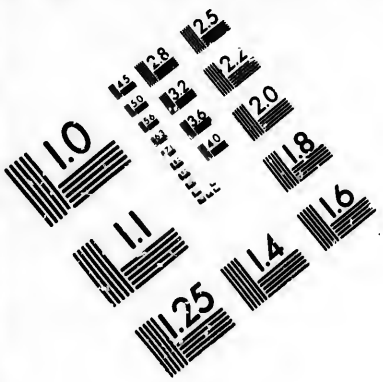

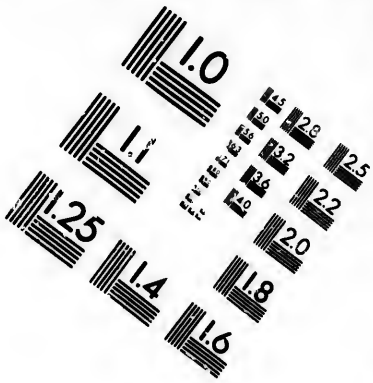

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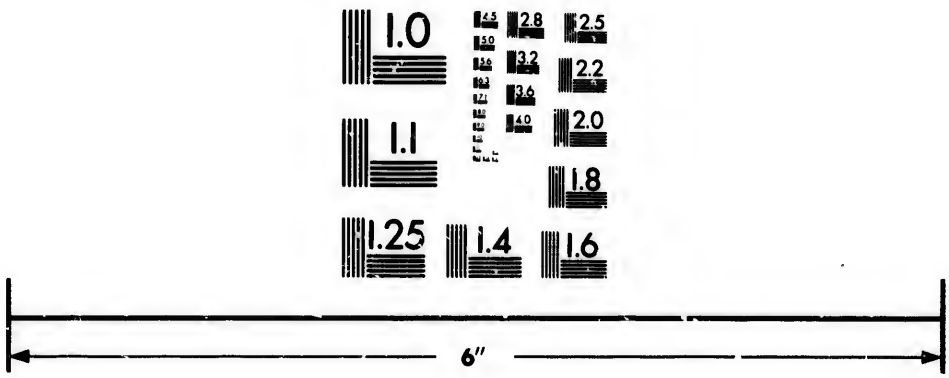

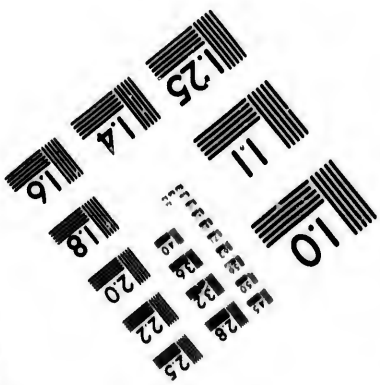

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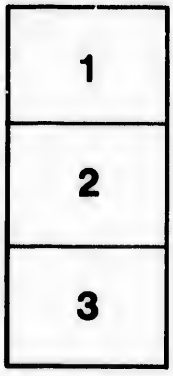

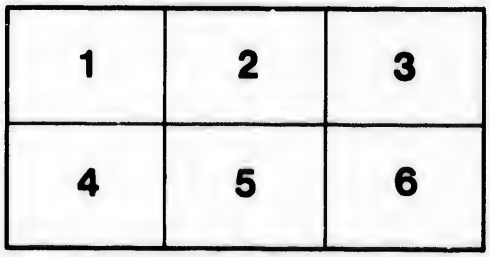

SYNOPSIS

OF THE

CHANGES IN THE LAW

EFFECTED BY

THE CIVIL CODE OF LOWER CANADA.

BY

T. McCORD, Advocate,

SECRETARY TO THE CODIFICATION COMMISSION.

OTTAWA:
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1866.

I.

The completion of the Civil Code of Lower Canada is an event which forms an epoch in our history, and is suggestive of many considerations.

In the retrospect, it brings to mind the long and arduous labor, the study, research and learning bestowed upon the work, by the eminent legists entrusted with its elaboration; it announces the successful attainment of a result, aimed at by the enlightened patriotism, and achieved by the ability and persevering energy of a statesman whose name must ever remain connected with the Code; and it presents to us our civil laws rescued from antiquity and chaos, and embodied in a form which renders them accessible and intelligible to all classes of the people whose rights and property they control.

Prospectively, the Civil Code promises uniformity of jurisprudence, which contributes to diminish litigation and add to the stability and security of our civil rights. It offers great additional means of legal education, from which may be expected a higher standard of professional excellence. It will ensure among the individual members of society, a more intimate acquaintance with their reciprocal rights and obligations, tending to increase and facilitate business relations, and to promote the material welfare of the community. Moreover, as a conservatory barrier against the continual inroads of fragmentary legislation, it is an earnest of stability in the law itself.

In view of a union of the British American provinces, the codification of our laws is perhaps better calculated than any

other available means to secure to Lower Canada an advantage which the proposed plan of confederation appears to have already contemplated, that of being the standard of assimilation and unity, and of entering into new political relations without undergoing disturbing alterations in her laws or institutions.

Such are the main features presented by the Civil Code, regarded as an embodiment of existing laws, but it has yet other advantages as a work of legislation, inasmuch as it introduces numerous and important amendments, intended for the most part to improve our law as a system, and to adopt it more perfectly to our present state of society.

It is evidently of great importance, that when the Code comes into force, these changes in the law should be known beforehand, at least to the profession, if not to the community at large. They are distinguished in the Code by their insertion between brackets. But, as the former law corresponding with them, as exhibited in the Draft, has disappeared, a previous knowledge of it is necessary in order to understand clearly the difference between the old and the new rules; and, as the observations made by the Commissioners, in reporting upon these amendments, no longer accompany the text, a like difficulty exists in ascertaining the reasons which suggested each particular amendment.

To obviate these difficulties, and to furnish a prompt and an easy method of becoming acquainted with the new legislation of the Code, the following synopsis has been written. Great care has been taken to present as succinctly and clearly as possible all the changes introduced by the Code, classifying them according to their character and motives, and referring in every case to the number of the article containing the amendment.

Of these changes generally, it may be remarked at the outset that they are not of a subversive character, or likely to disturb existing relations or to clash with prevailing notions. They are on the contrary of a nature to harmonize with the ideas of the present day, and to adapt our ancient laws to the changes which since their date society itself has undergone.

It is one of the characteristics of the olden legislation that it appears to have had in view Things before Persons. The conservative spirit of the law seems to have clung to immoveables as the safest basis of social stability, and its policy tended to restrict

rather than to encourage the conveyance of real estate. Hence the numerous distinctions of property and the different rules of law to which Persons were subject in respect of each kind of Thing. Hence too, the old rule "*Traditionibus non nudis pactis dominia rerum transferuntur*," and similar maxims. Hence also the facilities afforded for getting back alienated property by means of *retraits*, *rémérés*, and *restitutions*.

On the other hand, in modern society the frequency and multiplicity of transactions have become so great that real property now changes hands as rapidly as moveables did formerly. Agreements and promises are practically dealt with as representing the objects to which they relate. The tendency of the age is to make Things subservient to Persons, and to bring immoveables as well as all other things under complete subjection to the will of man, without any other restriction than a due regard for the rights and interests of others.

In order to adapt the old law to the new state of society the Code has introduced a number of new provisions. Some of these are intended to facilitate the free exercise of man's dominion over property. Some, by rendering contracts and other expressions of man's will definitive and reliable, are calculated to furnish elements of stability, for which formerly the nature of immoveable property was relied upon. Others tend to protect the rights of third parties; while some again are merely intended to remedy deficiencies or defects in previous laws.

II.

Taking these different categories in the order in which they have just been mentioned, the changes to be first noticed are those which relate to the FREE DISPOSAL OF PROPERTY.

These may be enumerated as follows:

Under the *Edit des secondes noces*, in force here, a widower, having children and intending to remarry, could not settle by gift, upon the wife he was about to take, any more than a very limited portion of his property. He might however, subject to a comparatively slight restriction, give away his property to a

stranger, or will it away entirely, without any restriction whatever, even to his second wife. This anomaly is removed for the future by article **764**, which abolishes the provisions of the Edict, and has the further advantage of favoring marriage.

