, or may become, entitled to the payment of money.

§ 2020. FRAUD ONLY INVALIDATES.] In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

§ 2021. PREFERRED CREDITORS.] A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand, in preference to another.

§ 2022. ALTERNATIVE RIGHT TO FUNDS.] Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to, some but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

TITLE II.

FRAUDULENT INSTRUMENTS AND TRANSFERS.

§ 2023. WITH INTENT TO DEFRAUD.] Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any persons upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

§ 2024. CONCLUSIVE PRESUMPTION.] Every transfer of personal property other than a thing in action, or a ship or cargo at sea, or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed, if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any person on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or incumbrancers in good faith subsequent to the transfer.

§ 2025. FRAUD, HOW AVOIDED.] A creditor can avoid the act or obligation of his debtor, for fraud, only where the fraud obstructs the inforcement, by legal process, of his right to take the property affected by the transfer or obligation.

§ 2026. QUESTION OF FACT, NOT LAW.] In all cases arising under section 676, or under the provisions of this title, except as otherwise provided in section 2024, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration.

TITLE III.

ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

§ 2027. WHEN ALLOWABLE.] An insolvent debtor may, in good faith, execute an assignment of property to one or more assignees, in trust towards the satisfaction of his creditors, in conformity to the provisions of this title; subject, however, to the provisions of this code relative to trusts and to fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, by corporations or by other specific classes of persons: *Provided, moreover*, That such assignment shall not be valid if it be upon, or contain any trust or condition by which any creditor is to receive a preference or priority over any other creditor; but in such case the property of the insolvent shall become a trust fund to be administered in equity, in the district court, and shall inure to the benefit of all the creditors in proportion to their respective claims or demands.

§ 2028. INSOLVENCY DEFINED.] A debtor is insolvent, within the meaning of this title, when he is unable to pay his debts from his own means, as they become due.

§ 2029. WHAT MAY PROVIDE.] An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

§ 2030. VOID IN CERTAIN CASES.] An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

One—If it tend to coerce any creditor to release or compromise his demand.

Two—If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor.

Three—If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid, other than property exempt by law from execution.

Four—If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

Five—If it exempt him from liability for neglect of duty or misconduct.

§ 2031. HOW EXECUTED.] An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized by writing. It must be acknowledged, or proved and certified, in the mode prescribed by the chapter on recording transfers of real property, and recorded as required by sections 2036 and 2037.

§ 2032. VOID UNLESS SO MADE.] Unless the provisions of the last section are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

§ 2033. RIGHTS OF ASSIGNEE.] An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

§ 2034. INVENTORY REQUIRED.] Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file in the manner prescribed by section 1938, a full and true inventory, showing:

1. All the creditors of the assignor.
2. The place of residence of each creditor if known to the assignor, or if not known, that fact must be stated.
3. The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account or otherwise.
4. The true consideration of the liability in each case, and the place where it arose.
5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor.
6. All property of the assignor at the date of the assignment which is exempt by law from execution; and,
7. All the assignor's property at the date of the assignment, both real and personal, of every kind not so exempt, and the incumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

§ 2035. VERIFICATION OF SAME.] An affidavit must be made by every person executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in the last section, to the effect that the same is in all respects just and true, according to the best of such assignor's knowledge and belief.

§ 2036. RECORD AND FILING.] An assignment for the benefit of creditors must be recorded, and the inventory required by section 2034 filed with the register of deeds of the county in which the assignor resided at the date of the assignment; or, if he did not then reside in this territory, with the like officer of the county in which his principal place of business was then situated; or if he had not then a residence or place of business in this territory, with the like officer of the county in which the principal part of the assigned property was then situated.

§ 2037. SAME.] If an assignment for the benefit of creditors is executed by more than one assignor, it must be recorded, and a copy of the inventory required by section 2034 must be filed with the register of deeds of every county in which any of the assignors resided at its date, or in which any of them, not then residing in this territory, had then a place of business.

