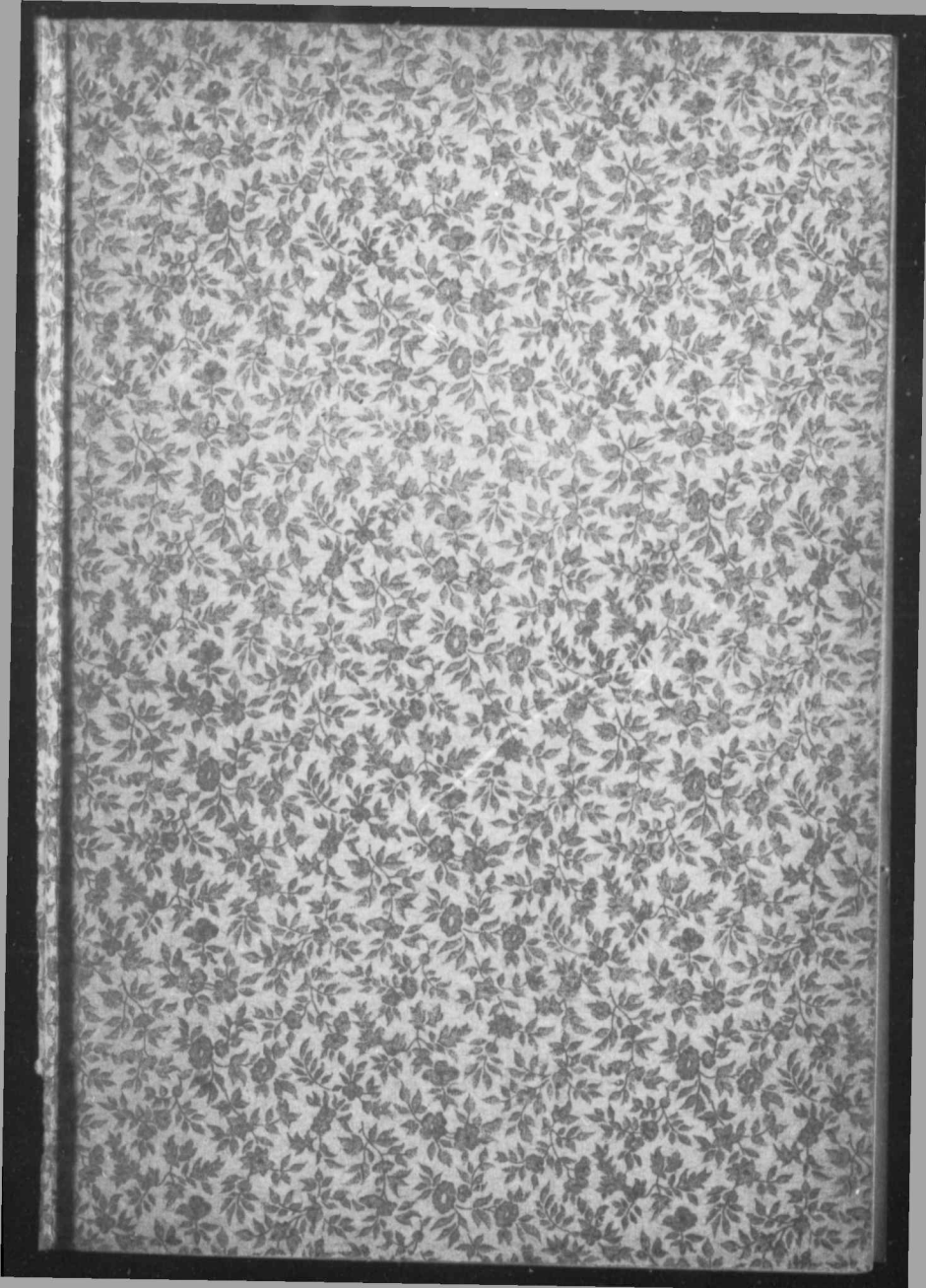
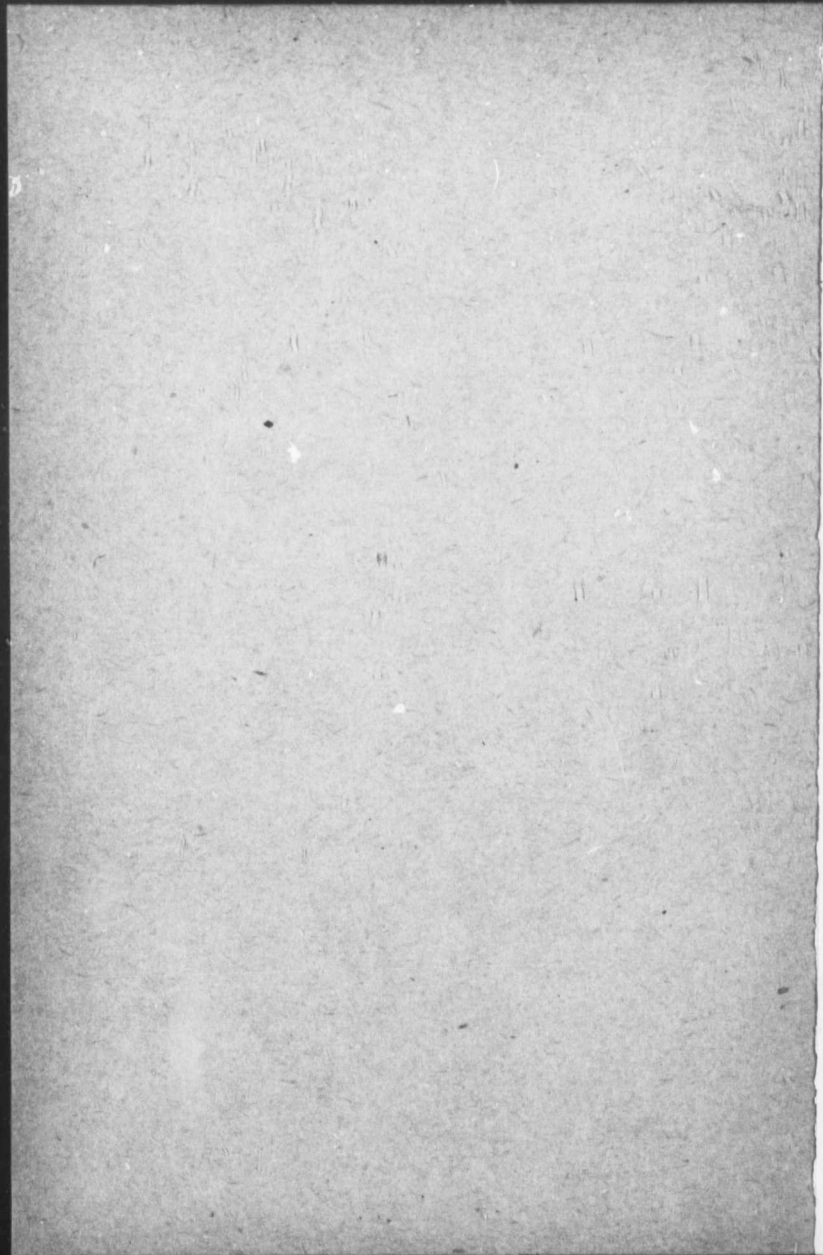


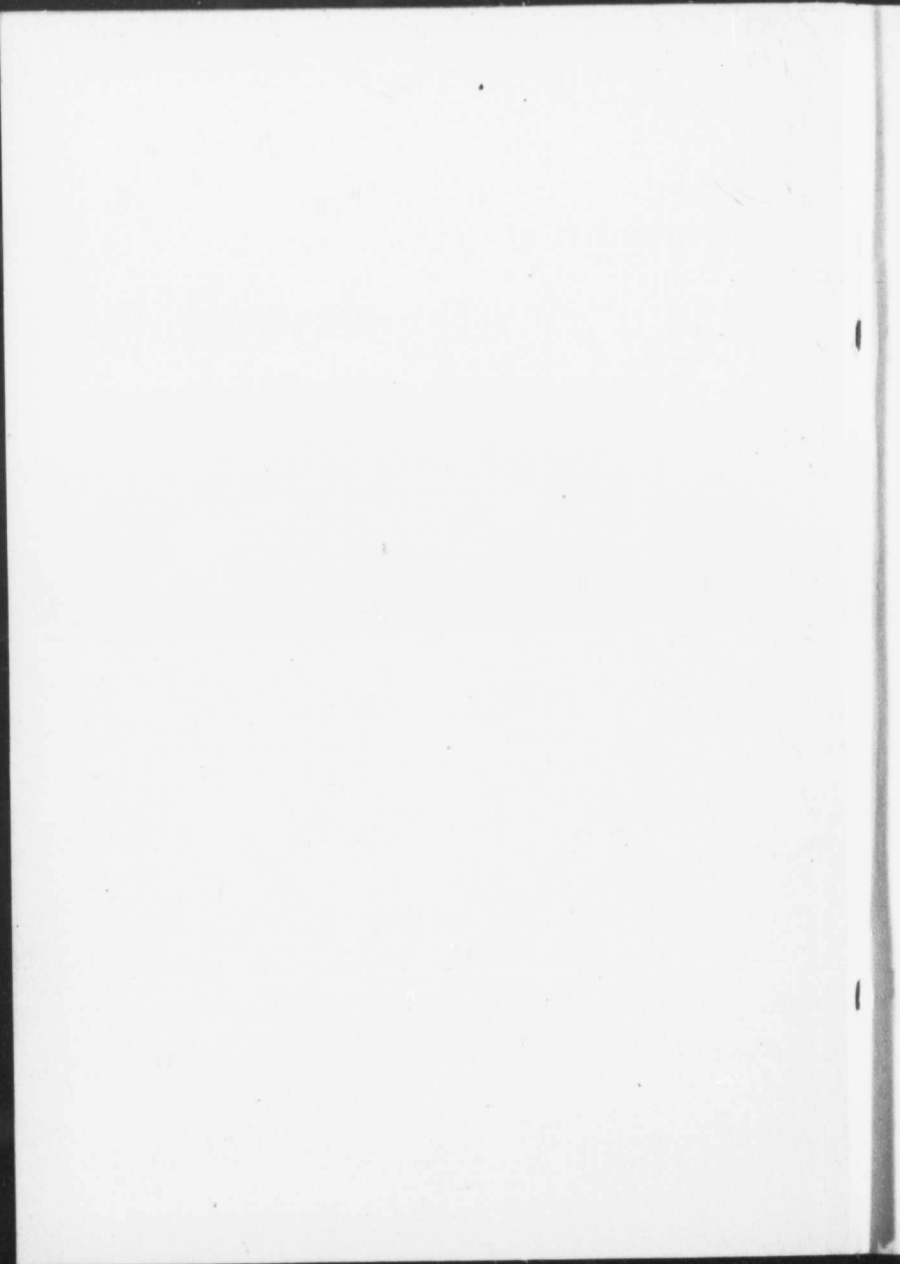
**Handbook
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PATTERSON

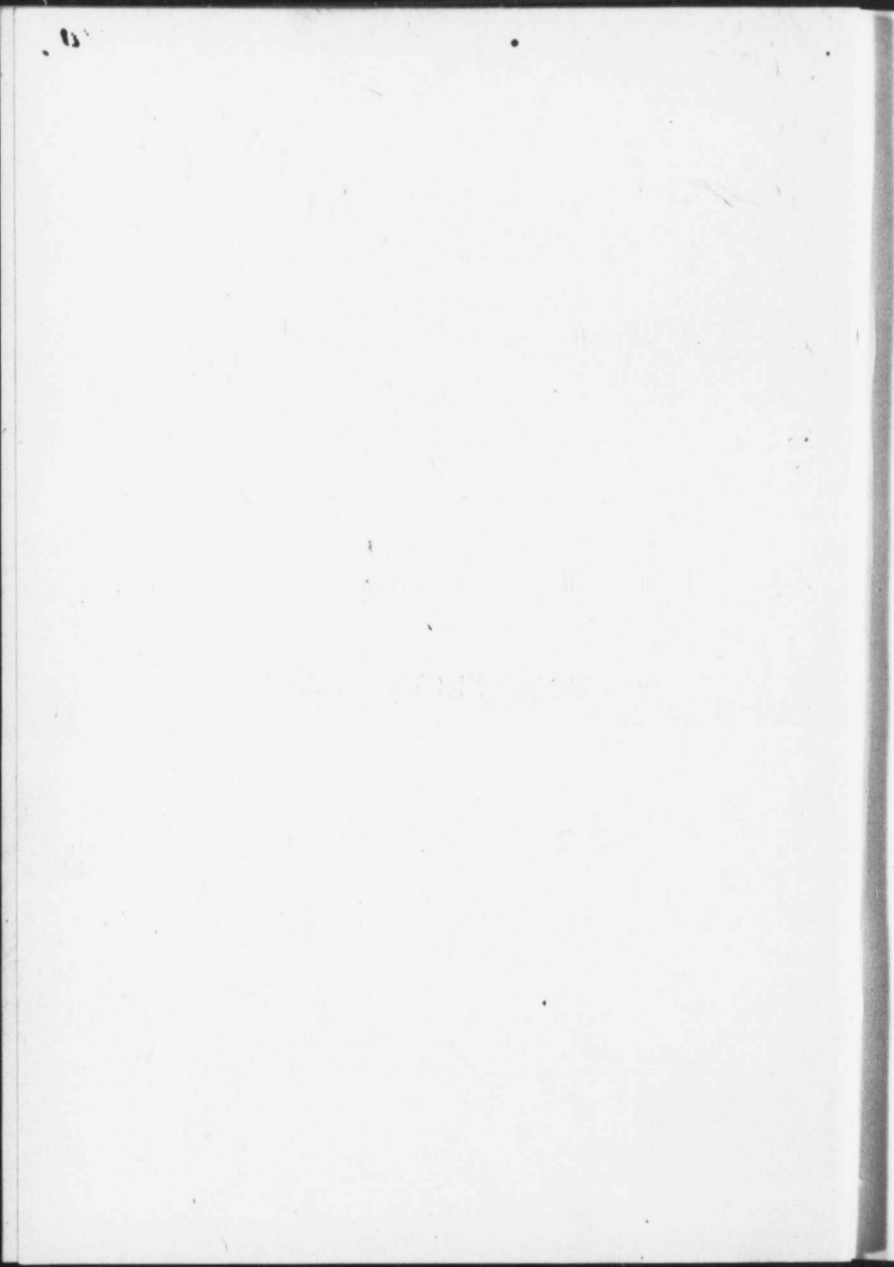








HANDBOOK
OF
COMMERCIAL LAW



HANDBOOK
OF
COMMERCIAL LAW

BY

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PREFACE

This book is an outline of the rules of law which govern and control our commerce. Although it has been expressly written for the use of commercial colleges, it will be helpful, it is hoped, even to that class of readers who have not attended college, but who nevertheless wish to obtain a knowledge of business law. Every man cannot be a lawyer, but every man should know enough law to safeguard his interests in ordinary commercial matters.

The plan of the book is simple. After a consideration of law in general, the various subdivisions of law, including commercial law, are defined in turn. The nature of contracts and obligations is explained. Then the chief contracts which occur in business life are discussed. Space is given to a brief consideration of privileges, hypothecs and prescription, commercial men being daily called upon to apply their rules. Some consideration is also given to the rules relating to insurance and bottomry and respondentia. The various kinds of commercial paper, including bills of exchange, notes, cheques, deposit receipts, bills of lading and letters of credit receive special treatment. The last chapter discloses the rules relating to the abandonment of property. Suitable examples of business forms for purposes of illustration are given, wherever required, throughout the work. Some additional forms appear in the appendix. The value of the book is further enhanced by the addition of a glossary of legal terms.

The author received many valuable suggestions from his friends, D. R. Murphy, Esq., K.C., and W. Herbert Burroughs, Esq., B.C.L., members of the Montreal Bar, and now desires to make suitable acknowledgment of their consideration and kindness. That portion of his work which refers to commercial paper was written in consultation with W. Graham Browne, Esq., B.A. (University College, Toronto), manager of the Sovereign Bank of Canada, Montreal, whose practical knowledge of banking proved to be of splendid service.

The author regrets that, owing to the limited space at his disposal, curtailment of the present volume at many points was necessary. He, however, sincerely hopes that it will fully serve its purpose, and at the same time inspire his readers with a desire to further pursue the study of commercial law.

Montreal, August, 1904.

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HANDBOOK OF COMMERCIAL LAW.

CHAPTER I.

OF LAW IN GENERAL.

Definition.—Law, in the sense of human law, is an external rule of human conduct enforceable by the state. It is always in that sense that the word, law is hereinafter used. It is an order, so to speak, from the state or supreme power to the people, telling them what to do, and what not to do.

Necessity of Law.—Law exists in some form or other among all nations. Even barbarous tribes have it. Sometimes it is written. Sometimes it is merely the spoken will of a chieftain. Indeed, it is only because of the existence and enforcement of law that men can live together peaceably in society. By law every state controls the property of its citizens as well as their actions. A state, however, can enforce its laws within its own boundaries only. All persons within its boundaries, whether strangers or citizens, must obey its laws. And while all must obey, they are entitled in return to the protection of their persons and property.

Division of Law.—Law with reference to its object is divided into Public Law, International Law, and Private Law.

PUBLIC LAW.

Definition.—Public law deals with the rights and duties existing between a nation and the individuals composing it.

Divisions.—Public Law is divided into: Constitutional Law, Administrative Law, and Criminal Law.

Constitutional Law is that branch of Public Law, which determines the legislative, executive and judicial powers of a state, and the relations between the citizens and the government of a country. In other words, it is the rules of law by which civilized countries are governed.

Administrative Law is the body of rules to which the government of a country is subject in its discharge of public business. It is the rules of procedure by which Constitutional Law is enforced.

Criminal Law has for its object the prevention of acts which destroy the peace and harmony of society. A person is not allowed to destroy his neighbor's property, nor to rob him nor kill him. Acts of that kind, once allowed, would soon convert society into a condition of unseemly turmoil and mob violence. Hence every state must have rules forbidding such acts, and must, at the same time, provide for the punishment of those who break them. The rules in question are called Criminal Law. Criminal Law may, therefore, be briefly defined as that branch of law which defines crimes and their punishment.

INTERNATIONAL LAW.

Definition.—International Law is composed of the rules, which all civilized states acknowledge as binding upon themselves in their relations to one another and to one another's subjects.

PRIVATE LAW.

Definition.—Private Law is the body of rules, which regulate the rights and duties existing between individuals.

Divisions.—It is divided into two parts: Civil Law and Civil Procedure.

Civil Law, in a restricted sense, means that portion of our law, which is derived through French sources from the Roman law as compiled by the Emperor Justinian. In its most extensive sense, it comprises those rules which have for their object the enforcement of the less important rights of the individuals of our Province against one another,—rights which affect the individuals chiefly and do not have an important bearing upon the welfare of society. For example, if a man makes an agreement to work for another, upon condition that he is to be paid a certain sum of money on completion of the work, it is important only to those two and to those depending upon them, that the obligations of the agreement be fulfilled. Rules which have for their object the enforcement of such obligations as these, are called Civil Law. Civil Law may therefore be briefly defined as that branch of our law, which relates to the enforcement of the private rights of the people of our Province against one another.