Hitherto gifts made in favor of an ascendant, who had been tutor or curator to the donor, were null if the ascendant had remarried, or they became so if he afterwards married before the death of the donor. This double restriction, upon the disposal of property and upon second marriages, is removed by article **767**.

Gifts could not legally be made in favor of persons with whom the donor had lived in concubinage, nor in favor of the donor's incestuous or adulterine children; and illegitimate children, not incestuous or adulterine, could only receive from their parents to a very limited extent. These restrictions are in a great measure removed by article **768**, which places illegitimate children, not incestuous or adulterine, upon the same footing, as regards gifts, as other persons, and allows concubinaries to make gifts in favor of each other when they are contracting marriage; a provision which certainly appears to be more consistent with morality than the former rule.

Gifts made in favor of the spiritual, medical, or legal advisers of the donor, were liable to be reduced or set aside, upon the presumption of their having been obtained by undue influence. This presumption has no longer any foundation, and as, even in the matter of wills, where there might sometimes be cause for it, it is no longer recognized, it is properly abolished by article **769**. Under this article, undue influence, in these as in all other cases, must be proved.

According to the ancient law, children were entitled, notwithstanding any previous disposals by will or by gift, to one half of the share they would have had in the succession of their parents, had no will or gift been made. All gifts and legacies were liable to contribute to this legitim, and were therefore in so far subject to be annulled. The statute of 1801 removed this reservation with regard to legacies, and some were of opinion that its provisions extended by implication to gifts likewise. All uncertainty upon this point is removed by article **775**, which abolishes legitim.

Gifts of moveables, not immediately delivered, were not valid

under the old law unless the deed contained or was accompanied by an enumeration of the property given. Article **786** dispenses with this formality, and article **788** adds further facility for the conveyance of property by gift, by providing that the acceptance of a gift needs no longer to be in express terms, but may be inferred from the deed or from circumstances.

The intention of a testator, or of a donor, to prevent the property bequeathed or given from being alienated by the legatee or the donee, had no effect under our former law unless the deed mentioned some sufficient motive for such intention, or imposed some penalty in case of non-fulfilment. Article **972** frees prohibitions to alienate from these obstructive formalities.

Article **1267** allows minors, provided they are duly assisted, to make in their contracts of marriage all such agreements or gifts, in favor of their future consorts or children, as contracts of this nature admit of. Our former law restricted their right in this respect to certain portions of their property. Although the article has chiefly in view the favoring of contracts of marriage, its effect is also to assist the free disposal of property, and it has for convenience been included in the present category.

But the most important change introduced by the Code in connection with the free disposal of property, is the adoption of the principle that consent alone suffices, without delivery, to convey ownership. This new rule of law, in direct opposition to the old familiar maxim "*traditionibus non nudis pactis, &c.*," and especially its application in positive terms even to third parties, created at first some alarm in the minds of persons who had not brought to bear upon the subject as much study, knowledge, and reflection as the Codification Commissioners had done. Among these may be safely counted the Quebec Board of Trade, which in a laconic petition to the Legislature, "objected" to the then proposed amendment "as tending injuriously to affect the interests of third parties, by offering inducements and facilities for secret and fraudulent transfers of property." That these fears were groundless is sufficiently shown by the experience of over fifty years in France, where the courts have persistently maintained the new doctrine in its full extent, notwithstanding the doubtful wording of the Code Napoleon as regards third parties. That the rule is not a dangerous one

may also be inferred from the fact of its being adopted in the Code of Louisiana and in the Codes of several of the States of Europe, and from its more recent enactment in England by the imperial statutes of 1856, chapters 60 and 97. Practically, the only difference between the two systems is, that under the Code the want of delivery cannot be invoked against a purchaser in good faith; that against a purchaser in bad faith, the well established rule that fraud must be proved obtains in this as in other cases; and that the absence of delivery, although it may afford strong evidence of fraud, cannot constitute a presumption *juris et de jure*. Article **1025** lays down the principle. Its application to immoveables is, however, in the interest of third parties, subjected by article **1027** to the provisions of the Code concerning registration. The same article also declares, as regards moveables, that of two purchasers of the same thing, from the same owner, the one who is in *bonâ fide* possession of it shall be deemed owner. The reasons of this exception are the almost impossibility of following a moveable when it passes through many hands, the inconvenience and expense of annulling the several transactions by which it was transferred, and the consequent embarrassment of commercial dealings.

The sufficiency of consent without delivery is applied to Gifts by article **777**, and by article **795**. The former declares delivery unnecessary, and gives donees, whose deeds are registered before the donor's death, a right to claim from his heirs things given but not yet delivered. The latter declares acceptance, without delivery, sufficient to complete gifts *inter vivos*.

Article **1472** applies the same rule to Sale, which it consequently defines as a contract by which a man *gives* a thing for a price, &c., instead of, as formerly, a contract by which a man *obliges himself to give the enjoyment* of a thing, &c. As a corollary of this definition it follows that a person cannot sell what does not belong to him, and that, if he does, he is liable in damages towards any purchaser ignorant of the fact. This is declared in article **1487**. But, in order to avoid practical inconvenience, article **1488** admits the validity of the sale when the matter is commercial, or when the vendor afterwards becomes owner of the thing. It also retains the rules of the old law with respect to things lost or stolen. These, when bought at a judicial sale, cannot be reclaimed, and when bought in a fair or market, at a public sale,

or from a trader dealing in similar articles, can only be reclaimed upon reimbursing the price paid for them.

Following out the same principle, article **1493** declares that the vendor's consent to the buyer's removal of the thing sold, when there is nothing to hinder such removal, is sufficient to satisfy the obligation to deliver. Article **1570** renders the sale of debts and rights of action perfect, between the buyer and the seller, by the completion of the title, if authentic, or the delivery of it, if it is under private signature. And article **1579** obliges a person who sells a right of succession, without specifying the property of which it consists, to warrant his right as heir. Under the old law he only warranted the existence of the succession.

Under article **1596**, Exchange, like Sale, is completed by consent alone.

Another branch of the law in which important changes have been made with the view of facilitating the disposal of property, is that relating to wills. The formalities attending these acts have been simplified, and the English and the French forms have been more nearly assimilated.

Thus, article **843** simplifies the French form by dispensing with the formality of dictation, (*dicté et nommé*), and the reading over of the will a second time; and article **844**, as regards the same form of wills, allows aliens to be witnesses, and requires that the witnesses shall be of full age. In the latter particular there is a slight restriction, not found in the old law which allowed persons over twenty years of age to be witnesses. When the age of majority was twenty-five years, there was some reason for admitting witnesses under that age and above twenty, but since the full age has been fixed at twenty-one the reason has no longer the same force. It is almost useless to make a special category of persons between the ages of twenty and twenty-one, and this rule, requiring the witnesses to be of full age, has, moreover, the advantage of being the same as that which applies to wills in the English form.

Under our former law a will could not be executed before notaries who were related or allied to the testator to the degree of cousins-german inclusively, nor before notaries and witnesses *very nearly* related or allied to one another. Article **845** gives a more simple and definite rule, by removing altogether the

incompetency of witnesses by reason of relationship or alliance, and restricting the prohibition, as regards notaries, to those who are related or allied to the testator, or to each other, in the direct line, or in the degree of uncle, brother, or nephew.

Hitherto legacies made in favor of the notaries or witnesses before whom a will was executed, or of their relations or connections to the degree of cousins-german inclusively, were not only null, but had the effect of annulling the whole will. Under article **846**, this nullity is limited, as regards the legacies, to those made in favor of the notaries or witnesses, of the wife of any such notary or witness, or of any relation of his in the first degree, and, as regards the remainder of the will, is done away with; the nullity of the legacy no longer entailing that of the whole will.