§ 2038. RECORD WITHIN TWENTY DAYS.] An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and incumbrancers in good faith and for value if the assignment is not recorded, and the inventory required by section 2034 filed, pursuant to section 2036, within twenty days after the date of the assignment.

§ 2039. REAL PROPERTY.] Where an assignment for the benefit of credi-

tors embraces real property, it is subject to the provisions of article IV of the chapter on recording transfers, as well as to those of this title.

§ 2040. BOND OF ASSIGNEE.] Within thirty days after the date of an assignment for the benefit of creditors, the assignee must enter into a bond to this territory in double the amount of the value of the property assigned, with sufficient sureties, to be approved by the judge of the district court of the county in which the original inventory is filed, and conditioned for the faithful discharge of the trust, and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the original inventory.

§ 2041. WHEN AUTHORITY BEGINS.] Until the inventory and affidavit required by sections 2034 and 2035 have been made, and the assignment has been duly recorded, and the inventory filed, and the assignee has given a bond as required by the last section, an assignee for the benefit of creditors has no authority to dispose of the estate or convert it to the purposes of the trust.

§ 2042. WHEN ASSIGNEE TO ACCOUNT.] After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on complaint of any creditor, to account before the district court of the county where the accompanying inventory was filed, in the manner prescribed by the code of civil procedure.

§ 2043. PROPERTY EXEMPT.] Property exempt from execution, and insurances upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they should pass thereby.

§ 2044. COMPENSATION.] In the absence of any provision in the assignment to the contrary, an assignee for the benefit of creditors is entitled to the same commissions as are allowed by law to executors and guardians, but the assignment cannot grant more, and may restrict the commissions to a less amount, or deny them altogether.

§ 2045. GOOD FAITH PROTECTS ASSIGNEE.] An assignee for the benefit of creditors is not to be held liable for his acts done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

§ 2046. CANNOT BE CANCELED.] An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the assignee, cannot afterwards be canceled or modified by the parties thereto, without the consent of every creditor affected thereby.

PART 3.

NUISANCE.

TITLE I.

GENERAL PRINCIPLES.

§ 2047. NUISANCES DEFINED.] A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others; or,
2. Offends decency; or,
3. Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,
4. In any way renders other persons insecure in life, or in the use of property.

§ 2048. PUBLIC NUISANCE.] A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

§ 2049. PRIVATE.] Every nuisance not included in the definition of the last section, is private.

§ 2050. STATUTE AUTHORITY.] Nothing which is done or maintained under the express authority of a statute can be deemed a nuisance.

§ 2051. SUCCESSIVE OWNERS.] Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable therefor in the same manner as the one who first created it.

§ 2052. DAMAGES.] The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

TITLE II.

PUBLIC NUISANCES.

§ 2053. TIME DOES NOT LEGALIZE.] No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

§ 2054. REMEDIES.] The remedies against a public nuisance are:

1. Indictment.
2. A civil action; or,
3. Abatement.

§ 2055. BY INDICTMENT.] The remedy by indictment is regulated by the penal code and the code of criminal procedure.

§ 2056. BY ACTION.] A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise.

§ 2057. HOW ABATED.] A public nuisance may be abated by any public body or officer authorized thereto by law.

§ 2058. SAME.] Any person may abate a public nuisance which is specially injurious to him, by removing, or, if necessary, destroying the thing which constitutes the same, without committing a breach of the peace, or doing unnecessary injury.

TITLE III.

PRIVATE NUISANCES.

§ 2059. REMEDIES AGAINST.] The remedies against a private nuisance are:

1. A civil action; or,
2. Abatement.

§ 2060. HOW PERSON MAY ABATE.] A person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace, or doing unnecessary injury.

§ 2061. WHEN NOTICE OF REQUIRED.] Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him before entering to abate it.

PART 4.

MAXIMS OF JURISPRUDENCE.