Civil Procedure is the body of rules by which civil law and the rights and obligations arising thereunder are enforced.

QUESTIONS FOR REVIEW.

Q. What is human law? Among what nations does it exist? What necessity is there for law? What are the divisions of law? Define public law? Into what branches is it divided? Define Constitutional Law, Administrative Law, and Criminal Law? Define International Law? What is Private Law? How is Private Law divided? What is Civil Law? What is Civil Procedure?

CHAPTER II.

COMMERCIAL LAW.

There is a portion of our Civil Law, which relates to the business dealings of men with one another, and its discussion forms the subject-matter of this book.

Definition.—Commercial Law may be defined as the body of rules which govern the legal relations arising between men from their business dealings with one another.

The business dealings, to which commercial law applies, may occur between traders, or between traders and non-traders. They consist of offers and acceptances of bargains. These are commercial acts and are the incidents taking place every day in commercial

life. People who perform commercial acts and make such their usual business are called traders.

A commercial act is any transaction, the object of which is to obtain an exchange of natural or industrial products in order to derive a profit thereby. It is known by its special characteristics, namely: 1. It must be paid for at the time or later; 2. It must have to do with movable things; 3. It must be done for the purpose of gain.

CONTRACTS.

In the conduct of their business, men, as has been seen, make bargains with one another. These bargains are contracts of various kinds, and the contracts give rise to obligations, binding men towards one another.

Definition.—A contract is an agreement founded on a valid consideration, whereby two parties reciprocally, or one of them only, promises and binds himself to give, to do or not to do something. It has also been defined as the agreement of two or more persons upon the same object. Thus one makes a contract, whenever one buys, or whenever one sells, or whenever one makes any kind of agreement. In short, whenever, for sufficient consideration, a man agrees to do or not to do a particular thing, he makes a contract. He may say, for example, that he has made a purchase, or has accepted a position. He, as a matter of fact, has made a contract.

Kinds.—Contracts, as to the mode of their formation, may be divided into verbal and written contracts.

Definitions.—When an agreement is made by spoken words, it is called a verbal contract. The vast majority of contracts are so made. When, however, the terms of an agreement are expressed in writing or print, it is a written contract.

A written contract is usually signed.

Essentials.—Four things or conditions must exist in order to form a valid contract. These things are called the essentials of the contract and are as follows :

1. Parties legally capable of contracting ;
2. Their consent legally given ;
3. Something which is the object of the contract ;
4. A lawful cause or consideration.

Capacity.—All persons are legally capable of contracting, if not expressly declared by law to be incapable. Capacity to contract is, therefore, the general rule, and incapacity the rule of exception. One must bear these rules in mind to determine who may and who may not, lawfully make contracts. The following are the principal persons that are affected with legal incapacity : minors, interdicts, married women, consorts as between themselves, a tutor with his own pupil, persons civilly dead and corporations.

Minors.—The law has arbitrarily fixed upon twenty-one years as the age at which a person ceases to be a minor and becomes a major. The parties to a contract must be of full age, that is, at least twenty-one years old. A minor is incompetent to make a contract, and his father or mother or tutor contracts for him during his minority. There are some exceptions to the rule, for example :

1. He may buy such articles of food and clothing as are necessary and proper for his station in life ;

2. He may contract for board, medical attendance and suitable schooling, and, if he is at least fourteen years of age, may sue for wages due him.

3. If he is engaged in trade, he is reputed of full age for all acts relating to such trade. His incapacity is established in his own favor ; he can bind others, but, if he suffers injury, not himself. The purpose of the law is to protect minors from being deceived. In cases where a minor wishes to be relieved from his contract, he must prove that he is injured, but in all cases, where relief is given, he is bound to restore what he has received, if he has been benefited by it. He is relieved from his incapacity by marriage, though still a minor, and may be relieved also by order of a court, judge or prothonotary.

Interdicts.—An interdict is any person whom a court or judge has declared to be incapable of contracting by reason of his habitual state of imbecility, insanity, madness, prodigality or drunkenness. An interdict may contract if assisted by his curator, or the curator in his quality as such may contract alone on his behalf. Acts done by a person alone, who is interdicted for imbecility, madness or insanity, are null, but those done by him when assisted by his curator are valid.

Married Women.—At marriage, for reasons of domestic peace and public policy, a woman's legal personality is merged in that of her husband. In consequence her interests are considered in law to be so thoroughly joined to those of her husband as to render her personally unable to make a contract. This rule suffers exception. If she is a public trader, and is duly authorized for such purpose, she may validly make all

contracts relating to her business. She may also in any case make contracts when specially authorized by her husband or by a judge.

Consorts.—A husband and wife are forbidden to sell to each other. The object of the rule is to remove from them the temptation and opportunity of agreement to wrong other people.

Tutors and Curators.—Tutors and curators are forbidden to become the purchasers of the property of those over whom they are appointed. The object of the law is to prevent them from using their offices for the purpose of gain to themselves and loss to the persons under their control.

Persons Civilly Dead.—Persons civilly dead are those who are deprived of their liberty and rights as citizens. Such deprivation results from condemnation to life imprisonment or to death, or by reason of their being members of certain religious communities. Those civilly dead have a right only to live and receive aliments. They cannot, as a rule, inherit nor transmit property by will or otherwise.

Corporations.—A corporation is a body composed of one or more individuals, forming one legal being and being perpetual, at least in theory. It may exercise only the powers given it by law or by special charter. It is otherwise incapable of contracting.

Consent.—Consent of the parties is the second essential of a valid contract. It is the agreement of their wills; their free and full assent given at the same time for the same object. It takes two persons or parties to make a bargain and their minds must meet. If one thinks one thing, and the other another, no con-

tract is formed. Both must think or agree to think the same thing.

How Given.—One party may make offers to the other, and the latter accept the same by writing, by word of mouth, by signs, and in some cases by silence. In this manner the minds of the parties meet and legal consent is given. There is, however, a kind of consent, which is of no avail in law. Such, for example, would be the consent obtained by error, fraud, violence or fear.

Object.—The object of the contract is the thing, according to agreement, which is to be given, or to be done, or not to be done. It must be something which can be an object of commerce, and be determinate as to kind. Its quantity may be uncertain, but it must be capable of being ascertained. The object may be a future thing, but it must be possible, and not forbidden by law nor by good morals.

Consideration.—Every contract must have a lawful cause or consideration. Such consideration is the reward, value or thing given in exchange for the object of the contract. A contract, if legal, is enforceable by law. But one in which there is no consideration, as well as one in which the consideration is unlawful, or contrary to public order or to good morals, is null and without effect, and cannot be enforced, because the law will not help wrongdoers. The consideration is unlawful when it is prohibited by law or is contrary to public order or good morals.

Nullity of Contracts.—The principal causes of the nullity of contracts are error, fraud, violence or fear and lesion.

Error.—Agreements can be formed only by con-

sent of the parties, and there can be no consent where the parties are in error respecting the object of their agreement. Error is a cause of nullity in contracts only when it occurs in the nature of the contract itself, or in the substance of the thing which is the object of the contract, or in something which is the principal consideration for making it.

Fraud.—Fraud is a cause of nullity when the artifices practised by one party are such that the other party would not have contracted without them. If only one of the parties is guilty of fraud, it is enforceable or voidable at the option of the innocent party. If he desires to have it cancelled, he must take proceedings within a reasonable time after the discovery of the fraud. If both parties are guilty of fraud, neither of them can derive any benefit from it, and neither of them can enforce it against the other.

A contract may also be voidable because its purpose is to defraud third persons.

Violence or Fear.—To be a cause of nullity the fear produced by violence or otherwise must be a reasonable and present fear of serious injury to the party himself, or to some one related to him.

Lesion.—Lesion is a cause of nullity in favor of an unemancipated minor against every kind of act, when he is not assisted by his tutor, and against every kind of act other than acts of administration, when he is so assisted.

EFFECT OF CONTRACTS.

Contracts produce obligations, and sometimes have the effect of discharging or modifying other contracts. They have also the effect in some cases of transferring

the right of property. They can be set aside only by the mutual consent of the parties, or for causes established by law. Contracts have effect only between the contracting parties. As a general rule, they do not affect third parties. A person cannot, by a contract in his own name, bind any one other than himself, his heirs and legal representatives. He may, however, contract in his own name that another shall perform an obligation, and in this case he becomes liable in damages, if the person indicated does not perform the obligation.

The obligation of a contract extends not only to what is expressed in it, but also to all the consequences which by equity, usage or law are incident to the contract according to its nature.

QUESTIONS FOR REVIEW.

Define commercial law? Define trader? What is a commercial act? What are the characteristics of a commercial act? What is a contract? Into what kinds may contracts be divided? What things are necessary to the validity of a contract? What persons are legally capable of contracting? What are the principal persons who are legally incapable of contracting? What is a minor? What is a major? Who contracts for a minor during his minority? What contracts may a minor make without assistance? In whose favor is the incapacity of a minor established? What is the effect of his incapacity? Upon what conditions may a minor be relieved from his contract? In what manner may he be relieved from his incapacity to contract? What is an interdict? Why are

married women legally incapable of contracting? What contracts may married women make notwithstanding their incapacity? Why are husband and wife forbidden to sell to each other? Why are tutors and curators forbidden to contract with those in their care? What persons are civilly dead? What rights have persons who are civilly dead? What is a corporation? What is consent? What is the object of a contract? What is the cause or consideration of a contract? When is the cause or consideration unlawful? What are the principal causes of nullity of contracts? In what case is error a cause of nullity? When is fraud a cause of nullity? When can violence or fear be a cause of nullity? When is lesion a cause of nullity? What is the effect of contracts? Between whom have contracts effect? Can a person by contracting in his own name bind another person? What is the extent of the obligation of a contract?

CHAPTER III.

OBLIGATIONS.

Source.—The main source, through which obligations arise, is contracts. Contracts have been already defined.

Definition.—An obligation is a legal tie by which a person is bound towards another to give, to do, or not to do, something.

Robert Brown gives James Smith his promissory note, promising to pay the latter \$1,000.00 one

month after date. Such a promise is an example of an obligation to give, and Robert Brown is bound to perform it.⁴ Robert Brown binds himself to deliver to James Smith a carload of grain, and so undertakes to perform an obligation to do. Robert Brown sells his business to James Smith and promises not to re-enter a similar line of business in the vicinity and so binds himself by an obligation not to do. An unlimited number of examples might be given.

Principal Kinds of Obligations.—The principal kinds of obligations, which occur in our law, are the following; conditional obligations, obligations with a term, alternative obligations, joint and several obligations, divisible and indivisible obligations, obligations with a penal clause.

Conditional Obligations.—An obligation is conditional when it is made to depend upon an event future and uncertain, either by suspending it until the event happens, or by cancelling it accordingly as the event does or does not happen. For example, if my brother becomes a member of Parliament, I will buy your horse.

Obligations with a Term.—An obligation with a term is one which can be enforced only after a future and determinate date. The insolvency of the debtor may, however, hasten its enforcement. For example, Six months after date I promise to pay John Brown one hundred dollars. This is an obligation to pay \$100.00 and a term of six months is allowed for its fulfilment.

Alternative Obligations.—An alternative obligation is one which has two things for its object. To free himself the debtor, that is to say, the person bound by

the obligation, can give one or the other of the two things. For example, I hereby promise to give you a horse or pay you the sum of \$100.00.

Joint and Several Obligations.—A joint and several obligation is one in which both of the debtors bind themselves to pay the entire amount of the obligation. Performance of the obligation by one of them, however, frees the other as regards the creditor. For example, we jointly and severally promise to pay John Brown one hundred dollars for value received.

Divisible and Indivisible Obligations.—An obligation is said to be divisible when it has for its object a thing which in its delivery or in its performance, is susceptible of division, either materially or intellectually, for example, an undertaking to deliver two horses. On the other hand, an obligation is said to be indivisible: 1. When it has for its object something which by its nature is not susceptible of division either materially or intellectually, for example, an undertaking to make a journey; or to build a house; 2. when its object, although divisible, is not susceptible of division or of performance by the parties by reason of the character, which is given to it by the contract, for example, an agreement to deliver a pair of horses.

Obligations with a Penal Clause.—An obligation with a penal clause is one in which the debtor, in order to insure the performance of the primary obligation, binds himself to suffer a penalty in case of its inexecution. The penal clause is a secondary obligation, whereby the fulfilment of the first obligation is secured. A, for example, is under obligation to build a house for B in four months and should he not complete it within that time, to give B \$100.00. If at the

end of four months the house is not completed, B can demand the \$100.00 and still require A to complete the house. The obligation to pay the \$100.00 is the penal clause.

QUESTIONS FOR REVIEW.

What is the main source of obligations ? What is an obligation ? Give examples of obligations ? What are the principal kinds of obligations ? What is a conditional obligation ? What is an obligation with a term ? What is an alternative obligation ? What is a joint and several obligation ? When is an obligation said to be divisible ? When is an obligation said to be indivisible ? What is an obligation with a penal clause ?

CHAPTER IV.

EXTINCTION OF OBLIGATIONS.

Means of Extinction.—It is important to know the source and the various kinds of obligations. It is also important to know how they are terminated or extinguished. Their extinction will now be considered. They are extinguished by one or other of the following means: payment, novation, release, compensation, confusion, performance become impossible, judgment of nullity or rescission, effect of a resolute condition, prescription, expiration of the time fixed by law or by the parties, the death of the

creditor or debtor in certain cases and special causes applicable to particular contracts.

Payment.—Payment means not only the delivery of a sum of money to discharge an obligation, but also the performance of everything to which the parties are respectively bound. The expenses of payment are always borne by the debtor.

Creditor's Rights.—When a debtor fails to pay or to perform his obligation, the creditor has a right to sue him for the following purposes :

1. To compel specific performance of the obligation, if such, under the circumstances, is desirable ;
2. For authorization to execute the contract at the debtor's expense ;
3. To set aside the contract from which the obligation arises on account of the debtor's failure to fulfil his obligation ;
4. To require anything done in breach of the contract to be undone ;
5. In addition to some one or other of these remedies above enumerated, to claim damages for breach of contract.

Debtor in Default.—Before, however, the debtor can be sued, he must be put in default. The general rule is that the debtor is not legally in default until he has been called upon by the creditor to perform his obligation. There are some exceptions to this rule :

The debtor is put in default :

1. By the express terms of the contract and
2. By the sole operation of law.

The debtor is also in default in the following cases :

1. By the commencement of a suit ;
2. By a written or verbal demand made upon him ;

3. By the doing of an act which he has agreed not to do.

Debtor Liable.—After being put in default in one or other of these ways the debtor is liable to pay damages in all cases, unless he can establish:

1. That the failure to perform the obligation proceeds from a cause which cannot be imputed to him ;

2. That the inexecution of his obligation is due to a fortuitous event or to irresistible force without any fault on his part.

He would, however, be also liable in these two cases if he has obliged himself so to be by the terms of the contract.

The damages which the creditor can claim are, as a general rule :

1. The amount of the loss he has sustained ;

2. The profits of which he has been deprived.

The debtor is, however, liable in these cases only for the damages, which have been foreseen or might have been foreseen at the time of contracting the obligation, when his breach is not accompanied by fraud, and which result immediately from the breach of which complaint is made. It is the approximate and not the remote damages which the creditor may lawfully claim. Any person may pay the debt, but he must pay it simply for the purpose of discharging the debtor, not with the object of being substituted in the rights of the creditor. If the obligation be to do something which the creditor has an interest in having done by the debtor himself, it cannot be performed by a stranger without the consent of the creditor.

To Whom Payment Made.—Payment must be made to the creditor or to some one having his author-

ity or authorized by a court of justice or by law to receive it for him. Payment to be valid must be made by a party capable of alienating to a party capable of receiving. If there is doubt as to whom the debt is due, the amount may be deposited in the general deposit office of the province, in accordance with certain formalities prescribed by law. Payment may be made to a person ostensibly entitled to it. A creditor cannot be compelled to receive anything but the one due him, although the thing offered be of greater value than the thing due, nor can he be compelled to receive payment in parts, even if the debt be divisible. When the debtor owes a specific thing, he is discharged by delivering it in the condition in which it is at the time of delivery, provided that any deterioration in the thing has not been caused by any act for which he is responsible, and that previous to such deterioration he was not in default.

If the object of an obligation be a thing determined in kind only, the debtor cannot be required to give a thing of the best quality, nor can he offer in discharge one of the worst. The thing must be of merchantable quality. When the debtor is given a term for the fulfilment of an obligation, he is entitled to the whole term, and cannot be called upon to pay until its expiration.

Place of Payment.—Payment must be made in the place expressly or impliedly indicated by the obligation. If no place be indicated, payment, when it is of a certain specific thing, must be made at the place where the thing was at the time of contracting the obligation. In all other cases it must be made at the debtor's domicile.

Imputation of Payment.—The debtor of several debts has the right of declaring when he pays which debt he intends to discharge. His declaration for such purpose under such circumstances is called an imputation of payment. When no special imputation is made, the money paid is applied in discharge of the debt which the debtor has the greater interest in paying.

Valid Tender.—If a creditor refuses to receive payment, the debtor may make a tender of the money or other thing due. To be valid it is necessary that such tender be made in accordance with the following rules:

1. That it be made to a creditor legally capable of receiving payment, or to some one having authority to receive for him ;
2. That it be made on the part of a person legally capable of paying ;
3. That it be of the whole sum of money or other thing payable ;
4. If it be in money, it must be in coin declared to be current and legal tender ;
5. That the term for payment have expired, if stipulated in favor of the creditor ;
6. That the condition under which the debt has been contracted has been fulfilled ;
7. That the tender be made at the place where payment is legally due.

If a creditor refuses to accept a tender, in any action afterwards brought, the debtor may plead and renew the tender or he may deposit the amount in the general deposit office of the province.

Novation.—Novation is the substitution of a new obligation for an old one, which is thereby extinguish-

ed. Novation is effected :

When the debtor contracts towards his creditor a new debt, which is substituted for an ancient one, and the latter is extinguished ;

When a new debtor is substituted for a former one who is discharged by the creditor ;

When by the effect of a new contract a new creditor is substituted for a former one towards whom the debtor is discharged.

Release.—Release is the liberation of a debtor by his creditor from the performance of an obligation. It may be express, as for example, when the declaration of such release is drawn and signed. It may be tacit, as, for example, when a creditor returns to his debtor the original title of the obligation.

Compensation.—Compensation is a reciprocal liberation between two persons who are both creditors and debtors of each other. It takes place by the mere operation of law between debts which are equally liquidated and demandable and have each for object a sum of money or a certain quantity of indeterminate things of the same kind and quality. So soon as the debts exist simultaneously, they are mutually extinguished in so far as their respective amounts correspond. It takes place whatever be the cause or consideration of the debts or of either of them, except in the following cases :

1. The demand in restitution of a thing of which the owner has been unjustly deprived ;
2. The demand in restitution of a deposit ;
3. A demand which has for object an alimentary provision not liable to seizure.