Article **853** contains similar provisions respecting wills in the English form, except that, as females may be witnesses to these wills, husbands of witnesses are added to the category of those to whom legacies cannot validly be made.

Article **847** provides a mode by which deaf mutes, and others who cannot speak, may make wills in the authentic or French form. The amendment was only needed for wills in this form, as the existing law already afforded these persons the means of making wills in the holograph form, (art. 850), or according to the form derived from the laws of England (art. 852.)

Article **851** enacts that, in wills in the English form, the two witnesses must attest the signature at the same time, and the testator must produce the will, and acknowledge his signature to it, in their presence. Under the old law the witnesses did not require to attest the will at the same time, nor was the same acknowledgment necessary. This article moreover subjects moveable property to the same formalities as immoveable property, though formerly it might, according to the English form, be willed by means of any writing of a nature to indicate the intentions of the testator. These provisions, viewed in relation to wills in the English form only, are certainly restrictive, but considered in relation to the subject of wills generally, and as an approximation to the authentic form, they contribute to simplify our double system, and by this means indirectly facilitate the disposal of property. For these reasons they have been mentioned under their present head.

Other provisions adapted to facilitate the disposal of property, (rights and claims being considered as such,) are to be found in article **1155** which allows conventional subrogations to be made by private writings, and provides that such subrogations shall become effectual against third parties by means of registration. The old law required that subrogations should be made by authentic deeds.

III.

The next class of changes to be noticed consists of those which have in view the STABILITY OF RIGHTS.

Under this head are comprised such provisions as are intended to maintain contracts in their integrity, and such as tend to preserve established relations, either by limiting the actions which might disturb them, or by shortening prescriptions and simplifying the rules which apply to them.

With a view to the integrity of contracts, minors and interdicted persons are no longer relievable from their acts, when they have been legally assisted. It was no doubt considered that such persons are sufficiently protected by the formalities without which their interests cannot be affected, by the presumed knowledge and integrity of the tutors or curators appointed to represent them, and by the recourse which they have against these representatives. Thus, article **301** declares that minors are not relievable from the acceptance or renunciation of successions; but in order to protect them, on the other hand, it provides that tutors shall no longer accept or renounce successions for their pupils, without judicial authorization and the advice of a family council. Similar provisions are contained in article **1341**, with regard to the acceptance of community by a minor wife surviving her husband; in article **307**, as regards transaction; in article **792**, with regard to the acceptance or renunciation of gifts; and in article **1010**, with respect to contracts for the alienation of real property, or the partition of successions. Minors duly assisted, though not generally relievable from stipulations contained in their contracts of marriage, were so when the gifts or advantages were excessive; but article **1006** no longer recognizes any exception, and these stipulations are now as

effectual as those made by persons of full age. Under article **319** emancipated minors are no longer relievable from any acts which the law allows them to perform, except in so far as persons of full age would be; and under article **1551**, minority does not suspend the lapse of the period within which a right of redemption must be exercised.

Although in some of the foregoing articles interdicted persons are not mentioned with minors, the same rule should apply to both, and article 313 declares this by necessary implication, if not in express terms.

As to persons of full age, they can no longer avoid their contracts on the ground of lesion. Such is the enactment of article **1012**; and article **751** prevents them from doing so even in the case of partitions of succession.

As further tending to establish the system of integrity of contracts, by making them as binding as possible upon the parties, article **1076** provides that the sum stipulated in a contract, as damages for its non-performance, is no longer liable to be modified by the court, although, if the contrary has not been specially agreed upon, it permits a reduction in cases where the contract has been beneficially performed in part, and where the time for the performance is not material. Similar provisions are contained in article **1135**, with respect to the penalty stipulated for the inexecution of the contract; and article **1149** deprives the Circuit Court and Commissioners' Courts of their power of ordering sums actually payable to be paid by instalments, without the consent of the creditor.

Under article **1663** the alienation of property leased no longer annuls the lease, unless the deed contains a special stipulation to that effect and is registered. But article **1664** provides that if under such stipulation the lessee is expelled, he cannot recover damages, unless he has expressly reserved the right to do so.

Article **1186** conforms to the same principle of binding parties to perform what they have undertaken, by enacting that the amount paid by a surety for his release shall no longer go in reduction of the amount due by the principal debtor. It may, however, be imputed in discharge of the cosureties, in cases where they have a recourse against the one released, and to the extent of that recourse.

In sales of immoveables, the right of dissolution for non

payment of price, and in gifts of immoveables, the right of revocation for non-fulfilment of conditions, were rights which, under the former law, though not stipulated in the contract, might at any time put an end to it. In order that the integrity of contracts should not be affected by rights which are not stipulated by them, and that third parties should be protected in all dealings based upon such contracts, articles **816**, for Gift, and **1536**, for Sale, provide that these rights shall no longer be exercised unless they are expressly reserved in the deed. When so reserved, they are similar in many respects to the stipulated right of redemption of immoveables sold. All three are limited as to their duration; their exercise is kept within the terms of the contract; and they are governed by similar rules. Some of these rules are in amendment of the former law. Thus, article **816** subjects the revocation of gifts for non-fulfilment of conditions to the same rules as the dissolution of sale for non-payment of the price, and does away with the necessity of obtaining a preliminary judgment condemning the donee to fulfil the conditions imposed by the gift. Article **1538** declares that the judgment dissolving a sale for non-payment of price must be absolute, instead of, as formerly, granting delay for the payment and only becoming absolute when such delay had expired. So long, however, as the judgment has not been given, the buyer may prevent its being rendered by paying the price with interest and costs of suit. Article **1542**, contrary to the old rule, provides that a suit brought for the price is not a waiver of the right to dissolve the sale for non-payment; and article **1537** subjects this right of dissolution to the rules relating to the right of redemption, which are contained in subsequent articles; among these, articles **1548, 1549, 1550** and **1551**, contain new law. Article **1548** forbids any stipulation of a right of redemption for a period exceeding ten years, and reduces to ten years any longer term stipulated. Article **1549** enacts that the term stipulated must be strictly observed and cannot be extended by the court; formerly the right was not lost by the expiration of the period agreed upon, and it had to be declared extinct by a formal judgment. Article **1550** makes the buyer absolute owner of the thing if the seller fails to exercise his right of redemption within the stipulated time. Article **1551**, which has already been noticed, enacts that the period agreed upon runs even

against minors and other incapable persons. Formerly these rights were prescribed by thirty years, but by article **2248** no prescription is required, as they are absolutely limited, either by the legal term of ten years, or by any shorter term stipulated.

Another cause of defeasance was the subsequent birth of children to a donor, by means of which the gift became null. Under article **812** a gift can no longer be annulled by this means, unless the deed contains a stipulation to that effect. The opinions and habits of former times may perhaps have justified a presumption that gifts were tacitly understood between the parties to be subject to this resolutive condition, but at the present day no such agreement would enter tacitly into the minds of the contracting parties. The right of annulling the contract for such a cause being therefore contrary to the real intention of the parties, and, moreover, injurious to the interests of third parties in their relations with the donee, it has very properly been abrogated.

Under the old law the property belonging to a substitution was liable to a subsidiary recourse which the wife of the institute could exercise against it, for securing her dower or her dowry. This rule was founded upon a presumption that the grantor of the substitution had in view the advantage of the institute rather than that of the substitute, and was therefore willing to promote the marriage interests of the former in preference to the direct interests of the latter. The correctness of this presumption even under the ancient system might well be questioned, but it is certainly no longer applicable to our present usage, according to which the substitute is generally the party whose benefit is chiefly in view. Article **954** accordingly does away with this liability, and so far maintains the integrity of the substitution.

Another presumption tending to annul, if not a contract, at least the written expression of a man's intentions respecting his property, was that in virtue of which legacies were deemed to be revoked when, subsequently to the will, enmity, to certain degrees, had sprung up between the testator and the legatee. This is another of those presumptions which have ceased to be well founded. The correct inference at the present day would be, that if the enmity had the effect of changing the testator's intentions it would also cause him to revoke the legacy in an

express manner. Article **893** accordingly declares that enmity does not establish a presumption of revocation.