§ 2062. HOW TO BE USED AND APPLIED.] The maxims of jurisprudence hereinafter set forth, are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

§ 2063. When the reason of a rule ceases, so should the rule itself.

§ 2064. Where the reason is the same, the rule should be the same.

§ 2065. One must not change his purpose to the injury of another.

§ 2066. Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

§ 2067. One must so use his own rights as not to infringe upon the rights of another.

§ 2068. He who consents to an act is not wronged by it.

§ 2069. Acquiescence in error takes away the right of objecting to it.

§ 2070. No one can take advantage of his own wrong.

§ 2071. He who has fraudulently dispossessed himself of a thing, may be treated as if he still had possession.

§ 2072. He who can and does not forbid that which is done on his behalf, is deemed to have bidden it.

§ 2073. No one should suffer by the act of another.

§ 2074. He who takes the benefit must bear the burden.

§ 2075. One who grants a thing is presumed to grant also whatever is essential to its use.

§ 2076. For every wrong there is a remedy.

§ 2077. Between those who are equally in the right, or equally in the wrong, the law does not interpose.

§ 2078. Between rights otherwise equal, the earliest is preferred.

§ 2079. No man is responsible for that which no man can control.

§ 2080. The law helps the vigilant before those who sleep on their rights.

§ 2081. The law respects form less than substance.

§ 2082. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

§ 2083. That which does not appear to exist is to be regarded as if it did not exist.

§ 2084. The law never requires impossibilities.

§ 2085. The law neither does nor requires idle acts.

§ 2086. The law disregards trifles.

§ 2087. Particular expressions qualify those which are general.

§ 2088. Contemporaneous exposition is in general the best.

§ 2089. The greater contains the less.

§ 2090. Superfluity does not vitiate.

§ 2091. That is certain which can be made certain.

§ 2092. Time does not confirm a void act.

§ 2093. The incident follows the principal, not the principal the incident.

§ 2094. An interpretation which gives effect is preferred to one which makes void.

§ 2095. Interpretation must be reasonable.

§ 2096. Where one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer.

PART 5.

DEFINITION AND GENERAL PROVISIONS.

§ 2097. MEANING OF WORDS.] Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears, and except also that the words hereinafter explained are to be understood as thus explained.

§ 2098. STATUTORY MEANING.] Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

§ 2099. DEGREES OF CARE.] There are three degrees of care and of diligence mentioned in this code, namely, slight, ordinary and great. The latter include the former.

§ 2100. DEGREES DEFINED.] Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as they usually exercise about their own affairs of great importance.

§ 2101. DEGREES OF NEGLIGENCE.] There are three degrees of negligence mentioned in this code, namely, slight, ordinary and gross. The latter include the former.

§ 2102. DEGREES DEFINED.] Slight negligence consists in the want of great care and diligence: ordinary negligence, in the want of ordinary care and diligence; and gross negligence, in the want of slight care and diligence.

§ 2103. CHILDREN.] The term children includes children by birth and by adoption.

§ 2104. DEBTOR AND CREDITOR.] Except as defined and used in part 2 of this division, and in sections 2018 and 2019, every one who owes to another the performance of an obligation is called a debtor, and the one to whom he owes it, is called a creditor.

§ 2105. GOOD FAITH.] Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law, together with an absence of all information or belief of facts which would render the transaction unconscientious.

§ 2106. NOTICE CLASSED.] Notice is either actual or constructive.

§ 2107. ACTUAL.] Actual notice consists in express information of a fact.

§ 2108. CONSTRUCTIVE.] Constructive notice is notice imputed by the law to a person not having actual notice.

§ 2109. PRESUMPTION OF.] Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.

§ 2110. FALSE NOTICE.] A notice which is false when given, is not made valid by the subsequent happening of the event.

§ 2111. PAPER.] The word "paper," means any flexible material upon which it is usual to write.

§ 2112. PERSON INCLUDES CORPORATION.] The word "person," except when used by way of contrast, includes not only human beings, but bodies politic or corporate.