Confusion.—Confusion is the union of the qualities

of creditor and debtor in the same person. Whenever such union occurs, the obligation is extinguished.

Performance become Impossible.—This mode of extinction of an obligation occurs in a variety of ways, of which the following are used for illustration :

1. When the object of the contract has perished, or when the debtor has lost its possession, provided that the debtor is not to blame, and is not in default to deliver. An instance of this would be the case of Raphael, the painter, undertaking to paint a picture, which is destroyed by fire before the time fixed for its completion, and through no fault on his part ;

2. When in certain cases one of the parties to a contract dies before its execution. For example, Raphael undertakes to paint a new picture and dies before doing so.

By Judgment of Nullity or Rescission.—This mode of extinction of a contract occurs when a competent court has declared a contract null or has rescinded the same for cause.

By Resolutive Condition.—Resolutive conditions are added, not to suspend the obligation until they are accomplished, but to make it cease when they are accomplished. For example : Peter obliges himself towards his brother until the steamship, "Canada," arrives in Montreal. That is an illustration of a resolutive condition. The moment the ship arrives, Peter's obligation ceases.

Prescription.—Prescription is a manner of acquiring ownership of property or of discharging obligations by the lapse of time. For example : Peter, in good faith, as owner, retains in open, public, and peaceful possession certain movable property for a

period of at least three years. Upon the expiration of such period, though not the owner at first, he has become virtual owner, and is said to be such by prescription. Another example : Peter owes a promissory note of \$100.00. During a period of at least five years after it became due, no payment on account or other admission of the obligation is made. In that case Peter is discharged by prescription from the obligation to pay the note.

Expiration of Time Fixed by Law or by the Parties.—A variety of instances of this mode of prescription might be given. By law, for example, a husband cannot grant leases of his wife's property for more than nine years. Any two parties could make a partnership for one year or for any other length of time. In both the above lease and the partnership, the agreements would terminate upon the expiration of at least nine years in the case of the lease, and the expiration of the special period of time fixed by the contract of partnership.

By the Death of the Creditor and Debtor in Certain Cases.—Raphael, the celebrated painter, undertakes to paint a life-sized portrait of a friend. Since he is employed on account of his skill, should he die before doing the work, its performance would become impossible. The same thing would be true should his friend die and the painting of his portrait thereby become impossible.

Special Causes.—A large number of special causes might be cited. For example, a contract is made containing a stipulation in it that should either party fail to fulfil his obligations under the same, such failure would terminate the contract.

QUESTIONS FOR REVIEW.

Name the various ways in which obligations may be extinguished? Define payment? By whom are the expenses of payment borne? When the debtor fails to perform his obligation, for what purposes may the creditor sue him? Before the creditor sues his debtor, what must he do? What is the general rule as regards the debtor being legally in default? In what cases is the debtor in default? How may he escape such liability? What is the liability of the debtor after being put in default? How may he escape such liability? What are the damages which the creditor can claim, as a general rule? Within what limitations must such damages be determined? Who may pay the debtor's obligation? In what cases must the debtor personally perform his obligation? To whom must payment be made? What may be done when there is doubt as to whom the money is due? Can a creditor be compelled to receive anything other than the one due him? Can he be compelled to receive payment in parts, even if his debt be divisible? When the debtor owes a specific thing, how may he discharge his obligation? When the object of an obligation is a thing determined in kind only, how may the debtor discharge his obligation? When the debtor is given a term for the fulfilment of an obligation, when may he be called upon to perform it? Where must payment be made? When a debtor has several debts, which of them may he pay first? If the creditor refuses to receive payment, what recourse has the debt-

or ? What rules must be observed to make a valid tender ? If the creditor refuses to accept a tender, what may the debtor do ? Define novation, release, compensation, confusion ? Give an example of an obligation of which the performance has become impossible ? What is meant by a judgment of nullity or rescission ? For what purpose are resolute conditions added to obligations ? What is meant by prescription ? Give an example of an obligation being extinguished by the expiration of time fixed by law or by the parties. Give an example of an obligation which is extinguished by the death of the creditor and one by the death of the debtor. Give an example of an obligation being extinguished by a special cause.

CHAPTER V.

PROOF OF OBLIGATIONS.

Burden of Proof.—The party who claims the performance of an obligation must prove it, the burden of proof being upon him. On the other hand, he who alleges facts in avoidance or extinction of an obligation, must prove them. The proof must be the best of which the case in its nature is susceptible. Secondary or inferior proof cannot be received, unless it is first shown that the best and primary proof cannot be produced.

Means of Proof.—Proof may be made by writings, by testimony, by presumptions, by admissions of parties or by their oaths. In commercial law, if there are

no special or general provisions in our Civil Code to regulate certain cases, proof must be made according to the rules of evidence laid down by the laws of England.

In ancient law verbal proof was held to be superior to written proof. In modern law the reverse is the case. Written proof is now held to be superior to verbal proof, and the latter may be used only when the former does not exist, or if it does exist, is not available.

Proof by Writings.—Proof by writings or written proof consists of authentic writings and private writings.

AUTHENTIC WRITINGS.

Definition.—An authentic writing is a document executed or attested with the requisite formalities by a public officer having authority to execute or attest the same in the place where he acts, for example, an agreement drawn before a Notary Public.

There is a variety of other authentic writings, such as acts of the Imperial Parliament, acts of the Dominion Parliament, acts of the Provincial Legislature, duly certified copies of judgments, and certified extracts from official records. These, however, will not be discussed as they are not within the scope of the present volume.

An authentic writing makes proof with reference to the contracting parties, their heirs and legal representatives, as follows :

1. Of the obligation expressed in it ;
2. Of what is expressed in it by way of recital, if the recital have a direct reference to the obligation or

to the object of the parties in executing the instrument. If the recital be foreign to such obligation and to the object of the parties in executing the instrument, it can serve only as a commencement of proof.

An authentic writing may be contradicted and set aside as false, in whole or in part, by a special proceeding for the purpose, called an improbation.

PRIVATE WRITINGS.

Definition.—Any writing which is not authentic, is said to be a private writing, for instance, an ordinary letter or a written agreement made by the parties themselves. A private writing, as a rule, avails as evidence, if signed by the parties and proved. It may be expressly acknowledged or denied, even by the heirs of the person who wrote it. They, in that case, have only to declare under oath that they do not know the writing in question and the signature. If it is acknowledged or proved, it makes proof between the contracting parties, and between their heirs and legal representatives.

Private writings have no date against third persons in non-commercial matters, except from the time of their registration, or from the death of one of the subscribing parties or witnesses, or from the day that the substance of the writing was set forth in an authentic instrument. The date may, nevertheless, be established against third persons by legal proof. In commercial matters, however, private writings are presumed to have been made on the day they bear date, in the absence of proof to the contrary.

What is written by a creditor on the back or upon any other part of the title which has always remained

in his possession, though the writing be neither signed nor dated, is proof against him when it tends to establish the discharge of the debtor. In like manner what is written by a creditor on the back or upon any other part of the duplicate of a title or of a receipt, is proof, provided such duplicate be in the hands of the debtor. No indorsement or memorandum of any payment upon a promissory note, bill of exchange or other writing, made by or on behalf of the party to whom such payment is due, can be received in proof of such payment, so as to take the debt out of the operation of the law respecting the limitation of actions.

Proof by Testimony.—Proof by testimony is made by word of mouth, and as such is distinguished from proof by writings. It is frequently called verbal or oral proof. This kind of proof must be used in regard to the great majority of our daily transactions, because men usually make oral bargains, and do not take the time to reduce their agreements to writing. In consequence it is of the highest importance to know in what cases verbal proof is admissible, and in what cases it is not.

1. Verbal proof may be made of all facts concerning commercial matters ;

There are, however, four exceptions, and in each of these proof can be made by writings only ;

(1) If the value exceeds \$50.00 upon any promise or acknowledgement whereby the debt is taken out of the operation of the law respecting the limitation of actions ;

(2) Upon any promise or ratification made by a person of the age of majority of any obligation contracted during his minority ;

(3) Upon any representation or assurance in favor of a person to enable him to obtain credit, money or goods thereupon ;

(4) Upon any contract for the sale of goods, unless the buyer has accepted or received part of the goods, or given an earnest to bind the bargain.

2. Verbal proof may also be made in all matters in which the principal sum of money or value in question does not exceed \$50.00.

There are three exceptions to this rule, written proof being required ;

(1) Verbal proof cannot be admitted to contradict or vary the terms of a valid written instrument ;

(2) Verbal proof cannot be used to prove additional work or changes in buildings or other works constructed according to plans and specifications ;

(3) Verbal proof cannot be used in an action for the recovery of a sum which does not exceed \$50.00, if such sum be a balance or make a part of a debt under a contract which cannot be proved by testimony, unless the creditor can prove by testimony that the debtor promised to pay such balance.

3. Verbal proof is not admissible in cases in which the amount exceeds \$50.00.

There are four principal exceptions to this last rule, verbal proof being sufficient :

(1). In cases in which real property is held by permission of the proprietor without lease, even if the lease is for a larger amount than \$50.00 ;

(2). In cases of necessary deposit, or deposits

made by travellers in an inn, and in other cases of like nature ;

(3) In case of a lost writing or one in the possession of an adverse party without collusion of the party claiming it, and which cannot be produced ;

(4) In cases in which there is a commencement of proof in writing.

The cases in which written proof is a necessity have been indicated. The cases, too, in which verbal proof may be used and those in which it may not be used, have been cited. It now remains to be seen, what persons are competent to make verbal proof. The general rule is, all persons are competent to offer such proof. The following are, however, declared by law to be incompetent and their testimony cannot be received :

1. All persons deficient in understanding, whether from immaturity of age, insanity or other cause ;
2. Those insensible to the religious obligation of an oath ;
3. Those civilly dead ;
4. Those declared infamous by law.

Under the old French law the testimony of one witness only was deemed insufficient. Until quite recently, the parties themselves to a suit were not competent witnesses, while under the Ordinance of 1667, which regulated all proceedings before our courts, all their relatives to the degree of second cousin were also barred from giving evidence. The constant tendency, however, has been to do away with these restrictions. In consequence under our law today, the evidence of

one witness, where verbal proof is admissible, is in all cases sufficient. Relationship is no longer a bar, and the parties themselves are competent to testify in their own behalf. Even a husband or wife may now offer testimony on each other's behalf.

PRESUMPTIONS.

Definition.—A presumption is a conclusion which the law or a magistrate deduces from a known to an unknown fact. For example, A returns to B a promissory note signed by the latter. Its return is a proved and known fact. The conclusion arising from this fact is that the note was paid, and such conclusion is a presumption. This means of proof is often the only kind available.

ADMISSIONS.

Definition.—An admission is the confession by a party of some fact which it is sought to establish. When it is made in a court proceeding, it is called a judicial admission, and when it is made in any other manner, it is called an extra-judicial admission.

OATHS.

Definition.—An oath is a solemn affirmation or declaration, made with an appeal to God for the truth of what is affirmed. It may be made by either party to the obligation and its use is a practice established by law to compel witnesses to tell the truth.

QUESTIONS FOR REVIEW.

Who must prove the performance of an obligation? Who must prove the extinction of an obligation? What kind of proof must be offered? In what cases may secondary or inferior proof be received? By what means may proof be made? What rules of proof are used in our commercial law in the absence of special or general provisions in our Civil Code to regulate certain cases? What kind of proof was held to be best in ancient law? What kind of proof is deemed best in modern law? Of what does written proof consist? What is an authentic writing? Indicate the principal kinds of authentic writings. With reference to whom and of what does an authentic writing make proof? By what means may an authentic writing be contradicted and set aside? What is a private writing? When does a private writing avail as evidence? What is the date of private writings as regards third persons in non-commercial matters? What is the date of private writings in commercial matters? When does a writing upon a title which has always remained in the creditor's possession make proof against him? When does a writing upon a duplicate of a title make proof against the creditor? Can an indorsement of payment upon a promissory note or other writing made by the party to whom payment is due, be received in proof of such payment, so as to take the debt out of the operation of the law respecting the limitation of actions? How is proof by testimony made? How is it distinguished from proof by writings? Why is it that proof by testimony must be used in regard to the great majority of our daily trans-

actions? State the rules relating to the use of verbal proof with the exceptions, if any, to each? What persons may make verbal proof? What persons are declared by law to be incompetent to make such proof? How many witnesses under our law are required to make proof where verbal proof is admissible? What was the rule in old French law? Does relationship disqualify persons from being witnesses? What is a presumption? Give an example? What is an admission? What is an oath?

CHAPTER VI.

SALE.

Commercial men make contracts of various kinds in the conduct of their business. The contracts most frequently used are sale, exchange, lease and hire, agency or mandate, loan, deposit, partnership, suretyship and pledge.

Definition.—Sale is a contract by which one party gives a thing to another for a price in money which the latter obliges himself to pay.

Four things are necessary to every sale so that the contract be binding: 1. that the property exist; 2. that it be owned by the seller; 3. that the contract be with regard to some particular property, or some particular property be set aside as the property sold, and 4. that the consideration be money. As a general rule, a sale is perfected by the consent alone of the parties, although the thing sold be not then de-

livered. In some cases it is not perfected by consent alone, as for example, where the things sold must be weighed, numbered or measured.

Promise of Sale.—A simple promise of sale is not equivalent to a sale, except in the case of movable property of which delivery has been made. A creditor may ask that the debtor hand him over the title of the sale according to his promise, and obtain it or recover damages. Sometimes in making contracts of sale, earnest-money is given. It is a payment which one of the parties makes upon a promise of sale and before concluding the sale. Each of the parties may abandon his promise, he who has given the earnest-money by abandoning the same, and he who has received it, by paying back double thereof.

Parties to Sale.—Every person capable of contracting may buy or sell, and so may be a party to a contract of sale. There are some persons incapable of contracting who may, however, be parties to a sale. Minors and interdicts, by reason of the right which every individual has to live, may buy clothes and aliments. It is to be observed, however, that there are some persons who, though capable of contracting, cannot be parties to certain sales. Thus a sale cannot take place between husband and wife ; a tutor cannot buy the property of his pupil ; judges, advocates, clerks of the court, sheriffs and bailiffs cannot become purchasers of litigious rights, which are brought before the court within the jurisdiction in which they exercise their functions.

Object of Sale.—Everything which is not excluded from commerce either by nature or by destination, or

by special disposition of law, may be the object of a sale.

Obligations of Seller.—The principal obligations of the seller are :

1. Delivery of the thing sold ; 2. Warranty of the thing sold.

Delivery.—Delivery is the transfer of the thing sold into the power and possession of the purchaser. It is perfected on the part of the seller, when he puts the purchaser in actual possession, every object there-to being removed. The delivery of incorporeal things is effected by the surrender of the titles or by the use which the purchaser makes of the thing with the consent of the seller. The cost of delivery falls upon the seller, and that of taking away the thing sold upon the purchaser. The seller may refuse to deliver when the purchaser refuses to pay the price, unless there be a term fixed for payment, and even in this latter case he may refuse, if, since the sale, the purchaser has become insolvent.

Warranty.—There are two kinds of warranty in sale : legal and conventional. Warranty whether legal or conventional has two objects :

1. The partial or total eviction or deprivation of the thing sold ;
2. The secret defects of the thing sold.

Legal warranty is the warranty imposed upon the seller by law. Conventional warranty is that which is regulated by agreement of the parties to the sale. In the absence of agreement to the contrary the seller is bound by law to warrant the purchaser against the total or partial eviction of the thing sold by reason of any act upon his own part or of any right existing at

the time of the sale. He is also bound by reason of incumbrances upon the thing sold, which are not declared nor apparent at the time of the sale. If it should be stipulated in the contract that the seller is not subject to any warranty whatever, he remains bound, however, to warranty against his own personal acts. He is not to deceive. In the case of eviction, he is bound to restore the price, unless the purchaser knew at the time of the sale, the danger of eviction, and purchased at his own risk.

The purchaser in the case of eviction has a right, both by legal and conventional warranty, to claim from the seller :

1. The restitution of the price ;
2. The restitution of the fruits, if he is paying them to a person who evicts him ;
3. The expenses incurred ;
4. Damages, interest and the expenses of the contract.

The seller is bound to warrant the purchaser against the secret defects of the thing sold and of its accessories, which render it unfit for its intended use, or which diminish its utility to such an extent that the purchaser would not have purchased or would not have given so high a price if he had known them. The seller, however, is bound neither for apparent defects nor for those as to the extent of which the purchaser was able to inform himself. The purchaser who discovers secret defects in the thing sold him, has the right to return the thing to the seller, and to have the price paid returned, or to keep the thing and to have a portion of the price returned according to valuation.

The seller, under the circumstances, would be bound to restore the price or part thereof, as the case may be, and also to pay all damages suffered by the purchaser.

Obligations of Purchaser.—The purchaser's principal obligation is to pay the price of the thing sold at the time and place of the delivery of the thing, otherwise, it is made at the time and place agreed upon. The purchaser is bound to pay interest upon the price of sale in the following cases :

1. If there is an agreement to that effect, counting from the time fixed ;
2. If the thing sold produces fruits of other revenues, counting from his taking possession thereof ;
3. If the thing sold does not produce fruits and other revenues, counting from his being put in default.

Frequently in contracts of sale the seller stipulates in his own behalf a right of redemption. A right of redemption so stipulated by the seller gives him the right to take back the thing upon restoring its price, and upon reimbursing the purchaser the costs of the sale, and of the necessary repairs and ameliorations. A right of redemption can be stipulated for any term not exceeding ten years. If the seller does not exercise his right to redeem the thing within the time prescribed, the purchaser then remains irrevocably proprietor of the thing sold.

Sales by Licitation.—Some sales are known as sales by licitation. If a movable or immovable thing common to several owners cannot be divided conveniently and without loss, or if in a division made by private agreement of common property there happens to be something, which none of the co-owners can or

will take, the sale of it is made publicly by a notary public to the highest bidder, and its price is divided between the co-owners. Such a sale is called a sale by licitation.

Auction Sales.—A sale made publicly by a licensed auctioneer, or sometimes by the proprietor of the object, is known as an auction sale. There are two kinds of auction sales, namely, 1 Forced sales and 2 Voluntary sales.

The voluntary sale by auction of goods, wares and merchandise, or effects, must, as a rule, be conducted by a licensed auctioneer.

The following sales are, however, exceptions to the rule, and may be conducted by an unlicensed person :

1. The sale of goods or effects belonging to the Crown or seized by a public officer under judgment or process of any court, or as being forfeited ;

2. The sale of goods of minors by forced or voluntary licitation ;

3. Sale of property at any bazaar held for religious or charitable purposes, or the sale of property for religious purposes ;

4. The sale of goods and effects belonging to deceased persons, or of any dissolution of community, or to any church ;

5. The sale of personal property, grain or cattle for non-commercial purposes by the inhabitants of the rural districts, removing from the locality ;

6. The sale at exhibitions of farm animals exhibited by agricultural societies ;

7. Sales for municipal taxes under municipal laws.

Sale of Debts.—The sale of debts and rights of action against third parties is perfected between the seller and purchaser by the execution of the title, if it is made in authentic form, or by its delivery, if made by a private writing. To make such sale binding upon the debtor, a notice of it must be served upon him. Such notice is unnecessary when the debtor has signed an acceptance of the transfer. There are some debts as to which a service of the notice of transfer is not required. Such notice is not required in case of bills of exchange, promissory notes, cheques or bank drafts payable to order or to bearer. Their transfer is effected by indorsement or by simple delivery.