The provisions which have in view the maintenance of established relations embrace the whole subject of prescriptions, whether *acquirendi causâ*, or *liberandi causâ*, or, according to the language of the Code, adopting that of the Scotch Law, whether *positive* or *negative*. These provisions tend to attain their object, some by creating limitations where none before existed, some by shortening prescriptions already existing under the previous law, and others by extending or by simplifying the rules of prescription, so as to secure greater uniformity and the more easy acquirement of prescriptive rights.

New limitations are introduced by the following six articles. Article **119**, in the case of marriages contracted in error or without free consent, provides that no action to annul the contract shall be brought, if cohabitation has continued for six months after the party has acquired full liberty, or has become aware of the error. Article **151**, in the case of minors contracting marriage without the necessary consent and formalities, provides that the persons whose consent was necessary cannot demand the nullity of the marriage if, after becoming aware of its having taken place, they have allowed six months to elapse without making any complaint. These marriages, now as formerly, become valid when even tacitly approved, but as the lapse of time from which a tacit approval might be inferred was not fixed, a specific limitation was evidently desirable. Article **223** limits to the term of two months a husband's right to disown a child born to him during his marriage; and article **224** extends this provision to the husband's heirs. Article **423** limits to one year the right of a proprietor to reclaim any distinguishable portion of his land which by the sudden force of a river or stream has been carried on to the property of another. Under the old law he could not reclaim it when by length of time it had become apparently incorporated with the adjoining property. This rule was indefinite and is advantageously replaced by that of the Code. Lastly, article **1040** declares that contracts entered into by debtors in fraud of their creditors cannot be set aside at the suit of the latter, unless the action is brought within a year from the discovery of the fraud.

The shortening of prescriptions was not only desirable generally for the better preservation of established relations, but it had become expedient in some instances from the improved means of modern travelling and correspondence. All parts of the world are now brought into closer connection and the obstacles of distance and delay have been comparatively removed Absences are now so usual and so frequent that they no longer call for exceptional legislation, and they so slightly interrupt home relations that absentees have ceased to require years of delay for their protection. The ten extra years formerly allowed to absentees in the matter of prescription have therefore been dispensed with, and the old prescription of ten years *entre présents*, or twenty years *entre absents*, is now simply one of ten years without distinction. The articles which have been framed in conformity with this change are **2206, 2251, 2252, 2254, 2255, 2256, 2257.**

The privilege which the church and religious houses formerly enjoyed, of not being prescribed against by any time less than forty years, is abolished, for the same reasons as those above given, and, under article **2218**, prescription may now be acquired against them by thirty years, as against other persons. Immemorial or centenary prescription has also, by article **2245**, been reduced to the same period of thirty years ; and article **2270** extends this provision even to prescriptions begun before the Code comes into force.

Article **1116** provides that a joint and several debtor from whom the creditor has continued, during ten years, and without reservation, to receive a separate share of arrears or interest, is relieved from his joint and several liability, even for future arrears or interest, or for the capital itself. The period was formerly thirty years, but with us the ten years is quite sufficient to establish a presumption of the creditor's acquiescence, and the shortening of the term is in conformity with the general policy of the Code in matters of prescription.

Article **2250** establishes a uniform negative prescription of five years for all arrears of rents, rent, interest, and natural and civil fruits generally. Constituted rents were already subject to this limitation, but all the other arrears were only prescribed by thirty years. Uniformity and the maintenance of existing relations are not the only motives of this amendment : another

reason is founded upon the fact that the conventional rate of interest is no longer restricted, and that the evil of allowing arrears to accumulate is in consequence the more to be apprehended.

The time of nearly all the shorter negative prescriptions has been reduced, and they have been conveniently classified by articles **2260, 2261** and **2262**.

Thus, article **2260** enumerates the actions which will be now prescribed by five years. It includes some which were formerly subject to a different limitation and with respect to which consequently the law is changed. These are: 1. The action of notaries for professional remuneration. Formerly there was no other limitation than the general prescription by thirty years. 2. The action against attorneys, notaries, and judicial depositaries, for the recovery of papers and titles. Under the old law this action was prescribed by five years from the end of the proceedings, when the documents had served, but only by ten years from their reception, when they had not been produced, or the proceedings were not ended. The change consists in fixing the period at five years in either case. 3. Actions upon claims of a commercial nature. This abolishes the former six years prescription, and substitutes the period already allowed for actions upon bills and notes. 4. All actions upon sales of moveable effects. Claims of this kind between traders, or between traders and non-traders, would fall under the preceding category as commercial matters, but the article goes further, and, by specially including sales between non-traders, extends this prescription to all sales whatever of moveable effects. 5. Actions for hire of labor, or for the price of manual, professional or intellectual work and materials furnished, except such as are hereinafter mentioned as being subject to a still shorter prescription. These actions under the former law, would have been prescribed by six years or by thirty.

Article **2561** enumerates the actions to which the Code applies a prescription of two years. 1. Actions for seduction or lying-in expenses. The former period was five years. 2. Actions for damages resulting from offences or quasi-offences, whenever other provisions do not apply; these formerly lasted six years. 3. Actions for wages of workmen, not reputed domestics, and who are hired for a year or more. Under the old law these

actions were prescribed by six or by thirty years, according as the matter was of a commercial nature or not. 4. Actions for sums due schoolmasters and teachers, for tuition and board and lodging furnished by them. The old law required only one year.

Article **2262** enumerates the actions which are subjected to a prescription of one year. Those in which that period changes the previous law are : 1. Actions for bodily injury, not provided for by special laws. These actions formerly came under the general prescription by thirty years. 2. Actions for wages of domestic or farm servants, merchants' clerks, and other employees hired for less than a year. Merchants' clerks were formerly subject to the six years prescription, and the servants or employees had a right to recover for one year besides the current year or month, according to whether they were hired by the year or by the month.

The articles to be next explained are those which tend to produce greater simplicity, uniformity, or facility, in the matter of prescriptions.

As regards the prescription of moveables and personal actions under our former law, different rules obtained. In commercial matters the English rule governed, by which they were subjected to the *lex fori* ; in all other matters the French rule prevailed, which subjected them to the law of the domicile of the debtor or the possessor. Then as to the admissibility of foreign or partly foreign prescription, the law was also different, according to whether the matter was commercial or not.

Articles **2190** and **2191**, partaking of both systems, have adopted a uniform rule, applicable to moveables and to personal actions generally, whether in commercial matters or not, and subjecting them to the *lex fori*. Under the former article prescription entirely acquired under foreign law, before the possessor or debtor was domiciled here, may be invoked, if the cause of action did not arise, or the debt was not stipulated payable, in Lower Canada ; and prescriptions partly acquired under a foreign law may, under the same restrictions, be invoked, provided they have begun abroad and are completed under our own law. Prescriptions entirely acquired in Lower Canada may be invoked, dating from the maturity of the obligation, when the cause of action arises, or the debt is stipulated to be paid, or the debtor, at

the time of the maturity, had his domicile, in Lower Canada; and in other cases, from the time when he becomes domiciled in that portion of the Province. Under the latter of these articles, prescriptions begun under the law of Lower Canada must be completed under the same law, without prejudice to those acquired wholly or in part under foreign law in conformity with the preceding article.

Under our former law possession obtained by violent or clandestine means could never avail for prescription, but article **2198** adopts the more equitable and logical rule, that when these defects have ceased prescription may commence. Neither the thief, however, nor his heirs or successors by universal title, can by any length of time prescribe the thing stolen.

Article **2202** declares that good faith is always presumed; under the old law it was presumed when possession accompanied title. The amendment seeks to remove all doubt or restriction from the simple and just rule, which prevails throughout the Code. that fraud or bad faith must always be proved.