§ 2113. SEVERAL.] The word "several," in relation to number, means two or more.

§ 2114. THIRD PERSONS.] The words "third persons," include all who are not parties to the obligation or transaction concerning which the phrase is used.

§ 2115. HOLIDAYS.] Holidays are, every Sunday, the first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, every day on which an election is held throughout the territory, and every day appointed by the president of the United States, or by the governor of this territory, for a public fast, thanksgiving, or holiday.

§ 2116. ADDITIONAL DAY.] If the first of January, the twenty-second of February, the fourth of July, or the twenty-fifth of December, falls upon a Sunday, the Monday following is a holiday.

§ 2117. BUSINESS DAYS.] All other days than those mentioned in the last two sections, are to be deemed business days, for all purposes.

§ 2118. NEXT BUSINESS DAY.] Whenever any act of a secular nature, other than a work of necessity, or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, such act may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

§ 2119. USAGE.] Usage, is a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties, or so well established, general and uniform, that they must be presumed to have acted with reference thereto.

§ 2120. CUSTOMARY.] The words "usual," and "customary," mean "according to usage."

§ 2121. VALUE.] A valuable consideration, is a thing of value parted with, or a new obligation assumed, at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value."

§ 2122. VERDICT.] The word "verdict," includes not only the verdict of a jury, but also the finding upon the facts, of a judge, or of a referee appointed to determine the issues in a cause.

§ 2123. TIME.] The word "year," means a calendar year, and "month," a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day, and involve no questions of priority.

§ 2124. GENDER.] Words used in the masculine gender, include the feminine and neuter.

§ 2125. NUMBER.] Words used in the singular number include the plural, and the plural the singular, except where a contrary intention plainly appears.

§ 2126. OTHER DEFINITIONS.] Words used in the present tense include future as well as the present; the word "oath" includes "affirmation;" and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" "signature" or "subscription" includes mark, when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness. The following words also have the signification attached to them in this section, unless otherwise apparent from the context:

One—The word "property" includes property, real and personal.

Two—The words "real property" are co-extensive with lands, tenements and hereditaments.

Three—The words "personal property" include money, goods, chattels, things in action and evidences of debt.

Four—The word "will" includes codicils.

§ 2127. INTEREST.] The words "compound interest" mean interest added to the principal as the former becomes due, and thereafter made to bear interest.

§ 2128. WRITING AND PRINTING.] The words "writing" and "written," include "printing" and "printed," except in the case of signatures, and where the words are used by way of contrast to printing. Writing may be made in any manner, except that when a person entitled to require the execution of a writing demands that it be made with ink, it must be so made.

§ 2129. CODE EXCLUDES COMMON LAW.] The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. This code establishes the law of this territory respecting the subjects to which it relates; and its provisions are to be liberally construed with a view to effect its objects and to promote justice. Whenever this code is cited, enumerated, referred to, or amended, it may be designated simply as "The Civil Code," adding, when necessary, the number of the section.

§ 2130. IMPRESSION OF SEAL.] When the seal of a court, public officer, or person, is required by law to be affixed to any process, commission, paper, or instrument, the word "seal" includes an impression of such seal upon the paper alone, as well as upon wax, or a wafer affixed thereto.

§ 2131. MAJORITY POWER.] Words giving a joint authority to three or more public officers or other persons, are construed as giving such authority to a majority of them, unless it is otherwise expressed in the act giving the authority.

§ 2132. REPEAL DOES NOT REVIVE.] Whenever any act of the legislative assembly is repealed, which repealed a former act, such former act shall not thereby be revived, unless it shall be expressly so provided. [See section 12, R. S. of U. S.]

§ 2133. EFFECT OF REPEAL.] The repeal of any statute by the legislative assembly shall not have the effect to release or extinguish any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability. [See section 13, R. S. of U. S.]

Approved, February 16, 1877.