He, who sells a debt or other right, must warrant that it exists and is due to him.

One can even sell his rights of succession, and he who does so without specifying in detail the property of which it consists, is bound by law to warrant only his right as heir.

Litigious Rights.—Some rights are called litigious rights. A right is called litigious when it is uncertain and disputed or disputable by the debtor, whether an action for its recovery is actually pending or is likely to become necessary. When a litigious right is sold, he, against whom it is claimed, is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer has paid it.

Fraudulent Sales.—Property is sometimes disposed of by persons who are badly involved in debt, in such a way as to keep it out of the hands of their creditors, and save to themselves the use and profits of it. Sales of this kind are binding between the parties them-

selves, but under certain circumstances can be set aside by the creditor. If the consideration is not a valuable one, or if it is valuable but the buyer knows that the sale is to defraud creditors, it can be set aside. If, however, the debtor makes a sale for insufficient consideration, and retains property enough to pay his debts, the sale could not be attacked.

EXCHANGE.

Definition.—Exchange is a contract by which the parties give to each other respectively one thing for another. The rules, which govern the contract of sale, apply equally to the contract of exchange.

QUESTIONS FOR REVIEW.

What is sale? What things are necessary to every contract of sale? How is a sale perfected? Is delivery necessary to perfect the sale of a thing sold? Give an example of a sale in which delivery is necessary? In what case is a simple promise of sale equivalent to a sale? What may the creditor do in the case of a promise of sale? What is earnest money? In what manner may parties abandon their promise of sale when earnest-money is given? Who may be a party to a contract of sale? Give an example of persons incapable of contracting, who may be parties to a sale? Give an example of persons capable of contracting who cannot be parties to certain sales? What may be the object of a sale? What are the principal obligations of the seller? What is delivery? When is delivery perfected on the part of the seller? How

is delivery of incorporeal things effected? Upon whom does the cost of delivery fall? When may the seller refuse to deliver? How many kinds of warranty are there? What are the objects of warranty? What is legal warranty? What is conventional warranty? To what extent is the seller bound in warranty towards the purchaser? Against what acts is the seller always bound in warranty, notwithstanding agreement to the contrary? What is a seller bound to do in case of eviction? Enumerate the rights of a purchaser in case of eviction? What is the seller's warranty as regards secret defects? For what defects is the seller not bound? What are the rights of a purchaser who discovers secret defects in the thing sold? What is the purchaser's principal obligation? In what cases is the purchaser bound to pay interest upon the price of sale? What is meant by a right of redemption? What is the limit of time for which the right of redemption may be stipulated? If the seller does not exercise his right of redemption within the stipulated time, how is the purchaser affected? What is a sale by licitation? What is an auction sale? How many kinds of auction sales are there? What sales must be conducted by a licensed auctioneer? What sales may be conducted by an unlicensed person? How is a sale between seller and purchaser made binding upon a debtor whose debt has been sold? When is a notice of transfer unnecessary? In what cases is a notice of transfer required? To what is a seller of a debt or other right of action bound? When is a right said to be litigious? How is the person against whom a litigious right is sold, discharged? What is meant by a fraudulent sale? What is exchange? What rules govern it?

CHAPTER VII.

LEASE AND HIRE.

Object.—A contract of lease and hire has for object either things or work, or both combined. Hence there are two kinds of lease and hire, namely, the lease and hire of things and the lease and hire of work. In other words, things and work may be leased, either separately or together.

THE LEASE AND HIRE OF THINGS.

Definition.—The lease and hire of things is a contract by which one of the parties called the lessor grants to the other called the lessee the enjoyment of a thing during a certain time for a rent or price which the latter obliges himself to pay.

Things, which may be the object of a contract of lease and hire, include movable and immovable property, corporeal and incorporeal things. The things, which cannot be the object of such a contract, are those which are excluded by special destination, or which are necessarily consumed by the use made of them. A graveyard could not be leased because excluded by destination, nor could a barrel of flour be leased because consumed by use.

Obligations of Lessor.—The lessor is bound by the nature of his contract :

1. To deliver to the lessee the thing leased ;

2. To maintain such thing in a fit condition to serve the purpose for which it was leased ;
3. To guarantee the peaceable enjoyment of the thing during the continuance of the lease ;
4. To make the greater repairs ;
5. To warrant the lessee against defects of the thing leased, which hinder or diminish its use ;
6. Not to change the nature of the thing leased ;
7. To suffer a reduction of the rent in proportion to the diminution of the enjoyment of the thing, if the lessee is disturbed in consequence of a claim concerning the right of property or other right in and upon the thing leased, and, according to circumstances, to pay him such damages as he suffers therefrom.

Greater Repairs.—The greater repairs are those of main walls and vaults, the restoration of beams and entire roofs, and also the entire reparation of dams, prop-walls and fences. All other repairs are lesser repairs and they will be discussed later.

Rights of Lessor.—The lessor, however, has rights as well as obligations. His rights consist of the following :

1. He may exercise his privilege in satisfaction of any claim arising under his lease ;
2. He has a right of action against the lessee, under certain circumstances, to resiliate the lease, to re-enter in possession of the premises leased and to recover damages.

The lessor may ask for the resiliation of the lease, if the lessee does not furnish the premises sufficiently

to secure the rent, or if he deteriorates them or uses them for illegal purposes or contrary to the purposes for which they were intended. He may sue to re-enter into the possession of the premises leased, when the lessee remains in them without right, and he has a right to recover damages for any violation of the obligations arising from the lease. He may join, too, with any action for the purposes above specified a demand for rent with or without attachment and also an attachment in recaption, if necessary.

Lessor's Privilege.—The lessor's privilege may be exercised for the payment of his rent and the other obligations of the lease, and extends to the movable effects, which are upon the leased premises, whether the object leased be a house or a farm. It also extends to the effects of the under-tenant in so far as the latter is indebted to the lessee. In the same manner it extends to the effects of third parties, when such effects are found upon the premises, with their express or implied consent. It extends also to the merchandize contained in a store, shop, or manufactory. In the case of a farm-lease it extends to all that is required to work the farm, including furniture, movable effects, and the fruits produced during the lease.

Obligations of Lessee.—The obligations of the lessee, on the other hand, are the following :

1. To use the thing leased as a prudent administrator, and according to the conditions of the lease ;
2. To pay for injuries and losses to the thing leased, unless he prove that such have happened without fault on his part ;
3. To pay for the injuries and losses to the thing

leased arising from the acts of persons of his family or of his sub-tenants ;

4. To pay for losses caused by fire in the premises leased, unless he prove that such fire was not caused through his fault ;

5. To return the premises in the condition in which they were leased. In the absence of a statement to the contrary, the premises are presumed to have been received in good condition, saving the right of the lessee to prove the contrary ;

6. To suffer the inconvenience of having the gross repairs made or the lesser in case of urgency ; to make the lesser repairs which become necessary in the house or its dependencies ;

7. To give for the lessor's benefit prospective tenants permission to view the premises which he himself is about to vacate ;

8. In case of ejectment or rescission of the lease through his own fault, he is obliged to pay the rent up to the time of vacating the premises, and also damages as well for the loss of rent afterwards, during the time necessary for reletting as for any loss resulting from his wrongful act.

Lesser Repairs.—Such repairs are those made to hearths, chimney-backs, chimney-casings and grates ; to the plastering of interior walls and ceilings ; to floors when partially broken, but not when in a state of decay ; to window-glass unless it is broken by hail or other inevitable accident, for which the tenant cannot be holden ; to doors, windows, shutters, blinds, partitions, hinges, locks, hasps and other fastenings.

Rights of Lessee.—The lessee has a right to sublet or assign his lease, to remove the improvements and

additions made to the thing leased, provided he leaves it in the state in which he has received it ; nevertheless, if the improvements or additions be incorporated with the thing leased with nails, lime or cement, the lessor may retain them on paying their value. The lessee has a right of action in the following cases :

1. To compel the lessor to make the repairs and ameliorations stipulated in the lease, or to which he is obliged by law ; or to obtain authority to make the same at the expense of such lessor ; or, if the lessee so declare his option, to obtain the rescission of the lease in default of such repairs and ameliorations being made ;

2. To rescind the lease for failure on the part of the lessor to perform any other of the obligations arising from the lease, or from the relation of lessor and lessee.

Cleansing Wells, Vaults, Etc.—The task of cleansing wells, vaults of privies and sewers falls upon the lessor in the absence of agreement to the contrary.

Farm Leases.—He who cultivates rural lands under the condition of sharing in the fruits thereof with the proprietor, can neither sublet nor assign his lease, if permission is not expressly given him. He is obliged to furnish the farm with sufficient stock, and the implements necessary for its cultivation, and to cultivate it with reasonable care and skill. If a farmer loses his harvest wholly or in great part by a fortuitous event or by irresistible force, when his lease is for one year, he is discharged from his obligation for the rent in proportion to such loss. The farmer at the end of his lease must leave upon his farm the manure and the straw and other substances intended

for manure, if he have received them on taking possession ; if he have not received them, the owner of the farm may, nevertheless, retain them on paying their value.

Lease of Cattle.—The lease of cattle on shares is a contract by which one of the parties delivers to the other a stock of cattle to keep, feed, and take care of, upon certain conditions as to the division of profits between them. It is a contract of lease mixed with one of partnership. Every kind of animal susceptible of increase or profit in agriculture or commerce may be an object of this contract.

Termination of Lease.—The contract of lease is terminated in the manner common to obligations, by rescission, by the expiration of its term and by the loss of the thing leased.

A lease, if written, terminates without notice at the expiration of its term. If, however, no time is specified for the lease of houses, apartments, shops and all other immovable property, except farms and rural estates, the lease is held to be annual, terminating on May 1st of every year, when the rent is at so much a year ; for a month, when it is at so much a month ; for a day, when it is at so much a day. Where the rate of rent for a certain time is not shown, the lease is regulated by the usage of the place.

When the term of lease is uncertain, or the lease is a verbal or presumed one, notice by either party to terminate it must be given within a delay of three months, if the rent be payable at terms of three or more months. When the rent is payable at terms of one month or terms of less than three months, a notice of one month must be given. If the property leased be a

farm or rural estate, and no time be specified, the lease is presumed to be an annual one, terminating by a notice of three months on October 1st of every year.

Persons holding real property by sufferance of the owner without a lease are held to be lessees and are bound to pay the annual value of the property, and the holding is regarded as an annual lease, terminating on May 1st every year, if the property be a house, and on October 1st if it be a farm or rural estate. Such holdings are subject to all the rules of law applicable to leases.

Tacit Renewal of Leases.—A tacit renewal of a lease takes place when the lessee remains in possession more than eight days after the expiration of his lease without opposition or notice to leave on the part of the lessor. Such renewals take effect for another year or for the terms for which the leases were made, if for less than a year.

The lessee cannot, therefore, leave the premises nor can the lessor eject him, unless a proper notice to leave has, in every case, been given. When such a notice has been given, a lessee cannot claim the benefit of a tacit renewal.

Registration of Leases.—The registration of a lease is sometimes important. When the lease is made for a term exceeding one year, if it has been registered, the sale of the property would not terminate the lease. If it has not been registered, however, its sale would end the lease and the lessee's only recourse would be an action against the lessor to recover the damages suffered.

Emphyteutic Lease.—Emphyteusis or an emphyteutic lease is a contract by which a proprietor of an

immovable conveys it for a time to another, the lessee subjecting himself to make improvements, to pay the lessor an annual rent, and to pay other charges according to agreement. The duration of an emphyteutic lease cannot exceed ninety-nine years and must be for more than nine years. This lease differs from other leases in the fact that it carries with it alienation. So long as it lasts the lessee enjoys all the rights attached to the quality of a proprietor. He alone can constitute it, who has the free disposal of his property.

LEASE AND HIRE OF WORK.

Definition.—The lease and hire of work is a contract by which one of the parties called the lessor undertakes to do something for another person, who is called the lessee, in return for a price which the latter obliges himself to pay.

The principal kinds of work which can be leased are :

1. The personal services of workmen, servants and others ;
2. The service of carriers, whether by land or by water, when they undertake to carry persons and things ;
3. That of builders and other contractors of works according to a plan and specifications.

Lease of Personal Services.—The duration of a contract of lease and hire of personal services of workmen, servants and others can be made for a limited time only, or for a determinate enterprise. It is ter-

minated by the death of the party engaged, or by his involuntary incapacity, and sometimes by the death of the lessee. The obligations and rights arising from the lease and hire of personal services, are subject to the rules common to contracts. They are also regulated in certain respects in country parts by a special law, and in towns and villages by by-laws of the local municipal councils.

Carriers.—Those, who transport the goods of others or transport passengers from one place to another, are called carriers or common carriers. Railways, street railways, steamboats, steamships and other public conveyances, express companies, truckmen and others are all examples of carriers. Owing to its vast extent the business done by carriers is of great importance. Carriers must exercise care in the preservation of things and as to the safety of the persons that they carry. They are bound to receive and carry, at the times fixed by public notice, all persons applying for passage, if the conveyance of passengers be a part of their accustomed business, and all goods offered for transportation, unless in either case there is a reasonable and sufficient cause of refusal. They may refuse to carry persons tainted with a contagious disease, and they may also refuse to carry matters of an explosive and dangerous nature. They are liable for the loss or damage of the things entrusted to them, unless they can prove that such loss or damage was caused by a fortuitous event or irresistible force, or has arisen from a defect in the thing itself. They are also liable in damages for injuries happening through their own carelessness or negligence to the persons whom they carry.

Carrier's Lien.—They may, like inn-keepers, retain goods until they are paid for their carriage of them.

Plan and Specifications.—When a party undertakes the construction of a building or other work by estimate and contract, it may be agreed that he furnish labor and skill only, or that he shall also furnish materials. If he contracts to do the work only and the thing perishes, the loss of the thing before delivery does not fall upon him, unless such loss happens through his fault. If the work must be done and delivered as a whole and the things perish before the work has been received, and without the owner being in default of receiving it, he who has done the work cannot claim his wages, although he be without fault, unless the thing has perished by reason of a defect in the materials or by the fault of the owner. If the contractor furnishes the materials, and undertakes to do the work, and deliver it as a whole for a fixed price, the loss in any manner whatever before delivery falls upon himself, unless it occurs through the fault of the owner, or the owner be in default to receive it. If a building perish in whole or in part within ten years owing to a defect of construction, or even a defect in the soil, the architect who supervised the work and the contractor are responsible for the loss jointly and severally.

The death of the contractor, in some cases, puts an end to his contract. If, for example, it is the personal skill of the contractor, which is the object of the contract, and such contractor die, the other contracting party can demand the rescission of the contract. If it was not the personal skill of the contractor which

was the object of the contract, then his death would not put an end to his contract, and his legal representatives would be bound by his obligations. As a general rule the death of the owner of the building to be erected does not end the contract. It would end it, if the performance of the work have thereby become impossible.

The word "contractor" includes builders, architects, masons, carpenters, plumbers, slaters, plasterers, and other workmen who undertake work according to a plan and specifications.

Payment of Workmen.—The payment of workmen must be effected in the following manner :

The contractor must keep a list indicating the names, wages of his workmen and the payments made to them attested by their signatures. If a workman is not paid his wages, which are due, he may call upon the proprietor and produce in the presence of a witness his claim made in duplicate. The amount then due is considered as seized in the hands of the proprietor. Five days later he may sue the contractor and make the owner a party to the case.

QUESTIONS FOR REVIEW.

What is the object of a contract of lease and hire ?
What are the kinds of lease and hire ? What is the lease and hire of things ? What are the things which can be the object of a contract of lease and hire, and what are those which cannot be ? What are the obligations of the lessor ? What are the greater repairs ? What are the rights of the lessor ? When may the lessor ask for the resiliation of the lease ? When may he sue to re-enter into possession of the premises

leased? What damages has he a right to recover? What is the extent of the lessor's privilege? What are the obligations of the lessee? What is meant by lesser repairs? What are the rights of the lessee? For what time is the lease of a house deemed to have been made, when there is no term fixed? If the rate of rent for a certain time be not shown, how is the duration of a lease to be regulated? Upon whom falls the task of cleansing wells, the vaults of privies and sewers? Can the lessee of farm property sublet or assign his lease? Under what obligation is the lessee of a farm as to furnishing and cultivating it? What rule is to be observed as to the payment of the rent of a farm when the harvest is wholly or in great part lost by a fortuitous event or by irresistible force? What must the farmer leave upon the farm at the end of the lease? What is a lease of cattle on shares? How is a contract of the lease of things terminated? What is meant by tacit renewal of a lease? What is emphyteusis? What is its duration? In what respect does emphyteusis differ from other leases? What is a contract of lease and hire of work? What are the principal kinds of work which can be leased? What is the duration of a contract of lease and hire of personal service of workmen, servants and others? How is a contract of personal service terminated? To what rules are obligations and rights resulting from this lease, subjected? What is meant by carriers? Give some examples of carriers? What are the obligations of carriers? What persons and what freight may they refuse to carry? What is the liability of carriers? What lien do carriers possess? What is the object of a contract of work by

estimate ? What happens, if the contractor is to do the work only and the thing perishes ? What happens in the case of a loss, if the contractor furnishes the material and undertakes to do the work and deliver it as a whole for a fixed price ? To what warranty are contractors and architects bound ? Does the death of a contractor always put an end to his contract ? Does the death of the owner put an end to his contract ? What persons does the word "contractor" include ? How is the payment of workmen effected ? What recourse has the workman who is not paid ?

CHAPTER VIII.

SURETYSHIP.

Definition.—Suretyship is the act by which a person engages to fulfil the obligation of another in case of its non-fulfilment by the latter. The person, who contracts this obligation is called surety or guarantor. Guarantee is another word for suretyship.

Suretyship is of daily use in commercial matters. Thus it is often made the condition of a loan or of a sale that payment shall be guaranteed by some one besides the debtor. Clerks in banks and others in positions of trust, especially where employed to handle money, are often required to furnish sureties that they shall faithfully and honestly discharge their duties, and that, if any loss is incurred, the sureties shall make the same good.

Kinds of Suretyship.—There are three kinds of suretyship : conventional, legal and judicial. Conventional suretyship is that kind, which results from the agreement of the parties ; legal suretyship is that kind, which is required by law, and judicial suretyship is that kind, which is ordered by a judgment.

Suretyship can only be for the fulfilment of a valid obligation. It may, however, be for the fulfilment of an obligation, which is purely natural, or from which the principal debtor may free himself by means of a plea or defence, which is purely personal to himself : for example, a minor may plead his minority as an excuse for not fulfilling his contract, whenever such contract would not be advantageous to him.