Other provisions intended to extend or simplify the rules in matters of prescription, are contained in following articles. Article **2207**, in cases of subtitution, enables the substitute, even before the opening of his right, to bring an action to interrupt prescription; and, having thus destroyed the only reason why, under the old law, prescription did not run against him, it declares him to be, like other persons, liable to be prescribed against, unless protected by minority or other disability. Article **2232**, which should be taken in connection with article **2269**, is intended to explain and to limit the application of the old maxim: *contra non valentem agere non currit prescriptio.* This rule is restricted generally to such persons as are under an absolute impossibility, in law or in fact, of acting by themselves, or of being represented by others. Minors, however, as well as insane persons, are not subject to the prescription by thirty years, nor to that in favor of subsequent purchasers of immoveables with title and in good faith, nor to the ten years prescription of actions in rescission of contracts for error, fraud, violence or fear. Article **2240** applies to all prescriptions the uniform rules which formerly applied only to the short prescriptions, namely, that they are reckoned by days and not by hours, that they are

acquired when the last day of the term has expired, and that the day on which they commenced is not counted. Article **2246** declares that commercial debts, although prescribed, may be pleaded in compensation. Under the former law this was not allowed; the object being, no doubt, to prevent a debtor in bad faith from paying his debt by setting off against it prescribed claims or notes which he had bought up. The article, however, attains this object by providing that, in all cases, prescribed debts can only be pleaded in compensation when the compensation took place before the prescription. Commercial debts as well as others are therefore brought under one uniform rule. Article **2267** no longer admits of the controversies which frequently arose, as to whether a particular negative prescription was intended by law to establish a presumption of payment, or whether it was an absolute bar to the action. Negative prescriptions are not only declared absolute, but the article even dispenses with the necessity of pleading them. Article **2268** declares that in the matter of prescription of moveables, the three years shall be computed from the loss of possession. This prescription may consequently be set up by any person in actual possession of the thing three years after the dispossession of the party claiming it. Under the old law requiring three years possession, it was difficult and often impossible for the possessor, owing to the nature of moveables and the frequency with which they change hands, to prove the possession of the persons from whom his own was derived. The article removes this difficulty, and also extends the prescription to cases in which the moveable has been stolen; it being considered that in these cases, as in those in which immoveables are concerned, the good faith of the possessor, rather than the bad faith of the person from whom he derives his title, should be the guide in determining the legality of the possession.

IV.

The next head to be noticed is that of the PROTECTION OF THIRD PARTIES.

The principal means of protecting third parties, is the publicity given to all contracts or claims by which their interests

may be affected. Nearly all the articles under this head will therefore be found in the title *Of Registration.* A few, however, which do not fall under that title, may be mentioned first.

Article **731** preserves the hypothecary claims of creditors upon immoveables returned by an heir to the mass of a succession. Formerly third parties having such claims upon property subject to be returned were liable to lose their right of hypothec when the return took place. Article **812** provides that gifts will no longer be subject to be dissolved by reason of the subsequent birth of children to the donor. Article **1313** requires, for the information of third parties interested, that all judgments ordering separation between husband and wife, shall be inscribed upon a posted list kept for that purpose. Article **1536** declares that the non-payment of price, in Sale, shall not be a ground for dissolving the contract, unless the deed contains a stipulation to that effect. This stipulation, followed by the registration of the deed, being a sufficient notice to third parties that the price remains unpaid. Article **932** limits substitutions to two degrees, exclusive of the institute. This restriction enables third parties, acquiring rights upon property, to guard against substitutions without being obliged to trace back the title deeds beyond a limited time. It is also based on other, and perhaps more important, motives, but its benefit to third parties has been selected, for convenience, in order to place the article under the present head.

The articles which contain new provisions in the matter of registration may be enumerated as follows : **661** requires the registration of judgments authorizing the acceptance of successions under benefit of inventory ; **981** declares that prohibitions to alienate must be registered, even as regards moveable property ; **2047** and **2130** render hypothecs ineffectual, even between the contracting parties, unless they are registered ; the only exception being the hypothecary claim of mutual insurance companies for the payments due by parties insured ; **2088** does away, for the future, with the provision of the statute under which open and public possession was equivalent to registration ; **2098** requires that in registering wills the date of the testator's death should also be registered ; it also provides for the registration of title by descent, and deprives of any effect all conveyances, hypothecs, or real rights granted upon immoveables by owners who have not registered their title thereto ; **2100** obliges vendors to

register their stipulated right of taking back an immoveable sold. in the case of non-payment of the price, but allows them a delay of thirty days to do so ; **2101** enacts that all judgments annulling deeds by which immoveables are conveyed or transmitted. or permitting redemption or revocation, must be registered; **2102** declares that no action founded upon the right of a vendor to dissolve a sale for non-payment, or upon a vendor's right of redemption, can be brought against third parties, unless the stipulation of such right has been registered; **2107** requires that memorials of claims for funeral expenses, and expenses of last illness should be registered within six months of the death, in order to preserve the privilege attached to such claims; **2116** provides for the registration of the right to customary dower; **2119** obliges notaries, on pain of all damages, to see to the previous registration of the tutorshsips of such minors, or the curatorships of such interdicted persons as are interested in any inventories they are called upon to make ; **2126** declares renunciations of dower, of successions, of legacies, or of community of property, ineffectual against third parties, unless they have been registered ; **2127** requires and provides for the registration of transfers or subrogations of hypothecary claims, and **2178** provides for their being mentioned in any copy of the documents creating such claims delivered by the registrar; **2128** renders leases of immoveables for more than a year inoperative against third parties unless they are registered; **2129** declares that no discharge from the rent of immoveables, for more than one year in anticipation, shall avail against a subsequent purchaser, unless it has been registered together with a description of the immoveables; **2146** requires that memorials for the preservation of interest or arrears of rent, besides the formalities already prescribed by law, shall be accompanied by an affidavit of the creditor that the amount thereof is due ; **2162** enacts that the provisions under which registrations may be effected in Quebec and Montreal, in separate books according to a certain classification, may be applied, by proclamation of the governor, to any registration division the population of which exceeds fifty thousand souls ; **2175**, with respect to the obligation of owners of immoveables designated upon the official plan to deposit a separate plan and book of reference for such immoveables whenever they subdivide them into town or village lots, limits that obligation

to cases where the property is subdivided into more than six lots; and **2182** requires the entry-book and the index to immoveables to be authenticated in the same manner as the register.

V.

The next and most numerous class of amendments introduced by the Code comprises those which tend to the GENERAL IMPROVEMENT OF THE LAWS, either by rendering them more simple, convenient, or uniform, or by supplying deficiencies, or removing useless provisions.

These will be best classified in the order of the titles in which they occur.

In the title *Of Acts of Civil Status*, article **71**, for the sake of uniformity, prescribes that the registers in which acts of religious profession are inscribed shall be authenticated, in the same manner as other registers of civil status; and article **77** supplies an omission in the law, by providing a remedy in cases where an act of civil status has been entirely omitted from the register. Provision already existed for rectifying such entries, but none to meet the case of their total omission.

In the title *Of Absentees*, article **93**, in view of the modern facilities of communication with distant parts of the world, reduces, from ten years to five, the period after which the presumptive heirs of an absentee may obtain authority to take provisional possession of his property; article **97**, for the protection of the absentee, obliges the persons obtaining the provisional possession to cause the immoveable property to be examined by skilled persons, in order to establish its condition, and provides for the homologation of their report, and the payment of the expenses out of the absentee's property.

In the title *Of Marriage*, article **132**, supplying a deficiency in the former law, renders it incumbent upon the officer about to solemnize a marriage to ascertain that there is no legal impediment to it, whenever the last domicile of the parties was out of Lower Canada, and the bans have not been published there. Article **141** provides a means of opposing the marriage of an insane person, even if he is of age and has not been interdicted.

The right of making such oppositions is given to the nearest relations or connections, to the exclusion of others, and in the order mentioned in the article. This insanity must however be established without delay, by interdiction; and article **143** declares that any such opposition falls to the ground, without any demand for its dismissal, if it is not followed up with the necessary formalities and within the delays prescribed by the Code of Civil Procedure. Articles **157** and **158** subject officers solemnizing marriage to a penalty not exceeding five hundred dollars, for any infringement of the rules by which the law requires them to be governed.

In the title *Of Separation from Bed and Board*, article **203** supplies a remedy in the event of a wife leaving the residence assigned to her during the pendency of a suit in separation. The husband, in such a case, may be released from his obligation to pay her an alimentary pension, or, in case she persists in not returning, when ordered by the court, her action may be dismissed; saving her right to bring another. Article **210**, for the sake of convenience as well as propriety, provides that a wife who is separated from bed and board, and requires to be authorized for any act tending to alienate her real property, may apply to a judge directly for such authorization, without being obliged, as formerly, to seek that of her husband in the first instance.

In the title *Of Filiation*, article **225** prescribes the mode by which a husband may disown a child, and article **226** renders that mode indispensable, by declaring that in default of its being followed within the proper time, the child will be held to be legitimate.

In the title *Of Minority, Tutorship and Emancipation*, article **276** reduces from three to two the number of tutorships which justifies a person in refusing to accept another; that of his own children excepted. Article **301** remedies a defect in the former law by providing that tutors shall no longer accept or renounce successions for their pupils without the advice of a family council, and that, even then, the acceptance can only be under benefit of inventory. Article **302**, conferring a benefit upon minors without prejudicing the interests of any other parties, provides that when a succession has been renounced in behalf of a minor, it may afterwards, if no one else has accepted it, be accepted either for him, under the proper authorization, or by

him, when he has attained his majority. But he must then take it as he finds it, and subject to all sales or other acts legally done during its vacancy. Article **304**, for expediency and uniformity, extends to fifty dollars the amount for which minors may bring an action to recover wages.

In the title *Of Majority, Interdiction, Curatorship and Judicial Advisers*, article **344** supplies a deficiency in the former law by allowing curators, other than the husband or wife, or ascendants or descendants of the interdicted person, to be relieved from their charge whenever they have held it for ten years.

In the title *Of the Distinction of Things*, article **388**, adopting the law to the manner in which rents are actually dealt with in the present state of society, declares constituted rents, and all other perpetual or life-rents to be immoveables by determination of law; saving those resulting from emphyteusis. Articles **393**, and **394** provide for the redemption of rents, whether perpetual or temporary. The latter, when no reimbursement of the capital is to take place at their termination, are assimilated in this respect to life-rents, the redemption of which is provided for in article 1915.

In the title *Of Real Servitudes*, a few changes have been introduced, in order the better to adapt to the habits and wants of the present day the rules which govern the relations between neighbouring proprietors. Thus, article **514** allows beams to be inserted in common walls to within four inches of their thickness, instead of one half of the thickness as formerly; this distance is however subject to be reduced to the one half, in the event of the neighbour wishing to insert beams on his own side, at the same place, or to build a chimney against that portion of the wall. Article **521** regulates the respective rights of different proprietors of separate stories in the same house. It provides that they all contribute to the main walls and roof, each in proportion to the value of his story; and that each makes the floor under his story, as well as the stairs which lead up to it. Article **532** increases, from one foot to fifteen inches, the thickness of the counter-wall to be built between a privy and a common wall, but diminishes, from four feet to twenty-one inches, the thickness of wall required when the neighbour has a well on the opposite side. No counter-wall is however required if the well or privy is at such a distance from the common wall as

is prescribed by municipal regulations or by established and recognized usage, or, in default of such regulations or usage, at a distance of three feet. The thickness of the counter-wall to be made when it is intended to build a chimney, a hearth, a stable, or a store for salt or other corrosive substance, against a common wall, or to raise the ground or heap earth against it, is left to be determined by municipal regulations, or established and recognized usage, and in default of these by the courts in each case.

In the title *Of Successions*, most important changes are made.

The many distinctions of property under our old customary law, which were each governed by special rules in matters of succession, and were a source of so much difficulty and confusion, have been abolished. It matters not under the Code whether property belonging to a succession is moveable or immoveable, *propre* or *acquêt*, or to which of eight different kinds of *propres* it belongs; article **599** considers neither its origin nor its nature, but treats the whole as one inheritance, subject to uniform rules.

As regards the order of succession in the collateral line and the direct line ascending, new rules are established. Thus, under articles **626**, **627**, **628** and **629**, which treat of successions devolving to ascendants, if a person dies without issue, leaving a father or mother, or both father and mother, and also brothers or sisters or their children, one half of his succession falls to the father and mother, or to either of them if the other is dead, and the other half to the collaterals just named. No other collaterals succeed to him, although his father and mother be dead, if he leaves any ascendants whatever; but one half goes to the ascendants of the paternal line, and the other to those of the maternal line. Under articles **631**, **632**, **633** and **634**, which regulate collateral successions, the brothers, or sisters, or nephews and nieces, of a person dying without issue inherit one half of his property, if he leaves a father or mother, and the whole of it, if he does not. If they are the issue of different marriages, the property is divided into two equal portions, those of the whole blood sharing in both portions, and those of the half blood sharing in one portion only. In the event of the deceased person leaving none of the relations above named, but only more distant collaterals and ascendants in one line only, the ascendants and collaterals each take one half. If, in the

same case, he leaves no ascendants, then one half falls to the nearest collateral in the paternal line, and the other to the nearest in the maternal line. Beside the above changes a few others also relate to the matter of successions. Thus, article **649** provides that where heirs do not agree as to whether a succession shall be accepted or renounced, it is held to be accepted under benefit of inventory. Article **683** declares that, in the collateral line, the beneficiary heir is not excluded by one who accepts unconditionally. This is contrary to the old rule, but it is similar to that which governs successions in the direct line. It is not only more equitable, but has the advantage of establishing a uniformity in respect of both lines. Article **712** applies to all heirs, in whatever line of succession, the rule which formerly governed only heirs in the direct line, or those in the collateral line who were also legatees ; so that in all cases the heir must return into the mass of the succession all gifts or legacies made in his favor. This obligation, however, is not binding when the gift or the legacy contains an express exemption from it. Article **714** extends the provisions of article 712 to donees who at the time of the gift were not heirs, but who, at the time when the succession devolves, are entitled to succeed. Article **728**, for the sake of uniformity and convenience, renders general the rule which was formerly exceptional, by declaring that, in all cases, the return of immoveaales by the heir who is also a donee or a legatee may, at his option, be made either in kind or by taking less at a valuation.

In the title *Of Gifts inter vivos and by will*, article **833**, for the sake of simplicity and uniformity, abolishes the privilege which minors over twenty years of age had, under the old law, of bequeathing certain portions of their property. When the age of majority was twenty-five years, minors between that age and twenty formed a considerable class, in favor of whom exceptional provisions might justly be made, but when the age of majority was fixed at twenty-one years, no sufficient reason remained for preserving an exceptional rule in favor of minors during only one year of their minority. Article **818**, in view of the facility with which notaries may now be procured, enacts that, except in the district of Gaspe, where it may still be difficult in many instances to obtain their services, ministers of religion can no longer act as notaries and can only serve as ordinary witnesses.