Nature of Suretyship.—A contract of suretyship cannot exceed that which is due by the debtor, nor be made under more onerous conditions, upon pain of being reduced. It extends to the accessories of the principal obligation, when it has been given indefinitely upon such obligation. Furthermore, it falls upon the heirs of the sureties.

Surety's Liability to Creditor.—The surety is liable to the creditor only upon the debtor's default or failure to perform his contract. The debtor's property must, therefore, be previously discussed, unless the surety has renounced the benefit of such discussion, or has bound himself jointly and severally with the debtor. In the latter case his liability is governed by the rules established with respect to joint and several obligations. A surety, who demands the discussion of his debtor, must point out to the creditor the debtor's property, and advance the money necessary to obtain the discussion.

When several persons become sureties of the same debtor for the same debt, each of them is bound for the whole debt. Nevertheless, they can be forced to pay only their respective portions of it, and upon suit against them by the creditor, unless they have renounced the right and benefit of such division, they may require the creditor to divide his action, and reduce it to the share of each surety.

Surety's Liability to Debtor.—A surety who is bound with the consent of the debtor, may recover from him all that he has paid for him in principal, interest, costs, and even in damages, if there be ground for such. On the other hand, the surety, who has bound himself without the consent of the debtor, cannot recover moneys paid, beyond what the debtor would have been obliged to pay, had the suretyship not been assumed. Costs, however, which are subsequent to the notice of payment by the surety, are borne by the debtor.

Surety's Right.—The surety has recourse against the debtor, for such damages as the latter would have been liable for in the absence of the suretyship. Moreover, a surety who has bound himself with the consent of the debtor, may even before paying, sue the latter to be indemnified:

1. When he is sued for the payment ;
2. When the debtor becomes bankrupt or insolvent ;
3. When the debtor has obliged himself to effect his discharge within a certain time ;
4. When the debt becomes payable by the expiration of the stipulated term without regard to the delay

given by the creditor to the debtor without the consent of the surety ;

5. After ten years when the term of the principal obligation is not fixed, unless the principal obligation, such as that of a tutor, is of a nature not to be discharged before a determinate period.

Extinction of Suretyship.—The obligations of suretyship become extinct by the same causes as other obligations.

QUESTIONS FOR REVIEW.

What is suretyship ? What name is applied to a person who undertakes an obligation of suretyship ? Is suretyship of frequent use in commercial matters ? What are the different kinds of suretyship ? For what kind of obligation can suretyship be made ? What limitation is imposed upon a contract of suretyship ? What is the surety's liability to the creditor ? What is the surety's liability to the debtor ? What recourse has the surety against the debtor ? How does suretyship become extinct ?

CHAPTER IX.

DEPOSIT.

Definition.—Deposit is a contract by which a person called the depositor entrusts an object to another called the depositary, in order that the latter may keep the same during a certain time gratuitously or for a

consideration, and then return it to the depositor. It is a simple delivery of an object by the depositor to the depositary to be kept by the depositary with or without reward as the case may be, subject to return later. Its purpose may be for the safe-keeping of the object, for the benefit of a third person, delivery being made to him at a certain time or on demand.

Kinds of Deposit.—There are two kinds of deposit, namely : simple deposit and sequestration.

SIMPLE DEPOSIT.

Simple deposit applies only to movable things, and is gratuitous. It is of two kinds : voluntary and necessary.

Definition of Voluntary Deposit.—Voluntary deposit is that kind of simple deposit which is made by the mutual consent of the party making and of the party receiving it.

Voluntary deposit can take place only between persons capable of contracting. Nevertheless, if a person capable of contracting accept a deposit made by an incapable person, he is liable to all the obligations of a depositary, and these may be enforced against him by the tutor or other administrator of the incapable person. Should, however, a deposit be made with a person incapable of contracting, the party making it has a right to claim back the thing so long as it remains in the hands of the former, and afterwards has a right to demand the value of the thing in so far as it has been profitable to the depositary.

Obligations of the Depositary.—The depositary must :

1. Keep the thing deposited as a prudent administrator ;
2. Not use it without permission ;
3. Return the identical thing deposited ;
4. If it has been taken away by irresistible force, return that which has been received in its place, and in the condition and at the place where it happens to be at the moment of its restoration ;
5. Return the thing deposited as soon as requested.

Obligation of Depositor.—The depositor must reimburse the expenses necessarily incurred and the losses borne by the depositary.

Definition of Necessary Deposit.—Necessary deposit is that kind of simple deposit, which takes place under unforeseen and pressing necessity arising from accident, or irresistible force, as in the case of fire, shipwreck, pillage, or other sudden calamity. A voluntary deposit is the kind which arises without any such calamity, from the mere consent or agreement of the parties. Necessary deposit occurs also under other circumstances, for example, those who keep inns, boarding houses and hotels, are responsible for the baggage brought to their houses by travellers. Such is considered a necessary deposit, but these depositaries are not responsible for the theft or the loss of large sums, when the depositors have not apprised them or requested them to put the object in a safe place.

Innkeepers' Lien.—Innkeepers and boarding house-keepers have a right of retention to compel payment for the board and lodging, which they have given, and in default of payment they can sell after three months,

at a public auction, the baggage kept by giving a week's notice in a newspaper published in the municipality in which the hotel, inn, tavern, public house, place of refreshment, boarding-house, or lodging-house, as the case may be, is situated. In case there is no newspaper published in such municipality, the notice must be inserted in a newspaper in the nearest locality in which a newspaper is published.

SEQUESTRATION.

Sequestration is the separating or setting aside of the thing in controversy from the possession of both the parties that contend for it. It is that kind of deposit, which may have for its object movable as well as immovable property.

Kinds of Sequestration.—There are two kinds of sequestration : conventional and judicial.

Definitions.—Conventional sequestration is the deposit made by two or more persons of a thing in dispute in the hands of a third person, who obliges himself to restore it after the termination of the contest, to the person to whom it may be adjudged. Sometimes it is gratuitous, and sometimes it is not. When it is not gratuitous, it is assimilated to the contract of lease, and the obligation of the depositary is the same as that of the lessee as regards the keeping of the thing sequestrated.

Judicial sequestration is the deposit by authority of justice of the object in dispute. It may take place in the following cases :

1. When movable property is seized under pro-

cess of attachment, or taken in execution of a judgment ;

2. When money or other things are tendered and deposited by a debtor in a pending suit ;

3. When movable or immovable property is in question, concerning the ownership or possession of which two or more persons are in litigation ;

4. When the usufructuary cannot give security ;

5. When the institute deteriorates, wastes or dissipates the property, he may be compelled to give security or allow the substitute to be put in possession as a sequestrator.

Duties of Sequestrator.—The sequestrator or judicial depositary must :

1. Conserve the things sequestrated as a prudent administrator ;

2. Produce them, either to sell or to return them according to the judgment ;

3. Give an account of his management of the things deposited with him ;

4. Lastly, he must administer always independently of the persons who claim the ownership of the thing deposited, and do so by authorization of the court.

QUESTIONS FOR REVIEW.

What is deposit? How many kinds of deposit are there? What are the kinds of deposit and what is the nature of each? What is the liability of a person who accepts a deposit made by an incapable person? What are the rights of a person, who makes a deposit with an incapable person? What are the obligations of the depositary? What are the obligations of the deposit-

or? What is simple deposit, and name its two kinds? What is voluntary deposit? What is necessary deposit? Give an example of necessary deposit? What is meant by an innkeeper's lien? What rights may innkeepers exercise in view of their lien? When? What is sequestration? What the the different kinds of sequestration? What is conventional sequestration? Is conventional sequestration gratuitous? To what contract is it assimilated, when it is not gratuitous? What is judicial sequestration? In what cases may judicial sequestration take place? What are the duties of a sequestrator or judicial depositary?

CHAPTER X.

PLEDGE.

A creditor is said to have security for his claim or debt, when he has been given something to rely upon, besides his debtor's promise of payment. That security may be the guarantee of a third person, as for example, when some one other than the maker endorses a note. It may also be some particular property of the debtor set apart to guarantee payment of the debt in question. If it is real or immovable property, the security is given by hypothec, which will be discussed later; if personal property, by way of pledge. A pledge is thus to be understood as security for the payment of a debt and so is a hypothec. Though both are given as security there is a marked difference between a pledge and a hypothec. In the case of pledge

both title and possession are transferred, but in case of a hypothec, title only is transferred.

Definition.—Pledge is a contract by which a thing is placed in the hands of a creditor, or being already in his possession, is retained by him with the owner's consent in security for his debt.

The parties to a contract of pledge may be, as already noted, the debtor, or a third person on his behalf, and the creditor, and the object of it may be real or immovable property as well as movable or personal property. The pledging of movable property is called pawning.

Creditor's Rights.—The pawning of the thing in his hands gives the creditor a right to be paid from it before other creditors. The privilege subsists only while the thing so pawned remains in his possession, or in the possession of the person appointed by the parties to hold it. No creditor except a pawnbroker can, in default of payment of the debt, dispose of the thing given in pawn. He may cause it to be seized and sold in the usual course of law under the authority of a competent court, and obtain payment by preference out of the proceeds. He can also at the time he receives the thing in pawn stipulate that on default of payment he shall be entitled to retain the ownership of the thing.

Debtor's Rights.—The debtor is owner of the thing pledged until it has been disposed of by sale or otherwise. It remains in the hands of the creditor only as a deposit to secure his claim. He may pay his debt at any time within the stipulated period, and when it is wholly paid, may claim the return of the thing given in pledge. He might claim the thing so given even

before payment is made, if he can establish that the thing pawned is being abused by the creditor. He also has a recourse against the creditor for the loss or deterioration of the thing pledged, excepting when such loss or deterioration has occurred through a fortuitous event or irresistible force.

Collateral Security.—The words “collateral security,” are often used in the sense of pledge. When banks and private parties loan money, they often require security. For such purpose notes, government bonds, stock, railroad bonds, bills of lading, specifications of timber, receipts by warehousemen, millers, wharfingers, masters of vessels or by carriers, are often used as pledges for the debt, and when so used are called collateral security. The bank is then said to loan on collateral. The advance of money in this way for commercial purposes is of daily occurrence. The pledgee holds the commercial papers so assigned to him in security as a trustee in so far as the pledgor is concerned, and, as has been seen, subject to return to the owner or pledgor so soon as the debt in question is paid. As regards third parties, however, the pledgee is the virtual owner of all papers transferred to him as collateral security. Should the debt not be paid when due, such collateral security may be disposed of in satisfaction of the same, according to the formalities prescribed by law.

If a debt bearing interest be given in pledge, the interest is imputed by the creditor in payment of the interest due to him. If the debt, for the security of which the pledge is given, do not bear interest, the imputation of the interest of the debt pledged is made upon the capital.

QUESTIONS FOR REVIEW.

What is security ? Define pledge ? Who may be parties to a contract of pledge ? How is a pledge similar to hypothec and how different from it ? What kind of property may be the object of pledge ? What is meant by pawning ? What are the rights of the creditor upon the thing pawned ? When can a creditor dispose of the thing pawned ? What stipulation as to ownership can a creditor make at the time he receives the thing in pawn ? What are the debtor's rights upon the thing pawned ? What words are often used in the sense of pledge ? When is collateral security given ? To whom is it given ? Of what may it consist ? If a debt bearing interest is given in pledge, how is the interest so accrued applied ?

CHAPTER XI.**LOAN.**

Although men enter commercial life to make money, yet in the course of their business they frequently have occasion to render one another gratuitous services in the shape of money advanced without interest, or the giving of the free use of other property. These services are acts of accommodation and are called loans. In these loans the identical property must always be returned, if it can be, as, for example: A lends B a horse. B at the expiration of the time agreed upon must return the horse. If, however, the

property so loaned is consumed by the use made of it, other property of a similar kind and nature must be given back; as for example, A lends B a barrel of flour. B must return, not the exact flour loaned, but another barrel of similar quality.

Definition.—Loan may, therefore, be defined as the entrusting of a thing for use or consumption, without reward, and subject to be returned specifically or in kind.

Kinds of Loan.—There are two kinds of loan, as already indicated, namely, the loan of things which may be used without being destroyed, called loan for use, and the loan of things, which are consumed by the use made of them, called loan for consumption.

LOAN FOR USE.

Definition.—Loan for use is a contract by which one party called the lender gives to another called the borrower, a thing to be used by the latter gratuitously for a time, and then to be returned by him to the former.

The title to the thing loaned remains in the owner, that is to say, in the lender. Everything may be loaned for use, which may be the object of a contract of lease and hire.

Obligations of Borrower.—The borrower :

1. Must bestow the care of a prudent administrator in the safekeeping and preservation of the thing loaned ;
2. Must apply the thing to its intended use ;
3. Must return the thing in good condition at the time specified ;

4. Must indemnify the lender for the loss of the thing loaned, even by a fortuitous event, if he himself applied it to any other use than that for which it was intended by the parties, or used it longer than the specified time;

5. Must indemnify the lender for the loss of the thing lent, if it be lost by a fortuitous event from which the borrower might have preserved it by using his own, or if being unable to save both, he preferred to save his own;

6. Must return the thing upon order of the court, to the lender, even before the expiration of the term agreed upon, when the latter is in a pressing or unforeseen need of it.

The borrower, however, is not liable for the deterioration of the thing arising alone from its use for the purpose intended, and without fault on his part.

Obligations of Lender.—The lender cannot take back the thing loaned, or disturb the borrower in the proper use of it until after the expiration of the term agreed upon, or if there be no agreement, until after the thing has been used for the purpose for which it was borrowed. He is also bound to reimburse the borrower the extraordinary expenses incurred by the latter in a case of urgency for its preservation. When the thing loaned has defects which cause an injury to the person using it, the lender is responsible, if he knew the defects and did not make them known to the borrower.

LOAN FOR CONSUMPTION.

Definition.—Loan for consumption is a contract by which the lender gives the borrower a certain quan-

tity of things which are consumed by the use made of them, under obligation by the latter to return a like quantity of things of the same kind and quality.

There is an essential difference between loan for use and loan for consumption. In the case of loan for use, as has been already seen, the lender remains owner of the thing loaned, and its loss would therefore fall upon the lender. In the case of loan for consumption, however, the borrower becomes owner of the thing loaned, and its loss therefore falls upon himself.

Obligations of Borrower.—1. In the case of a loan in money, he must return only the numerical sum received at the time agreed upon, in the absence of an agreement to pay interest ;

2. If the loan be in bullion or of provisions, the borrower is obliged to return at the specified time the same quantity and quality as he received and nothing more, whatever may be the increase or diminution of the price of them ;

3. If the borrower fails to return the things lent, he is bound, at the option of the lender, to pay the value they bore at the time and place at which, according to agreement, their return was to be made. If the time and place of return be not agreed upon, payment must be made of the value which the things bore at the time and place of the borrower being put in default.

4.—He must pay interest for the time which has elapsed since he was put in default ;

The lender must have the right to alienate the thing loaned.

Obligations of Lender.—He is bound to indemnify the borrower for losses occasioned by secret defects

in the thing loaned, when he himself knew of the existence of such defects and did not make them known to the borrower.

INTEREST.

Definition.—Interest is the benefit which the lender obtains from the borrower for the use by the latter of a sum of money loaned.

Kinds of Interest.—Interest is either legal or conventional. It is legal and fixed by law at five per cent. per annum, or conventional and fixed at any rate agreed upon by the parties, with the exceptions :

1. Of certain corporations mentioned in the law respecting interest, which cannot receive more than the rate per cent. therein mentioned ;
2. Of certain other corporations which are limited as to the rate of interest by special acts ;
3. Of banks, which are not subject to any penalty for usury, but which cannot recover more than seven per cent.

Obligations of Borrower.—The borrower is bound to pay the interest, return the sum borrowed in current money, or to pay in things of the same kind and quality, if the loan be not a money loan.

QUESTIONS FOR REVIEW.

Define loan ? How many kinds of loan are there ? What is loan for use ? In the case of loan for use, in whom does the title of the thing loaned remain ? What things may be the object of a contract of loan for use ? What are the obligations of the borrower in the case of a loan for use ? What are the obligations of the

lender in the case of a loan for use ? What is loan for consumption ? What is the essential difference between a loan for use and a loan for consumption ? What are the obligations of the borrower in the case of loan for consumption ? What right must the lender, in the case of a loan for consumption, possess ? What is the obligation of the lender in the case of loan for consumption ? What is interest ? What are the kinds of interest ? What is the rate of interest fixed by law ? What rate of interest may parties fix for themselves ? What are the obligations of the borrower in the case of a loan upon interest ?

CHAPTER XII.

AGENCY OR MANDATE.

Definition.—Agency or mandate is a contract by which a person called the principal or mandator commits a lawful business to the management of another or third person, called the agent or mandatary, who, by his acceptance, obliges himself to perform it. The acceptance may be implied from the acts of the agent, and, in some cases, from his silence.

The agent or mandatary is any person authorized to act for another with third persons. The person, who authorizes an agent to act for him, is called the principal or mandator, and the business relationship existing between the principal and agent is called agency or mandate. A person dealing with an agent is termed a third party or a third person. Anyone may be a

principal who can make a valid contract. The agent, since he does not need to bind himself, may be any person of sufficient understanding to do the business committed to his charge. Thus a minor, a lunatic or an idiot, cannot make a contract through an agent, but minors and married women may act as agents, though lunatics and idiots cannot.

Agency is one of the most common and necessary relations of life, and, therefore, constitutes one of the most important parts of commercial law. For example, the business of brokers, commission merchants, lawyers, auctioneers, masters of ships, and that of many others is some sort of agency. Corporations act wholly by means of agents, that is to say, by their officers and employees. In our law agency is gratuitous, unless there is an agreement or established usage to the contrary. In commercial matters, however, it is onerous by nature, that is to say, an agent is entitled to remuneration for his services.

Kinds of Agency.—There are two kinds of agency or mandate :

1. Special mandate for a particular business ;
2. General mandate for all the affairs of the mandator.

A special mandate is required for such special purposes as to alienate or hypothecate property, and to do all acts of ownership other than acts of administration. In such cases, on account of its importance the authority must be express.

Obligations of Agent to Principal.—The agent's obligations are :

1. To obey the instructions of his principal, and to pay for the damages caused, should he fail to obey ;

2. To do, after the extinction of his mandate, whatever is a necessary consequence of previous acts, and if the extinction be caused by the death of his principal, he is obliged to complete the business, which is urgent and cannot be delayed without risk or loss ;

3. To exercise as regards the business entrusted to him the skill and care of a prudent administrator ;

4. To be responsible for the acts of a sub-agent, if he appoints one ;

5. To render an account to his principal of his administration and to pay him all the money which he has collected under the authority of his mandate, including interest upon his principal's money, which he has used for his own business.

Obligations of Agent to Third Parties.—The agent or mandatary is responsible to third parties, when he has exceeded the limit of his authority. So long as he acts within the bounds of his mandate he is not personally liable to third parties with whom he contracts.

An agent, who acts in his own name, is liable to the third party with whom he contracts, although such third party has also a recourse against the principal. If an agent acts in excess of his authority, he does not bind his principal, binding himself alone. An agent, however, is not held to have exceeded his powers, when he executes his mandate in a manner more advantageous to his principal than that specified by the latter.