Article **871** contains an amendment which is but a corollary of that contained in the title *Of Obligations* on the subject of defaults (art. 1067). It provides that in cases where, under the old law, fruits and interest arising from a thing bequeathed would not have accrued until after a judicial demand, they may now date from the time when the debtor of the legacy is put in default. Article **878** declares that universal legatees and legatees by general title, after they have accepted, are personally liable for the debts and legacies imposed upon them by law or by the will, unless they have obtained benefit of inventory; and assimilates their position in other respects to that of the heir. This article, however, is rather an interpretation of the old law than the introduction of a change, and is in harmony with a subsequent article (891) which, in the matter of seizin and all the consequent rights and actions, places legatees, by whatever title, in the same position as heirs. Articles **881** and **882** relate to the presumptions resulting from the legacy of a thing which does not belong to the testator. Under the old law such legacies were valid if the testator was aware that the thing did not belong to him, or if the thing belonged to the heir or legatee charged with the payment of it; the presumption being, in either case, that he intended the thing to be procured or the value of it to be paid in fulfilment of the legacy. As wills, however, are now drawn in ordinary language, and the testator has every facility for giving a clear expression of his intentions, no reason exists for maintaining these presumptions, and according to the two articles just mentioned they are no longer recognized. If, however, the testator, after bequeathing the property of another, should become owner of it, article **883** provides that the legacy will be valid as regards any portion of it remaining in his succession; but any alienation of it by the testator destroys the legacy, even though, by reason of the nullity of such alienation, the property should have returned into his succession. Article **889**, reversing the rule of the old law, declares that, if property bequeathed is hypothecated for a debt due by the testator, the hypothec is borne by the particular legatee. No reason indeed could be given for the former presumption that the testator intended it to be chargeable to his heir or his universal legatee. Article **897** provides that any alienation whatever by the testator, of property by him bequeathed, except when it is both

involuntary and void, annuls the legacy; provided his intention to the contrary is not expressed. This is in conformity with the rule of the French Code, which is more simple, and more in accordance with the correct inference from the circumstances, than the rule of the old law, under which forced sales, expropriations for publics purposes, and sales urged by pressing necessity formed an exception, and did not annul the legacy. Article **899** declares that heirs cannot be disinherited without all the formalities required for a will. Under the old law the act of exhere dation needed only the ordinary notarial form. Under our present system these acts have become useless, inasmuch as a will disposing of the property to other persons than the one in view effectually excludes him from the succession; disinheritances have therefore been brought under the same rules as other tesamentary dispositions. Articles **905** and **924** supply a deficiency in the old law, by reason of which wills, in many instances, could not be executed, as no one but the testator could name testamentary executors. Under these articles the testator may not only name executors, but may provide for the manner in which they shall be appointed or successively replaced, and the courts and judges may appoint them whenever the testator has expressed his intentions to that effect, or whenever an executorship, which the testator intended to continue, has become vacant, and the will makes no provision under which the vacancy can be filled. Article **911** also supplies a deficiency by affording to testamentary executors a means of being relieved from the executorship for sufficient cause. Article **913** facilitates the execution of wills by providing that in the absence of one or more joint executors from the place, the others may do alone all acts of a conservatory nature, or requiring dispatch. The old law only allowed this to be done when the absence was out of Lower Canada. Article **917** furnishes a remedy which it was doubtful whether the old law afforded. It provides for the removal of testamentary executors who do not or cannot act, or who act improperly. Article **930** declares that substitutions made by other gifts than contracts of marriage may be revoked, so long as they have not opened, unless the substitute has accepted. Formerly, the acceptance required to be more formal than that of gifts in general; but the Code establishes a uniform rule, and any acceptance which would suffice for a gift will be sufficient to pre-

vent the grantor from revoking a substitution. Article **956** settles a point previously doubtful, by deciding that any active or passive debt of the institute, which, in consequence of his accepting as heir or legatee, may be extinguished by confusion, revives between the substitute and the institute, or his heirs. when the substitution opens ; except as regards interest up to that time for which the confusion still holds.

In the title *Of Obligations*, article **1047** adopts the doctrine of the French Code, as more equitable than the old rule, and declares that when a person, who has received a thing which is not due to him, is in good faith, he is not obliged to restore the profits of it. Article **1064** greatly simplifies the law as regards the degree of care which, under the different classes of contracts, is to be taken of property belonging to others. It abolishes the old distinction of *culpa lata*, *culpa levis* and *culpa levissima*, and establishes the one simple rule for all cases, that the keeper of a thing is bound to bestow all the care of a prudent administrator, (*bon père de famille*). Article **1069** excepts commercial cases from the ordinary rule in matters of default, and subjects them to the more convenient rule of the English law, according to which, when the time of performance is fixed by the contract, the debtor is put in default by the mere lapse of time. Article **1101**, adopting the doctrine of the French Code, reverses the rule of the old law under which one of joint and several creditors might release the debtor from the whole of the debt. It is even more explicit than the article of the Code Napoleon, and leaves no room for the doubts of modern jurists under that code, by declaring that in the case of actual payment alone can the obligation be extinguished by one of the joint and several creditors. Commercial partnerships nevertheless remain subject to their own particular rules. Article **1123**, for greater simplicity and convenience, and with a view of avoiding unnecessary expense, repeals the old rule under which all the codebtors of a divisible obligation, which could not be performed in parts, had to be joined in the suit brought to enforce the obligation. It will now be sufficient to sue that one of the debtors upon whom the performance of the obligation depends. Saving, of course, his recourse against his codebtors. Article **1156** also simplifies the law by declaring that in all cases where subrogation may take place of right and by operation of law, no demand to that effect is necessary. The old rule required

a demand in some cases and not in others. Article, **1164**, for motives of convenience and equity, provides, that when a debt is payable at the debtor's domicile, notice of his readiness to pay is equivalent to a tender, provided he proves that the money or thing due was ready for payment at the proper time and place. Article **1208** puts an end to the absurdity of making the authenticity of a deed depend on the signature of a second notary who, in practice, whatever may have been the law, never was present at the passing of the act, or even knew the contents of the document. When the contracting parties sign the deed, one notary is now sufficient to give it authencity, and when they do not, the presence and signature of a witness, or of another notary, is required. The article also amends the old law by allowing aliens to be witnesses. Articles **1233**, **1235**, **1236** and **1237**, whenever the admissibility of oral testimony was formerly limited to cases in which the amount in question did not exceed twenty-five dollars, extend that admissibility by changing the amount to fifty dollars. A similar change has been made in other articles, and it was desirable for the sake of uniformity to make the limitation the same in all such cases. Article **1253**, as a consequence of the change introduced by article 1101, already noticed, declares that the effect of the decisory oath submitted by one of joint and several creditors, is limited to the share of such creditor in the debt, and the debtor cannot by that oath free himself from liability towards the other creditor. This article, however, like article 1101 is subject to the special rule applicable to commercial partnerships.

In the title *Of Marriage Covenants, &c.*, article **1265** simplifies the law by abolishing the *don mutuel*, or mutual gift by which, under the old law, consorts might reciprocally, but only to a limited extent, confer upon each other advantages in the event of survivorship. This species of contract had not only fallen into disuse, but the freedom allowed in disposing of property by will had superseded it by affording consorts a more simple and less restricted means of benefiting each other. Article **1269** enacts that community of property between consorts cannot be stipulated to commence at any other time than from the day of the marriage. According to Pothier, it might, under the old law, be stipulated that it would commence at any time after the marriage, though not before. The Code has adopted the rule of the

modern French law, which is not only more simple and uniform, but more in harmony with the nature of the marriage contract. Article **1297** declares that, without authorization, a wife cannot obligate herself, nor bind the property of the community, even for the purpose of releasing her husband from prison, or of establishing their common children. These two cases were formerly exceptions to the general rule requiring that the wife should be authorized; but as a judicial authorization can always be obtained, even when that of the husband cannot be had, and as there seems to be no reason for dispensing with it, the Code simplifies the law by applying the same rule in every case. Article **1342**, in order to remedy a deficiency in the former law, as well as for the sake of uniformity, requires that the inventory made by a wife, after the death of her husband, to enable her to renounce the community, shall be judicially closed, in the same manner as that prescribed by article 1324 for preventing the continuation of the community between a surviving consort and the children issue of the marriage. The old law required this judicial closing of the inventory in the one case, but omitted to do so in the other, although the same reason called for it in both cases. Article **1380** allows the widow, who renounces the community, to retain out of it the wearing apparel and linen in use for her person, and also her wedding presents. The old law allowed her but one suit of wearing apparel. The change here adopted by the Code renders the rule more consonant with present notions of propriety, without going as far as the French Code, which allows the wife to retain all jewelry whatever. Under this last rule serious injustice might, in many instances, be done to the creditors of the community. Article **1389** requires that in the case of any moveable property being excluded from the community, by a clause of *realization* in the contract of marriage, such property must be established either by an inventory or by some equivalent title. It improves the old law in this, that in default of such inventory or title, which the husband must see to, the latter forfeits his right to take back after the dissolution of the community, such moveable property as accrued to him after marriage, and the wife is allowed to prove, either by titles or by witnesses, or even by common rumor, whatever property of the same kind accrued to her subsequently to the same period.

In the title *Of Sale*, article **1501** declares that when an im-

moveable is sold with a statement of its superficial contents, whether at a certain rate by measurement, or at a certain price for the whole, and really contains more or less than the quantity specified, then the buyer, in the one case, is bound to give back or to pay for the excess, and the seller, in the other case, is bound to complete the quantity if possible, or, if this cannot be done, he must make a proportionate reduction in the price. Article **1502** provides, however, that if the difference in quantity is so great as to raise a presumption that the buyer would not have bought had he known it, he may abandon the sale and recover back the price and expenses, and such damages as he may have suffered. Article **1503** excludes from the operation of the two preceding articles all contracts in which it is manifest that a certain determinate thing is sold without regard to measurement. These three articles, which may be considered as one, change the existing law merely in this respect, that for the sake of simplicity and uniformity, as well as for motives of equity, they apply the same rule to the case of excess in quantity when the property has been sold at a single price for the whole, although with a declaration of its contents. The old law in such a case allowed the buyer to have the benefit of the excess in quantity. Article **1519** provides that a purchaser who has unknowingly bought a property charged with a non-apparent servitude, under circumstances which entitle him to vacate the sale, or to claim indemnity, may bring his action for either remedy so soon as he discovers the existence of the servitude. Under the former law his right of action did not accrue until he was disturbed by the exercise of the servitude. The new rule is evidently more just and is moreover analogous in principle with the recent statutory change allowing purchasers of real property to withhold payment of the price, until the removal of such incumbrances as may not have become known to them until after the sale. Article **1544** provides that in sales of moveables, when the buyer fails to take them away, the seller may treat the sale as null, as soon as the delay has expired within which it was agreed to remove them, or if there be no such agreement, then from the time of the buyer's being put in default to do so. Under the old rule a suit at law was necessary in order to give the seller this right, but the wants and usages now existing among us required a more speedy and less expensive remedy.

In the title *Of Lease and Hire*, article **1668** declares that in the case of farms the presumed annual lease, resulting from a holding by sufferance, terminates on the first day of October. This rule is in accordance with the usage of the country, but had been omitted in the statute, by which all such leases, whether of houses or of farms, were made to end on the first of May. Article **1651** provides that, in leases for two or more years, the lessee shall not be entitled to any reduction of rent, by reason of total or partial loss of harvest caused by fortuitous event or irresistible force. Under the old law, the reduction was proportionate to the loss, which was estimated at the end of the lease, after compensating the harvests of the good years with those of the bad. The new rule is more simple, more easy of application, and less likely to cause litigation. Article **1662** regulates the notice to be given to the lessee by the lessor who, under a stipulation to that effect in the deed, wishes to put an end to the lease in order to occupy the property himself. It was formerly a notice of at least one month ; but is now, for the sake of uniformity, assimilated to other notices in cases of lease, and is proportionate to the length of the terms at which the rent is payable. Article **1690**, adopting a provision which has been found to work well in France and which is much needed here to prevent frequent abuses, provides that contractors who undertake to build, according to plans and specifications and at a fixed price, cannot claim any additional sum for extra works, unless such works and their price are specially agreed to in writing by the proprietor.

In the title *Of Loan*, article **1766**, as a corrollary of the new rule adopted by article 1064, defines the care which a borrower is bound to bestow upon the thing borrowed to be that of a prudent administrator, and

In the title *Of Deposit*, article **1802** makes a similar provision with regard to the care which the depositary is bound to bestow upon the thing deposited.

In the title *Of Partnership*, article **1848** declares that when there is no agreement concerning the shares of the partners in the profits and losses of the partnership, they share equally. Under the old law this was the rule in commercial partnerships only, while in other partnerships, a different rule obtained, whenever the value contributed by each partner had been declared. The

rule given in this amendment is quite as equitable in ordinary as in commercial partnerships, and its application to both ensures both simplicity and uniformity. Article **1879** corrects a mistake in the statute law, which enacted that in limited partnerships any alteration in the names of the partners was deemed a dissolution of the partnership. This never could have been intended to apply to the names of the special partners, whose shares are mere transferable investments, and the correction is made accordingly.

In the title *Of Life-rents*, article **1906** provides that a rent constituted upon the life of a person who dies within twenty days after the date of the contract is null, and that the money paid for it may be recovered back. The change introduced here consists in fixing at twenty days the period which under the old law was undetermined. An uncertainty is thus removed which was at least inconvenient, and might in some instances be a cause of litigation. Article **1914** declares that if an immoveable hypothecated for the payment of a life-rent is brought to sheriff's sale, or is sold by a deed of which a confirmation is applied for, the posterior creditors have the choice of either receiving the proceeds upon giving security for the payment of the life-rent, or of allowing the creditor of such rent to be collocated for a sum equal to its value. The provisions of this article are considered more equitable and more convenient than those of the former law which gave the option to the creditor of the rent, by allowing him either to be collocated for its value or to require that the creditors should invest a sufficient amount of the proceeds to produce a like rent, or should give security and be personally liable themselves for the payment of the rent. Article **1915** provides a new and convenient rule for estimating the value of rents. They were formerly valued according to the age and condition of health of the person upon whose life they were constituted, a mode attended with difficulty and uncertainty, and sometimes with considerable expense. The certainty and precision which the system of life-assurances has now attained, and the convenience of the tables prepared by insurance companies for establishing the value of risks upon life, offered a ready mode of establishing the value of life-rents; and this has been done by fixing the value at such a sum as

would be sufficient to purchase from a life-assurance company a life-annuity of like amount.

In the title *Of Transaction*, article **1923**, enacts that a contract of transaction upon any writing subsequently discovered to be false is null. Under the old law it was null only in so far as it depended upon such writing. The new rule is more equitable and logical for the reason that in transactions all the different clauses depend upon each other, and each is a part of the consideration without which in most cases the transaction would not have been entered into.

In the title *Of Pledge*, article **1971** permits the stipulation by the pledgee that in default of payment, he shall have a right to retain the thing pledged. Such a stipulation, under the old law, was forbidden, and the pledgee could not retain the thing except under the judgment of a court, and at a valuation expressly made for that purpose. The former rule was intended to prevent usurious transactions, but under our law, which allows the stipulation of any rate of interest, there is no longer any reason for the restriction.

In the title *Of Privileges and Hypothecs*, articles **2003** and **2009**, as an equitable restriction in favor of the general mass of the creditors of an estate, limits the privileges for expenses of last illness, when the disease was a chronic nature, to those incurred during the last six months before the decease; and, for the same reason, article **2006** limits the privilege of domestic servants and hired persons, upon the moveable property of the debtor, to the wages due for one year previous to the time of the seizure of the property, or the death of the debtor; while the privilege of clerks, apprentices and journeymen, upon the merchandise and effects contained in the store, shop, or workshop in which their services were rendered, is limited to three months.

In the title *Of Registration of Real Rights*, article **2146**, for the sake of simplicity and uniformity, enacts, for all cases, that the memorial to be registered for the preservation of arrears of interest, or rent, must be accompanied with an affidavit of the creditor that the amount is due. This formality was previously required only when the deed was not in authentic form, but there seems to be no reason for any exception in such cases, and the affidavit is now required whether the deed be authentic or not.

In the title *Of Insurance*, article **2548** settles a point upon which

different opinions prevailed. It declares that upon an accepted abandonment of a ship, the freight earned after the loss belongs to the insurer of the ship, and that the freight earned previously belongs either to the ship-owner, or to the insurer on freight to whom it is abandoned. Some were of opinion that the insurer was entitled to the whole freight, others that he was entitled to none. The Code, as an equitable compromise, adopts the rule of the American law upon the subject.

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