An agent in signing documents for his principal should always use the name of his principal, adding thereto his own initials. For example, the "World Publishing Company," per E. M.

Obligations of Principal to Agent.—The principal must indemnify his agent for all obligations contracted by him toward third parties within the limit of his powers, and for acts exceeding such powers whenever they have been expressly or tacitly ratified. He or his legal representative is also bound to indemnify his agent for all acts done by him within the limit of his powers after the extinction of the mandate by death or other cause when he is ignorant of such extinction. The principal is bound to re-imburse the expenses and charges which the agent has incurred in the execution of his mandate and to pay him the salary or other compensation to which he may be entitled, and to indemnify him for losses incurred without fault on the part of the agent in the performance of his mandate. When there is no fault imputable to the agent, the mandator is not released from such re-imbusement and payment, although the business has not been successfully accomplished ; nor can he reduce the amount of the re-imbusement upon the ground that the expenses and charges might have been made less by himself. The principal must pay interest upon money advanced for the purpose of his business by his agent.

Obligations of Principal to Third Parties.—The principal is bound in favor of third parties for all acts of his agent, except in the case of factors when the credit has not been given to both principal and factor nor to the principal alone, and in the cases wherein by agreement or usage of trade, the agent alone is bound. The principal is also bound for his agent's acts done in excess of the authority given, when he has expressly or tacitly ratified the same. The principal or his legal representative is bound for all acts of his agent done

after the extinction of the agent's authority when such extinction was not known to third parties. He or his legal representative is also bound for acts of the agent done within the powers of the mandate after its extinction when such acts are a necessary consequence of the business already begun, or have been done after the principal's death for the completion of the business where loss or injury might have been caused by delay. The principal is also liable to third parties, who, in good faith, contract with a person, not the agent, under the belief that he is so, when the principal has given reasonable cause for such belief, and he is also liable for damages caused by the fault of his agent in execution of the duties assigned to him.

BROKERS, FACTORS AND OTHER COMMERCIAL AGENTS.

Definitions.—A broker is one who exercises the trade and calling of negotiating between parties the business of buying and selling or any other lawful transactions. He may be the agent of both parties, and bind both by his acts in the business for which he is engaged by them.

A factor or commission agent is an agent who is employed to buy or sell goods for another, either in his own name or in the name of his principal, for which he receives a compensation commonly called a commission.

Extent of Agent's Authority.—If a person buy goods from an agent entrusted with their possession, and pay him for the same, the contract is binding upon the owner of the goods. The agent, as a matter of fact, although known to be merely an agent, is deemed

to be owner of the goods for the following purposes :

1. To sell them to any purchaser ;
2. To entitle the consignee to a lien for money paid thereon by him to the agent ;
3. To give validity to any contract by way of pledge, lien, or security made in good faith with such agent for money advanced or to be advanced him.

Termination of Agency.—A contract of agency or mandate may be terminated:

1. By revocation ;
2. By the renunciation of the agent ;
3. By the natural or civil death of the principal or agent ;
4. By the interdiction, bankruptcy or other change in the condition of either party by which his civil capacity is affected ;
5. By the cessation of authority in the principal ;
6. By the accomplishment of the business or expiration of time for which the mandate is given ;
7. By other causes of extinction common to contracts.

QUESTIONS FOR REVIEW.

What is agency or mandate ? What is an agent or mandatary ? What is a principal or mandator ? What is the name of the business relationship existing between a principal and his agent ? What is meant by a third party or third person ? Who may be a principal ? Who may be an agent ? State whether a minor, a lunatic or idiot can make a contract through an agent, and give a reason for your answer. State whether minors or married women may act as agents with a reason for your answer. Is agency of frequent

use in commercial life ? Mention a list of commercial agents. By what means do corporations act ? Is agency gratuitous ? How many kinds of agency are there ? When is a special mandate required ? When is a general mandate sufficient ? What are the obligations of a principal to his agent ? What are the obligations of an agent to third parties ? What are the obligations of an agent to his principal ? What are the obligations of a principal to third parties ? What is a broker ? What is a factor ? What is the extent of the authority of an agent entrusted with the possession of goods ? How may a contract of agency be terminated ?

CHAPTER XIII.

PARTNERSHIP.

Definition.—Partnership is a contract by which two or more persons invest together their property, their credit, their skill, or their industry in order to derive therefrom a profit.

Participation in such profit involves the obligation to share in the losses, but the proportion of the profit and the loss to be shared by each partner is fixed by agreement.

Partnership is formed by an oral or written agreement. The partners, collectively, are, in many respects, regarded as a single individual, and as such are often called a "house" or "firm," having partnership property and a firm name under which they do all their business.

Registration Formalities.—Whenever a partnership is formed, the firm is bound to register in the office of the prothonotary of the superior court, and in the local registry office, a written declaration announcing :

1. The name of the firm ;
2. The names of all the partners ;
3. The purpose of the business ;
4. The date of the commencement of the partnership ;
5. If one or more of the partners are married, the declaration should mention whether every such married partner is under community or is separate as to property from his wife, and if by marriage contract ; and in case of separation of property, if by marriage contract or by judgment.

If he is separate by marriage contract, the declaration should mention the date, the name of the notary before whom the deed was passed and the domicile of the latter when the contract was made, and if by judgment, the declaration shall mention the number of the case, the date of the judgment, and the name of the district in which the judgment was rendered.

According to the provisions of the Quebec Statute 2 Edward VII., Chap. 37, this declaration as to community or separation of property affects every married person doing business as a trader, whether alone or in partnership with others.

These formalities of registration must be observed within sixty days from the day on which trading commenced, or within sixty days from the date of the marriage of the party affected, under a penalty of \$200.00. Should partners marry after the registration

of their business, they must register an additional and special declaration to that effect.

Kinds of Partnership.—There are four principal kinds of partnership : universal, particular, civil and commercial.

Universal Partnerships.—In a universal partnership of all property, all that which the partners possess in property, whether movable or immovable, and all their profits, present and future, are united in common. Parties contracting a universal partnership are presumed to intend only a partnership of gains, unless the contrary is expressly stipulated. In a universal partnership of gains is included all that the partners acquire by their industry in whatever employment they are engaged during the continuance of the partnership. The movable property and the enjoyment of the immovables possessed by the partners at the date of the contract are also included ; but the immovables themselves are not included.

Particular Partnerships.—A particular partnership is one which applies only to a certain determinate object. The partnership contracted for a single enterprise or for the exercise of any art or profession is also a particular partnership.

Civil Partnerships.—A civil partnership is one formed for any other than a commercial purpose.

Commercial Partnerships.—A commercial partnership is one which is contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general or limited to a special branch or adventure.

Kinds of Commercial Partnership.—Commercial partnerships are subdivided into general partnerships,

anonymous partnerships, partnerships en commandite or limited partnerships and joint stock companies.

A General Partnership is that kind of commercial partnership which is contracted for the purpose of carrying on business under a collective name or firm, consisting ordinarily of the names of the partners, or of one or more of them, all of whom are jointly and severally liable for the obligations of the partnership, for example : James Smith & Company ; or Smith & Brown.

An Anonymous Partnership is that kind of commercial partnership which has no name or firm. In such a partnership, however, whether it is general or confined to a single object or adventure, the partners are subject to the same liabilities in favor of third persons as in ordinary general partnerships.

A Partnership en Commandite, or limited partnership, is that kind of commercial partnership which is formed for the transaction of any mercantile, mechanical or manufacturing business other than the business of banking and insurance. Such a partnership consists of one or more persons called general partners and of one or more persons, who contribute in cash payments a specific sum or capital to the common stock, and who are called special partners. The special partners are not liable for the debts of the firm beyond the amounts contributed by them to the capital. Persons contracting a limited partnership are bound to make and severally sign a certificate before a notary public, containing the following particulars :

1. The name of the firm or partnership ;
2. The general nature of the business to be carried on ;

3. The names of all the general and special partners, disclosing which are general and which special, and their usual place of residence ;

4. The amount of capital stock contributed by every special partner ;

5. The period at which the partnership commences and that of its termination.

This certificate must be filed and recorded at length in the office of the prothonotary of the district and in the local registry office.

A Joint Stock Company is that kind of commercial partnership which is formed by the mere agreement of its members without being incorporated. It is subject to the rules of general partnerships, and although not a corporation, retains the name and form of one. Whenever such a partnership is incorporated, it at once ceases to be a partnership in the ordinary sense, and, of course, becomes a corporation. The various modes of forming corporations are indicated in the next chapter.

The names of the partners or stockholders do not, as a rule, appear in such joint stock companies. They are generally known under a name indicating the object of their formation. Such a company, although unincorporated, carries on its business by a board of directors or other agent, who are appointed from time to time according to well established rules.

Essential Elements of Partnership.—The essential elements of every partnership are :

1. Community of property ;
2. A share of the profits and losses ;
3. The right, as a general rule, of every partner to

the management or direction of the affairs of the partnership.

The contract of partnership may be verbal or in writing, and its usual contents are :

1. The name of the partnership or firm name ;
2. The rights and duties of the partners ;
3. The amount of the contribution of each partner ;
4. The portion of the profits or losses which must fall to each partner ;
5. The duration of the partnership ;
6. The mode of liquidation at its expiration.

Kinds of Partners.—There are three kinds of partners : general partners, nominal partners, and dormant or unknown partners.

General Partners have their names known in business circles and carry all the responsibilities of the partnership business.

Nominal Partners assist the business with which they are connected by the prestige which their names give, and although having no interest in the same, they are liable to third parties in the same way and to the same extent as general partners. Should any person, however, give sufficient cause for the belief that he is a member of the firm, in that case he becomes liable to third parties as a general partner.

Dormant or unknown partners are, during the continuance of the partnership, also liable to third parties in the same way as general partners.

Obligations of Partners.—The following are the principal obligations of the partners :

1. They must give their time and attention to the business ;

2. They must act as agents of one another, and be responsible for each other's acts ;

3. They must work for the common benefit of the partners, and never for personal gain.

Dissolution of Partnership.—Partnerships are dissolved:

1. By the efflux of time ;

2. By the extinction or loss of the partnership property ;

3. By the accomplishment of the business for which it was contracted ;

4. By bankruptcy ;

5. By the death of one of the partners ;

6. By the civil death or interdiction of one of the partners ;

7. By the will of one or more of the partners ; or

8. By the business of the partnership becoming impossible or unlawful.

QUESTIONS FOR REVIEW.

What is partnership ? What registration formalities are to be observed by a firm of partners ? What declaration must be registered by every married person, whether doing business alone or in partnership with others ? What persons are subject to the necessity of registering a declaration as to marriage and how they are married ? Within what delay, and subject to what penalty, must the formalities of registration be observed ? What are the principal kinds of partnership ? What is a universal partnership ? What is a particular partnership ? What is a commercial partnership ? What are the four kinds of

commercial partnership? Define each kind. What are the essential elements of every contract of partnership? How is a contract of partnership made, and what are its usual contents? Mention the different kinds of partners and define each. What are the obligations of partners? How are partnerships dissolved?

CHAPTER XIV.

CORPORATIONS.

Definition.—A corporation is a body composed of one or many individuals forming one legal being, which is perpetual at least in theory.

Objects.—Corporations are now organized in large numbers to carry on business enterprises of all kinds, such as railway transportation, insurance, banking, manufacturing, mining and trading.

Formation.—There are in Canada three methods by which corporations may be formed :

1. By special act, either of the Parliament of Canada or of the Legislature of the Province in which incorporation is sought ;
2. By letters patent issued under the Companies' Act ;
3. By royal charter. (Companies are now rarely, if ever, organized by this method.)

A corporation is the same in form as an unincorporated joint stock company, but in view of its corporate powers it possesses advantages which the unincorporated company does not, as will be seen later. Cor-

porations are sometimes popularly spoken of as "incorporated joint stock companies," or simply as "joint stock companies."

Kinds.—Corporations are classed as aggregate or sole, accordingly as they are composed of several persons or of one. They are also religious or lay, public or private, political or civil, according to their respective purposes. Civil corporations include commercial corporations.

Powers.—Corporations may exercise the powers given them by law or by special charter. They are otherwise incapable of contracting. They are subject to law as other persons, though not to imprisonment. They must carry out their contracts; they may sue and be sued in the courts; they may own property, both movable and immovable, for the purposes of their business, and transfer such property as may be necessary.

Members.—The members of a corporation or company are those persons who buy shares or stock in such corporation or company, and are called shareholders or stockholders. The total number of shares into which the nominal capital of the company is divided, is called the company's stock, or capital stock.

Management.—Corporations can act only through their agents, that is to say, their officers and employees. The entire management of their affairs is conducted by a board of directors who are elected for the purpose by the shareholders. The directors elect a president, secretary, treasurer and such other officials as may be required. They also engage the clerks, agents and all employees.

Advantages.—To carry on the immense business enterprises of today requires a larger capital than can

usually be furnished by any one individual. Corporations meet this need. There is a marked tendency at the present time towards the union of capital. The formation of corporations is at least a convenient mode by which such union of capital is effected. Its debts are always the debts of the corporation itself and not of its members. A shareholder's liability is to the extent of the capital stock he has subscribed for, and that only. In the case of an unincorporated joint stock company, or of any other commercial partnership, the liability of a member of the firm is quite different. His interest in the business is liable for the entire debts of the firm, and when that interest is exhausted, even his personal property is liable. Another advantage of corporations is that their existence is perpetual, if necessary, a fact which gives them a character of stability which partnerships do not possess. The death of a partner dissolves a partnership, but the death of a shareholder in no way affects the existence of a company. Lastly, corporations have another advantage. They allow of an easy transfer of the ownership of shares without in the least affecting their existence, while in partnerships a transfer of interest would dissolve the firm.

Dissolution.—Corporations are dissolved :

1. By any act of the legislature declaring their dissolution ;
2. By the expiration of the term, or the accomplishment of the object for which they were formed, or the happening of the condition attached to their creation ;

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3. By forfeiture legally incurred ;
 4. By the natural death of all the members, the diminution of their number, or by any other cause of a nature to interrupt the corporate existence, when the right of succession is not provided for in such cases ;
 5. By the mutual consent of all the members ; or
 6. By voluntary liquidation in the cases by law provided.

QUESTIONS FOR REVIEW.

What is a corporation ? For what objects are corporations organized ? What are the methods by which corporations may be formed ? What is the difference between a corporation and an unincorporated joint stock company ? What are the different kinds of corporations ? What powers may corporations exercise ? To what extent are corporations subject to law ? What persons are the members of a corporation ? What is meant by the company's stock, or capital stock ? How is the management of the affairs of a corporation conducted ? By whom are the directors elected ? What officials do the directors elect ? What other persons may the directors hire ? Explain the advantages of a corporation over a partnership. How are corporations dissolved ?

CHAPTER XV.

PRIVILEGES AND HYPOTHECS.

Debtor's Property Liable for his Debts.—Whoever incurs a personal obligation, renders liable for its fulfilment all his property, movable and immovable, present and future, except such property as is specially declared to be exempt from seizure. The reason of the rule is the fact that a debtor's property is by law always a pledge or guarantee to his creditors that his debts will be paid. When the creditors claim together they share the price of his property rateably, unless there are amongst them legal causes of preference. These legal causes of preference are privileges and hypothecs.

PRIVILEGES.

Definition.—A privilege is a right which a creditor has of being preferred to other creditors, according to the origin of his claim. It results from the law and is indivisible by nature.

The privileges upon movable property are ranked in the following order :

1. Law costs, and all expenses incurred in the interest of the mass of creditors ;
2. Tithes ;
3. The claims of the vendor ;
4. The claims of creditors who have a right of pledge or of retention ;
5. Funeral expenses ;

6. The expenses of the last illness ;
7. Municipal taxes ;
8. The claim of the lessor ;
9. The claim of the owner of the thing lent, leased, pledged or stolen ;
10. The claims of domestic or hired servants ;
11. The claims of the Crown against persons accountable for its moneys.

The privileges on immovable property rank in the following order :

1. Law costs and expenses incurred for the common interest of the creditors ;
2. Funeral expenses ;
3. Expenses of the last illness ;
4. Expenses of tilling and sowing ;
5. Assessments and rates ;
6. Seignorial dues ;
7. The claim of the laborer, workman, architect and builder ;
8. The claim of the vendor ;
9. Servants' wages, when the movable property is

insufficient, and the claims of employees of railway-companies engaged in manual labor.

The laborer, workman, architect and builder rank in the following order for the purposes of their privilege :

1. The laborer ;
2. The workman ;

3. The architect ;
4. The builder.

Privileges upon immovables are preserved by registration.

HYPOTHECS.

Definition.—Hypothec is a real right upon immovable property made liable for the fulfilment of an obligation in virtue of which the creditor may cause it to be sold in the hands of whomsoever it may be, and have a preference upon the proceeds of the sale in order of date.

Kinds of Hypothec.—There are three kinds of hypothec :

1. Legal hypothec, which results from the law ;
2. Judicial hypothec, which results from judgments or judicial acts ;
3. Conventional hypothec, which results from agreement.

EXTINCTION OF PRIVILEGES AND HYPOTHECS.

Both privileges and hypothecs become extinct :

1. By the total loss of the thing subject to the privilege or hypothec ; by the changing of its nature ; by its ceasing to be an object of commerce, saving certain exceptional cases ;
2. By the determination or legal extinction of the conditional or precarious right of the person who granted the privilege or hypothec ;

3. By the confusion of the qualities of privileged or hypothecary creditor and purchaser of the thing charged. Nevertheless, if the creditor who has become purchaser be evicted for a cause which is not attributable to himself, the hypothec or privilege revives ;

4. By the express or tacit remission of the privilege or hypothec ;

5. By the complete extinction of the debt to which the privilege or hypothec is attached ;

6. By sheriff's sale, or other sale of a like effect, or by forced licitation, saving seigniorial rights, and the rents constituted in their stead ; and also by expropriation for public purposes. The creditors in such case retain their recourse upon the price of the property ;

7. By judgment of confirmation of title ;

8. By prescription.

QUESTIONS FOR REVIEW.

If a person incurs a personal obligation, how is his movable and immovable property affected thereby ? What is the reason of the rule ? When creditors claim together, how do they divide the price of the debtor's property ? What is a privilege ? Mention in their respective order the privileges upon movable property. Mention in their respective order the privileges upon immovable property. In what order do the laborer, the workman, the architect and the builder rank for the purposes of their privilege ? How are privileges upon immovables preserved ? What is hypothec ? How many kinds of hypothec are there ? Name and define the kinds. How do privileges and hypothecs become extinct ?

CHAPTER XVI.**PRESCRIPTION.**

Definition.—Prescription is a means of acquiring or of being discharged by lapse of time, subject to conditions established by law.

Kinds of Prescription.—There are two kinds of prescription :

1. Positive prescription ;
2. Negative prescription.

Positive Prescription is that kind in which title is presumed or confirmed and ownership is transferred to a possessor by the continuance of his possession

Negative Prescription, on the other hand, is that kind which is a bar to, and, in some cases, precludes any action for the fulfilment of an obligation or the acknowledgement of a right when the creditor has not preferred his claim within the time fixed by law.

Prescription cannot be renounced by anticipation. Prescription already acquired, however, may be renounced, and so may all the benefit of any time elapsed by which prescription is begun.

Possession.—Possession is the detention or enjoyment of a thing or of a right which a person holds or exercises himself, or which is held or exercised in his name by another. To avail for the purposes of prescription it must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor.

Imprescriptible Things.—The following things are imprescriptible :

1. Things which are not objects of commerce ;
2. The rights of the crown with regard to sovereignty and allegiance ;
3. Sea-beaches and lands reclaimed from the sea, ports, navigable or floatable rivers, their banks and the wharfs, works and roads connected with them, public lands, and generally all immovable property and real rights forming part of the domain of the crown ;
4. Sacred things, so long as their destination has not been changed ;
5. The right to tithes and the rate of the tithe ;
6. Roads, streets, wharfs, landing-places, squares, markets, and other places of a like nature for the use of the public, so long as their destination has not been changed.

Prescription of 30 Years.—All things, rights and actions, the prescription of which is not otherwise regulated by law—for example, money loaned—are prescribed by the lapse of thirty years.

Prescription of 10 Years.—A prescription of ten years avails against an action in any one of the following matters :

1. In favor of the possessor of property with a title in good faith ;
2. The action in restitution of minors for lesion ; the action in rectification of tutors' accounts and that in rescission of contracts for error, fraud, violence or fear ;
3. The action against architects and contractors as regards the warranty of the work which they have done or supervised.

Prescription of 5 Years.—A prescription of five years avails against actions in the following matters :

1. For professional services and disbursements of advocates and attorneys, reckoning from the date of the final judgment in each case ;

2. For professional services and disbursements of notaries and fees of officers of justice, reckoning from the time when they became payable ;

3. Against advocates, attorneys, notaries and other officers or functionaries, who are depositaries in virtue of their office, for the recovery of papers and titles confided to them, reckoning from the termination of the proceedings in which such papers and titles were made use of, or, in other cases, from the date of their reception ;

4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of grain or other things, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity ; (this prescription, however, does not apply to bank notes.)

2. Upon sales of movable effects between non-traders, these latter sales being in all cases held to be commercial matters ;

6. For hire of labor, or for the price of manual, professional or intellectual work and materials furnished ;

7. For visits, services, operations and medicines of physicians or surgeons, reckoning from every service or thing furnished ;

8. Arrears of rents, even life rents, those of interest, those of house and land rents, and in general, all arrears of natural or civil fruits.

The prescription of five years does not apply, however, to what is due to the crown, nor to interest upon judgments.

Prescription of 3 Years.—A prescription of three years occurs in favor of the possessor in good faith of corporeal movables.

Prescription of 2 Years.—The following actions are prescribed by two years:

1. For damages resulting from offences and quasi-offences ;
2. For salaries of employees not reputed domestics, and whose engagement is for a year or more ;
3. For sums due schoolmasters and teachers for tuition, and board and lodging furnished by them.

Prescription of 1 Year.—An action is prescribed by one year in the following cases:

1. For slander or libel reckoning from the day that it came to the knowledge of the party aggrieved ;
2. For bodily injuries ;
3. For wages of servants, clerks and other employees whose engagement is for less than a year ;
4. For hotel or boarding-house charges.

Prescription may be interrupted either naturally or civilly.

There is a natural interruption of prescription when the possessor is deprived for more than a year of the enjoyment of a thing, either by the former proprietor or by any one else.

There is a civil interruption of prescription when a judicial demand in proper form is regularly made, or when the debtor expressly renounces such prescription.

QUESTIONS FOR REVIEW.

What is prescription ? How many kinds of prescription are there ? What is positive prescription ? What is negative prescription ? Can prescription be renounced ? What is meant by possession ? What must be the characteristics of a person's possession to avail for purposes of prescription ? What things are imprescriptible ? What things are prescribed by thirty years ? Against actions in what matters does a prescription of ten years avail ? What actions are prescribed by five years ? In what case is there a prescription of three years ? In what cases is an action prescribed by two years ? In what cases is an action prescribed by one year ? Can prescription be interrupted ? When is there a natural interruption of prescription ? When is there a civil interruption of prescription ?

CHAPTER XVII.

INSURANCE.

Definition.—Insurance is a contract whereby one party, called the insurer or underwriter, undertakes for a valuable consideration, to indemnify the other, called the insured, or his representatives, against loss or liability from certain risks or perils to which the object of the insurance may be exposed, or from the happening of a certain event.

The insurance business has developed wonderfully in modern times. Its growth has kept pace with all branches of our commercial and industrial life. It is claimed that the incomes of some of the great Brit-

ish and American insurance companies are almost equivalent to that of some of the smaller nations, and the value of the things on which insurance is now being effected is simply fabulous. The oceans themselves carry wealth which is insured for over a billion dollars. If anything possesses pecuniary value and is liable to injury, it may be insured. The premiums, that is to say, the cost of carrying the insurance, are based upon the most exact scientific and statistical knowledge.

Essential Elements of Contract.—The essential elements of a contract of insurance are :

1. The contracting parties, the insurer and the insured ;
2. Any object whatever exposed to risk whether incorporeal or corporeal, and also human life and health ;
3. A consideration called a premium, being a percentage upon the value of the thing insured varying according to the danger or risk of the thing insured.

The Insured.—All persons capable of contracting may insure objects in which they have an interest and which are subject to risk. A person has an insurable interest in the object insured, whenever he may suffer direct and immediate loss by the destruction or injury of it. Whenever insurance is effected it is witnessed by an instrument issued by the company, called a policy of insurance.

Kinds of Policy.—There are two kinds of policies of insurance :

1. A value policy ;
2. An open policy ;

A value policy declares the value of the thing insured, as for example, life insurance. An open policy contains no declaration of value, and the insurer pays the actual amount of the loss suffered. A person sometimes secures insurance upon an object in which he has no real interest. The insurance policy so obtained is commonly called a wager or gaming policy. A wager or gaming policy is one in the object of which the insured has no insurable interest. The condition of interest being absent, such a policy is illegal.

Representations.—The insured is obliged to represent to the insurer fully and fairly every fact which shows the nature and extent of the risk and which may prevent the undertaking of it or affect the rate of premium. There are some facts, however, which the insured is not bound to declare to the insurer. The insured is not obliged to represent facts known to the insurer, or which from their public character and notoriety he is presumed to know ; nor is he obliged to declare facts covered by warranty express or implied, except in answer to inquiries made by the insurer.

Misrepresentation or Concealment.—If a party, even innocently, makes mis-representations or concealments in regard to material facts, the contract is voidable. If he makes a fraudulent representation, whether it is in regard to a material fact or not, the contract is void. The basis of a contract is the material facts, which the insurer is bound to have disclosed to him in order to form a reasonable judgment as to whether he will accept the risk, and for the purpose of appreciating the premium to be paid. It is worth remembering

that a representation is not necessarily written, it is generally made verbally.

Warranty.—Warranty is of two kinds in our law :

1. Express ;
2. Implied.

All stipulations in a policy of insurance, or referred to therein so as to be made a part thereof, are express warranties; but every statement in the policy is not necessarily a warranty, these being sometimes inserted for the purpose of giving information as regards description. All statements made in reference to the policy, as for instance, for the purpose of an application, are also of the nature of a warranty. A mere memorandum, even though containing descriptions of the risk, is not of the nature of a warranty because it is not a reference to the policy, but a mere written representation. Warranties form part of a contract of insurance, but a representation, unless expressly so made, is not a part of it. Representations embodied in a contract of insurance, whether material or not, become warranties, and must be strictly complied with, although the strict application of this rule is modified by statute. According to the Dominion Act in regard to life insurance, the distinction between warranty and representation is practically done away with, as the policy can be voided only by the falsity of a material warranty or representation.

Implied warranties are those stipulations or conditions, which arise from the nature itself of the contract without it being necessary and essential to declare them. For example, in a contract of marine insurance there is an implied warranty that the ship would be fit for sea at the moment of departure.

Kinds of Insurance.—Insurance is divided, with respect to its object and the nature of the risks, into three principal kinds :

1. Marine insurance.
2. Fire insurance.
3. Life insurance.

MARINE INSURANCE.

Contents of Policy.—A policy of marine insurance contains :

1. The name of the insured or of his agent ;
2. A description of the object insured, of the voyage, of the commencement and termination of the risk, and of the perils insured against ;
3. The name of the ship and master, except when the insurance is on a ship or ships in general ;
4. The premium ;
5. The amount insured ;
6. The subscription of the insurer with its date ;
7. Other clauses and announcements according to agreement of the parties.

Marine insurance may be upon ships, on goods, on freight, on bottomry and respondentia loans, on profits and commissions, on premiums of insurance, and on all other things appreciable in money and exposed to the risks of navigation. The risks usually specified in a policy of marine insurance are tempest and shipwreck, stranding, collision, unavoidable change of the ship's course, or of her voyage, or of the ship itself, fire, jettison, plunder, piracy, capture, reprisal and other casualties of war, detention by order of sovereign power, barratry of the master and mariners, and

generally all other perils and chances of navigation by which loss or damage may arise.

Obligations of Insured.—The principal obligations of the insured are :

1. To pay the premium ;
2. To make such representations to the insurer as are required, and to avoid misrepresentation and concealment ;
3. To guarantee that the ship is fit to go to sea and is provided with all necessary papers.

Abandonment.—Abandonment is the surrender by the insured to the insurer of the thing insured in all cases of its constructive loss, and, when such abandonment is accepted, it is equivalent to a transfer, the thing transferred then becoming the property of the insurer. An insured may make an abandonment in all cases in which a loss is implied. He can, in consequence, recover the amount of insurance as if for a total loss ; otherwise he has a right to recover only as for a partial loss.

Obligation of Insurer.—The principal obligation of the insurer is to pay to the insured all losses suffered by the latter by reason of any of the risks insured against, according to the terms of the contract.

FIRE INSURANCE.

Contents of Policy.—A fire insurance policy contains :

1. The name of the party in whose favor it is made ;
2. A description or sufficient designation of the

object of the insurance and of the nature of the interest of the insured ;

3. A declaration of the amount covered by the insurance, and of the amount or rate of the premium, and of the nature, commencement and duration of the risk ;

4. The subscription of the insurer with its date ;

5. All other announcements and conditions which the parties have lawfully stipulated.

In fire insurance, in practice at least, there are no valued policies. They could exist, but, as a rule, the company stipulates to pay the damage caused up to the sum insured. Fire insurance, therefore, gives a larger measure of protection to the insured than marine insurance does. In marine insurance the insurer is liable to pay only the proportion which the amount insured bears to the value of the stock. In practice, however, some fire insurance companies have conditions which amount to the same thing as the law on marine insurance, some policies containing a provision that the insurer will only be liable for that proportion of the loss which the amount insured bears to the value of the property.

LIFE INSURANCE.

Contents of Policy.—A policy of life insurance contains :

1. The name or sufficient designation of the party in whose favor it is made, and of the person whose life is insured ;

2. A declaration of the amount of the insurance, of the amount or rate of premium, and of the commencement and duration of the risk ;

3. The subscription of the insurer with its date ;
4. All other announcements and conditions which the parties have lawfully stipulated.

It was for a long time considered wrong to insure human life. Indeed, it is only quite recently that the business of life insurance has been extended in many European countries. There is, generally, no difficulty in determining, in marine and fire insurance, the correct amount of the insurance. It is, as a rule, approximately the value of the thing insured. In life insurance it is impossible to give any specific value to the object insured, the general rule being that the policy is a valued policy. It is for a fixed amount, namely, the amount specified or for which the insurance is granted. A man has an interest and a right to insure his life for any amount agreed upon between himself and the insurance company.

QUESTIONS FOR REVIEW.

What is insurance ? Give some idea of the recent growth of insurance business. What things may be insured ? What are the essential elements of a contract of insurance ? Who may insure objects and what objects may they insure ? What is meant by an insurable interest ? How is a contract of insurance witnessed ? Name the different kinds of policies and define each. What representations must the insured make to the insurer ? What facts is he not obliged to represent to the insurer ? Explain the effect of misrepresentation or concealment on the part of the applicant for an insurance policy. What is the basis of a contract of insurance ? Are representations always

written ? How many kinds of warranty are there in a contract of insurance ? Define express and implied warranties. When does a representation become a part of a contract of insurance ? Name the different kinds of insurance. What are the contents of a policy of marine insurance ? Upon what objects may a policy of marine insurance be placed ? What risks are usually specified in a policy of marine insurance ? What are the principal obligations of the insured ? What is meant by abandonment in marine insurance ? When may an insured make an abandonment ? What is the principal obligation of the insurer ? What are the contents of a policy of life insurance ? How is the value of a life insurance policy determined ?

CHAPTER XIX.

BOTTOMRY AND RESPONDENTIA.

Definition of Bottomry.—Bottomry is a contract whereby the owner of a ship or his agent, in consideration of a sum of money loaned for the use of the ship, undertakes conditionally to repay the same with interest, and hypothecates the ship for the performance of his contract.

The essential condition of the loan is that if the ship be lost by a fortuitous event or irresistible force the lender shall lose his money, otherwise it is to be repaid with a certain profit for interest and risk. Bottomry differs materially from an ordinary loan. Upon a simple loan the money is wholly at the risk of the borrower, and must be repaid at all events. In bot-

tomry the money, to the extent of the enumerated perils, is at the risk of the lender during the voyage on which it is loaned or for the period specified.

Definition of Respondentia.—When the loan is not made upon the ship, but upon the goods laden in her, the contract is called respondentia. Respondentia may, therefore, be defined as a contract for the loan of a sum of money on goods laden on board of a ship upon condition that if the goods be wholly lost in the course of the voyage by any perils enumerated in the contract, the lender shall lose his money ; if not, that the borrower shall pay him the sum borrowed with interest according to agreement. Respondentia is so called because the borrower's personal responsibility is deemed the principal security for the performance of the contract. In a loan upon respondentia the lender must be paid his principal and interest, though the ship perish, provided the goods are saved. In most other respects the contracts of bottomry and of respondentia stand substantially upon the same footing.

A loan may be made upon a ship, freight and cargo together, or upon such portion of either as may be agreed upon by the parties.

Contents of Contract.—Contracts of bottomry and respondentia must specify :

1. The amount of money loaned with the rate of interest to be paid ;
2. The objects upon which the loan is made. It specifies also the nature of the risk.

Loans in the nature of contracts of bottomry and respondentia cannot be made upon the wages of sailors. This provision of law is made in order to force

the sailors to do their best to navigate the ship with care, and bring her safely to the end of her voyage.

QUESTIONS FOR REVIEW.

What is bottomry? What may be the object of bottomry? What is respondentia, and what may be the object of the same? What must contracts of bottomry and respondentia specify?

CHAPTER XX.

NEGOTIABLE PAPER.

Definition.—Negotiable paper is that kind of commercial paper which may for valuable consideration be transferred from one person to another by simple delivery or by indorsement.

Kinds.—There are several classes or kinds of negotiable paper, the most important of which are, promissory notes, bills of exchange, cheques, deposit receipts, bons, bills of lading and warehouse receipts.

Consideration.—It is presumed that in all negotiable paper there is valuable consideration given. In this class of contracts it is implied by the words "value received." Sometimes, however, paper as, for example, a note, is given as an accommodation merely, and in such case there is no consideration given by the beneficiary to the maker; it is simply a loan of the maker's credit to the beneficiary. Between the original parties the failure to give consideration may be shown; but where the paper passes into the hands

of an innocent holder before maturity for value, and in good faith, it can be collected.

Negotiability.—"Order or Bearer" are the words usually used to express negotiability, but any words in a bill of exchange or note, from which it can be inferred that it is intended to be negotiable, will make it transferable. When payable to bearer the paper may be transferred without indorsement; but when payable to order, it requires the payee's signature before it can be transferred.

Time.—By time or term the date of commercial paper and the date of its maturity are meant; but when no time is mentioned, the paper is presumed to be due immediately and is payable on demand.

The amount.—The amount is expressed by marginal figures and written words. If these differ, the written amount is presumed by law to be the one intended.

Maturity.—The maturity of commercial paper is the arrival of the time at which it is made payable, the obligation to pay it being then mature by lapse of time. It is the due date of the paper.

If the time be not mentioned, the paper is payable on demand. It may be ante-dated or post-dated, and it would be perfectly valid and binding if made on a Sunday or other non-juridical day. If, however, it falls due upon a non-juridical day, its payment is not exigible before the next following juridical day.

Non-Juridical Days.—The non-juridical days in the Province of Quebec are Sundays, New Year's Day, Epiphany, Ash Wednesday, Good Friday, Easter Monday, Ascension Day, All Saints' Day, Conception Day, Christmas Day, the Sovereign's birthday or the

day fixed by proclamation for its celebration, Dominion Day, Labor Day, and Thanksgiving Day.

Days of Grace.—The three days delay usually given by law for the payment of negotiable paper are called days of grace. These days of grace are allowed with respect to all commercial paper, except such as is payable on demand. When allowed they immediately follow the maturity of the paper, and its payment, although due, is not exigible until three o'clock in the afternoon of the third day of grace. For example, a note is dated August 12th, 1903, and is payable one year from date. The maturity of the note in question in reality would be the 12th day of August, 1904, but according to law three days of grace are allowed immediately after such maturity. Hence payment of the note would be exigible at and after three o'clock in the afternoon of August 15th, 1904.

Parties to Negotiable Paper.—The parties to negotiable paper are called original and subsequent. The original parties are those who enter into the paper at the time of its making. The subsequent parties are those who were not interested in the paper at the time it was made, but to whom it was transferred later by delivery or by indorsement. The promissor or maker or the payee are the original parties in the case of a promissory note, and those who do not enter into a note at the time of its making, but to whom it is later transferred are the subsequent parties. The original parties to a bill of exchange are the drawer or person who orders the money paid, the payee or person to whom it is to be paid, and the drawee or person upon whom it is drawn and who does not become a

party until he accepts it. The subsequent parties to it are those to whom it was later transferred.

Indorsement of Negotiable Paper.—The indorsement of negotiable paper is anything written on its back which has a relation to the paper itself. It is generally made for the purpose of transferring the holder's right to some other person. The following are the principal kinds of indorsement: indorsement in blank, special indorsement, restrictive indorsement. An indorsement in blank specifies no indorsee and negotiable paper so indorsed becomes payable to bearer. A special indorsement specifies the person to whom or to whose order the paper is to be payable. A restrictive indorsement is one which prohibits the further indorsation of the paper, or which expresses that it is a mere authority to deal with it as thereby directed and not a transfer of the ownership thereof, as, for example, if the paper is endorsed "pay D only" or "pay to D for the account of X," or "pay D or order on collection."

Demand of Payment.—Before payment of negotiable paper can be properly demanded it must have reached maturity; that is to say, it must be due and exigible. A demand is not necessary so far as the maker and acceptor are concerned, for they are liable in any event. It is necessary and is made in order that the drawer of the bill of exchange and the indorsers of a bill of exchange or note may be held liable. It must be made in a proper manner, at a proper time, at a proper place and by a proper person. If not so made the holder's claim upon the subsequent parties is lost.

PROMISSORY NOTES.

Definition.—A promissory note is an unconditional promise in writing made by one person, called the maker, engaging to pay on demand or at a fixed or determinable future time, a certain sum in money to, or to the order of a specified person, or to bearer.

Form.—A promissory note must be in writing. Any form containing a promise is good. Thus a note made in the following words, "on demand I promise to pay to the bearer \$100.00" is valid.

Contents.—A promissory note may contain:—

1. The name of the place where it is signed;
2. The date on which it is made;
3. A promise to pay;
4. The name of the person to whom or to whose order it is payable;
5. The date when payment is to be made;
6. The stipulated amount mentioned in figures and in words;
7. The consideration or value received;
8. The name of the person or persons by whom signed;
9. An indorsement, if any;
10. The place of payment.

It is not necessary that every promissory note shall contain all of the above enumerated things, but the mention of one or all of these things introduces into it important modifications. However, mention of the sum of money promised, of the time of payment, and of the person to whom it is payable and the signature of the maker are essential.

Kinds of Promissory Notes.—The principal kinds

of promissory notes are: individual notes, joint notes, joint and several notes, notes of security, bank notes.

Individual Notes.—Individual notes are those which are signed by one promissor only, thus

Due——

\$50.00.

Montreal, June 11th, 1904.

One month after date I promise to pay to James MacGregor or order Fifty Dollars at The Sovereign Bank of Canada here for value received.

JOHN BROWN.

No.——

Joint Notes.—Joint notes are those which are signed by two promissors, each one of the two being bound to pay one-half of the sum promised, for example,

Due——

\$500.00.

Montreal, August 13th, 1904.

One month after date, we jointly promise to pay to Thos. Robertson or order Five Hundred Dollars at Bank of Montreal here for value received.

JAMES SMITH.
JOHN BROWN.

No.——

Joint and Several Notes.—Joint and several notes are those which are signed by two promissors equally liable for their payment to the payee and to all possible holders. The following are examples,

Due——

\$100.75.

Montreal, June 11th, 1904.

One month after date, we jointly and severally promise to pay to J. B. Allan or order One Hundred and $\frac{75}{100}$ Dollars at Bank of British North America here for value received.

JAMES SMITH.
JOHN BROWN.

No.——

Due——

\$100.60.

Montreal, June 11th, 1904.

One month after date, I promise to pay to J. B. Allan or order One Hundred and $\frac{60}{100}$ Dollars at Bank of British North America here for value received.

JAMES SMITH.
JOHN BROWN.

Notes of Security.—Notes of security are those which, apart from the signature of the promissor, contain also that of the surety, who guarantees the payment, thus

Due——

\$250.00.

Montreal, June 11th, 1904.

Three months after date, I promise to pay to C. Th oret or order Two Hundred and Fifty Dollars at Hochelaga Bank here for value received.

JAMES SMITH, Principal.
JOHN BROWN, Surety.

No.——

Bank Notes.—Bank notes are the promises to pay issued by banks, and are payable to bearer on demand. They are in daily circulation and form the major portion of the money of the country.

Promissory notes are sometimes divided also into negotiable notes and non-negotiable notes.

Negotiable Notes.—A negotiable note is one which can be transferred by the payee to another person by indorsement and delivery, or simply by delivery, upon receipt of its amount, thus

Due——

\$50.00.

Montreal, June 11th, 1904.

One month after date, I promise to pay to Robert Wilson or order Fifty Dollars at Royal Bank of Canada here for value received.

JOHN BROWN.

No.——

Robert Wilson, the payee therein, may negotiate the foregoing note by indorsing the same in blank, specially, or restrictively.

The following note, being made payable to bearer is negotiable by delivery simply:

Due——

\$100.60.

Montreal, June 11th, 1904.

Thirty days after date, I promise to pay to James Simpson or bearer One Hundred $1\frac{6}{100}$ Dollars at Royal Bank of Canada here for value received.

ROBERT SMITH.

No. ——

Non-Negotiable Notes.—A non-negotiable note is one which cannot be transferred by the payee to another person in the ordinary course of business, thus

Due——

\$500.00.

Montreal, June 11th, 1904.

One month after date, I promise to pay to Robert Wilson, Five Hundred Dollars at The Sovereign Bank of Canada here. for value received.

\$500.00.

\$500.00.

No. 4.

JAMES SMITH.

A note payable to a person without any restriction being expressed is negotiable. If, however, it is made payable to a particular person only, or if it is drawn before a notary in any form whatever, or if it is payable in merchandise, it does not possess the character of negotiability and cannot be made to circulate for business purposes. It is essential that a negotiable note be made payable in money.

Presentment for Payment.—The presentment for payment of a note must be made by the holder upon the maker at 3 o'clock or later and within reasonable hours in the afternoon of the third day of grace, if days of grace are allowed. If no days of grace are allowed, it must be presented within the same hours in the afternoon of the day of its maturity. A note payable on demand which has been indorsed, ought to be presented for payment within a reasonable time from its indorsement. If it is payable at a bank, the demand must be made during the bank's business hours. If no place of payment be specified, the demand must be made upon the maker personally.

Obligations of Maker.—The maker of a note is bound to pay it when it becomes due. Should he fail to pay and the surety or indorser pay it, he remains liable to the party who paid it.

Obligation of Surety.—The surety of a note is bound to pay when it becomes due, should the maker fail to pay.

Obligation of Indorser.—An indorser is bound for the entire amount of the note to the person to whom he transferred it, if the maker is in default to pay and it has been duly protested. If the note is not protested, the indorser, unless he is also the maker, is released.

Right of Payee.—The payee or beneficiary of a note may transfer it to a third party by indorsing it if it is made payable to his order or by surrendering it if it is made payable to bearer.

Right of Surety.—Whenever the surety of a note is obliged to pay it, he has his recourse for the sum paid against the maker.

Right of Indorser.—An indorser who has paid a

note has his recourse against the party who transferred it to him, or if he prefers, against the other parties previously liable upon the note.

Transfer of Notes.—It is considered prudent to transfer notes by indorsing them specially to some person. In the case of a note so transferred there is greater facility in tracing the series of persons by whom it has been negotiated. It may be transferred before or after maturity, but with different effects. When the transfer occurs before maturity, the holder acquires a perfect title, but if the transfer takes place after maturity the holder receives the note at his own risk and subject to the defects which it had in the hands of the previous holder.

Protest of Notes.—The protest of a note is a declaration made by a notary at the request of the holder in consequence of its non-payment. This measure is necessary after payment has been demanded and refused, in order to enable the holder to preserve his rights against the indorsers, if it is indorsed. The protest is thus made on behalf of the holder who is entitled to be paid, and is so made against them from whom he has a right to recover. A notice of protest is given by the notary who makes the protest.

Suspension of Protest.—Sometimes the protest of a note is suspended. This is done by "noting" the promissory note. The noting consists of an official minute or record made by a notary public of the debtor's default to pay. It is the beginning of a protest. If the note is not paid within a specified time, generally one day thereafter, the protest is completed by a formal notice to the indorser of the maker's failure to pay.

Waiver of Protest.—When a person indorses a note, he may waive protest and so render it unnecessary by signing a declaration of such waiver upon the back of the note in the following or similar words: "I hereby waive protest of the within note and notice of same."

When, however, a person does considerable business and has a current account with a bank, he is usually able to arrange with its manager for an exemption from the necessity of protest for all notes and other negotiable paper payable on his account. This arrangement saves time and trouble, and avoids costs, and at the same time secures for the bank all the rights which a protest would give. A customer desiring such exemption usually obtains it by signing a declaration in favor of his bank, such as the following:—

Montreal, June 14th, 1904.

To the Manager,
.....Bank,
Montreal, Que.

Sir,

I authorize and request you to charge to my current account in your Bank, without any protest whatever, even to the extent that other people may be concerned, unless I give you instructions in writing to the contrary, every promissory note bearing my name, either as promissor or as indorser, every cheque bearing my name as drawer or indorser, and all bills of exchange drawn and indorsed by me, and of which acceptance or payment has been refused, whether the said promissory notes, cheques and bills of exchange have been discounted for me

by your Bank, or at my request have been retained by your Bank as collateral security, or have been deposited in your hands for collection upon my account, or have been paid by you simply on presentment for payment on my account.

And I hereby expressly waive all protests and notices of protest, even to the extent that other people are concerned, which, but for the present waiver, would be necessary as regards all the promissory notes, cheques and bills of exchange so charged by you to my current account.

QUESTIONS FOR REVIEW.

What is negotiable paper? What are the different classes or kinds of negotiable paper? What words are used in negotiable paper to indicate that valuable consideration has been given? Can the failure to give consideration be shown as between the original parties? Could want of consideration be shown as against an innocent third holder? What words are used on commercial paper to indicate its negotiability? How may commercial paper, which is payable to bearer, be transferred? When commercial paper is payable to order, how can it be transferred? What is meant by the time of commercial paper? How is the amount of money expressed on commercial paper? When the marginal figures and the writing express different amounts, which amount is presumed to be the one intended? What is meant by the maturity of commercial paper? If the time of commercial paper is not mentioned, when is it payable? When com-

mercial paper falls due upon a non-judicial day, when is its payment exigible? What are the non-judicial days in the Province of Quebec? What is meant by days of grace on commercial paper? Give an example of a promissory note on which days of grace are allowed. How may the parties to negotiable paper be classified? Who are the original parties to negotiable paper? Who are the subsequent parties to negotiable paper? Give examples. What is meant by the indorsement of negotiable paper? What is the usual purpose of an indorsement? What are the principal kinds of indorsement? Define each kind. Give an example of each kind. When may a demand of the payment of negotiable paper be made? Is a demand of payment necessary as regards the maker and acceptor of negotiable paper? When is it necessary? What is a promissory note? What is the form of a promissory note? What may the contents of a promissory note include? Is it necessary that every promissory note shall include all such contents? What are the principal kinds of promissory notes? Define each kind and give an example of each. What is meant by bank notes? How are promissory notes sometimes otherwise divided? What is meant by a negotiable note? Give an example of a note which is transferable by indorsement and delivery. Give an example of a note which is negotiable simply by delivery. What is meant by a non-negotiable note? If a note is drawn before a notary, in any form whatever, is it negotiable? If it is payable in merchandise, is it negotiable? By whom must the presentment of a note for pay-

ment be made? When must such presentment for payment be made? If no days of grace are allowed, when must it be presented for payment? When should a note, payable on demand, be presented for payment? What rule as regards a demand of payment, must be observed if a note is payable at a bank? If no place of payment is specified, how is a demand of payment to be made? What are the obligations of the maker of a note? What is the obligation of a surety of a note? What is the obligation of an indorser of a note? What is the right of a payee of a note? What is the right of a surety of a note? What is the right of an indorser of a note? Which is the most prudent mode of transferring notes? Why? What is the difference in effect of a transfer of a note before maturity and of a transfer of one after maturity? What is the protest of a note? When is it made? What is its purpose? By what official is it made? By whom is a notice of protest given? How is a suspension of protest of a note effected? How may a person waive protest and notice of same upon a note? How may he arrange with his bank for a general exemption from protest and notice of protest?

CHAPTER XXI.

BILLS OF EXCHANGE OR DRAFTS.

Definition.—A bill of exchange or draft is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on

demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of a specified person or to bearer.

Kinds.—There are two kinds of bills of exchange, namely, inland bills of exchange and foreign bills of exchange.

Inland Bills.—An inland bill is one which is, or on the face of it purports to be, both drawn and payable within Canada, or drawn within Canada upon some person resident therein. Any other bill is a foreign bill.

Foreign Bills.—Generally three copies are drawn of the same date, and, for the same amount, of every foreign bill of exchange, and these are called the first, the second and the third bill of exchange. They are sent by different routes, and the first which arrives and is accepted and paid, renders the other two copies null and of no effect. The drawer must mention the three copies of the bill, and his order is valid only to the extent that no other copy is paid. Without such mention each copy can be considered as an original. This mode is in practice in order to avoid delays resulting from accidents and otherwise. The tendency at the present time, owing to improved facilities of communication between different countries, is to use only one copy of such bills, or two at the most.

Time of Payment.—A bill of exchange may be made payable:—

1. On presentment;
2. At sight;
3. At a certain number of days after sight;
4. At a certain number of days after date.

The Parties.—The parties to a bill of exchange, at the moment of its making, are three in number, name-

ly, the drawer, the drawee and the payee. These parties may be called, as in the case of promissory notes, the original parties to the bill and the indorsers are, as in the case of promissory notes, the subsequent parties.

The Drawer.—The drawer is the person who gives and signs the order to pay. He is held to have deposited in the hands of the drawee, or with the bank upon which the bill is drawn, the amount of money necessary for the payment of the draft. Otherwise it would be an accommodation draft. The drawer's obligation upon the bill is similar to that of an indorser of a promissory note.

The Drawee.—The drawee is the person who receives the order to pay, and who possesses the necessary funds. He becomes a party to the bill by his acceptance. The drawee's obligation is the same as that of the maker of a promissory note.

The Payee.—The payee is the bearer of the bill when it is made payable to bearer, or is the person in whose favor it is originally made payable and who is either expressly named or expressly indicated. A bill of exchange may be made payable:—

1. To a specified person only;
2. To a person or his order;
3. To the drawer or his order;
4. To the drawee or his order;
5. To the bearer simply.

The holder of a bill is either the original payee or the person to whom it has been transferred.

Negotiability.—Bills of exchange may be negotiated like promissory notes, and they are for that reason subject to the same rules.

Presentment for Acceptance.—Presentment for acceptance must be made when the bill of exchange is payable at sight, or at a certain number of days after sight, and must be made within a reasonable delay after its date. It is the holder who is bound to present it to the drawee.

Acceptance.—An acceptance consists of the signature of the drawee after the word "accepted" or other expression indicating his assent. It is generally made in red ink crosswise upon the bill.

An acceptance implies the admission of the drawee's indebtedness to the drawer, and by it the former binds himself to pay the amount of the bill. Where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance by intervention is usually called an acceptance for honor.

An acceptance for honor *supra* protest, to be valid, must be made upon the following conditions:—

1. It must be written on the bill, and indicate that it is an acceptance for honor;
2. It must be signed by the acceptor for honor.

Protest of Bill.—A bill of exchange may be protested for non-acceptance when the drawee refuses to accept it, and payment thereof is exigible from the parties in the same manner as if the matured bill had been protested for non-payment. In place of protest-

ing it, the bearer may have it noted as in the case of promissory notes.

Presentment of Bill for Payment.—A bill of exchange must be presented for payment according to the following rules:—

1. Where the bill is not payable on demand, presentment must be made on the day it falls due;

2. Where the bill is payable on demand, presentment must, as a rule, be made within reasonable time after its issue in order to render the drawee liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

Presentment must be made by the holder or by some person authorized to receive payment on his behalf, to the person designated by the bill as drawee or to his representative, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can be found.

Forms of Bills.—The following forms of bills are in general use:—

A Negotiable Bill of Exchange Payable at Sight.

\$1,000.00.

Due at sight.

Date, August 17, 1904.

Payee, William Brown.

Drawee, John Brown.

No. 37.

No. 1.

\$1,000.00.

Toronto, August 17th, 1904.

At sight pay to William Brown or order, the sum of One Thousand Dollars, for value received, and charge to the account of

JAMES SMITH.

John Brown,
Merchant,
Toronto, Ont.

Endorsed across the face in red ink :—Accepted, payable at the *Sovereign Bank of Canada*, Toronto.

Toronto, *August 18th*, 1904.

JOHN BROWN,
Toronto, Ont.

A Negotiable Bill of Exchange Payable after Sight,

No. 2.

\$100.00.

Due *15 days after sight*.

Date, *August 17, 1904*.

Payee, *William Brown*.

Drawee, *John Brown*.

No. 35.

\$100.00.

Montreal, *August 17th*, 1904.

Fifteen days after sight, pay to *William Brown* or order, the sum of *One Hundred Dollars*, for value received, and charge the same to the account of

JAMES SMITH.

John Brown,
Merchant,
Toronto, Ont.

Endorsed across the face in red ink :—Accepted, payable at the *Merchants' Bank of Canada*.

Toronto, *August 21st*, 1904.

JOHN BROWN.

A Negotiable Bill of Exchange Payable after Date.

\$800.00.

Due *60 days after date*.

Date, *August 17, 1904*.

Payee, *William Brown*.

Drawee, *John Brown*.

No. 36.

\$800.00.

No. 3.

Montreal, *August 17th*, 1904.

Sixty days after date, for value received, pay to *William Brown*, or order, the sum of *Eight Hundred Dollars*, and charge the same to the account of

JAMES SMITH.

John Brown,
Merchant,
Toronto, Ont.

Indorsed across the face in red ink :—Accepted, payable at the *Bank of Montreal here*.

Toronto, Ont., *August 21st*, 1904.

JOHN BROWN.

A Non-Negotiable Bill of Exchange.

\$500.00.

Due *on presentment.*Date, *August 18th, 1904.*Payee, *William Brown.*Drawee, *John Brown.*

No.

\$500.00.

Montreal, *August 17th, 1904.*

On presentment pay to William Brown only, Five Hundred Dollars for value received, and charge the same to the account of

JAMES SMITH.

*John Brown,
Merchant,
Toronto, Ont.*

Demand of Acceptance of a Bill of Exchange or Draft.

—BANK OF CANADA,

Montreal, *August 17th, 1904.*

*Mr. James Walsh,
St. James St.,
City.*

Dear Sir,

We have received from *Messrs. Wills & Wills*, of Montreal, a bill of exchange for *Five Hundred Dollars* drawn upon you at *one month*, maturing the *20th September, 1904*. In place of signing the acceptance of the bill of exchange, be good enough to sign the form annexed hereto, and oblige,

Yours truly,

EDWARD JONES,

\$500.00.

Manager.

Annexed form referred to in foregoing demand of acceptance of bill of exchange:

Montreal, *August 17th*, 1904.

Edward Jones,
Mgr., Bank of Canada,
Montreal.

Dear Sir,

I accept the above mentioned bill of exchange payable at the *Imperial Bank of Canada, Montreal*. The present form annexed to the said bill of exchange is, when signed, equivalent to an acceptance of the bill of exchange itself.

Signature, JAMES WALSH.
Residence, *St. James St.*,

Montreal.

The foregoing demand of acceptance is often used in place of the presentment of the bill of exchange for acceptance when the drawee lives at a distant place, and presentment could not be made without inconvenience and expense.

Foreign Bill of Exchange (first bill of set.)

No. 4177.

Exchange for

£1,000—0—0 Stg.

Montreal, *August 17th*, 1904.

60 days after sight of this FIRST of EXCHANGE (the second and third of the same tenor and date not having been paid) pay to the order of *John Davis* the sum of *One Thousand Pounds Sterling* for value received.

ROBERT BROWN & SONS.

Messrs. *Spear Bros. & Clark*,
Bristol, Eng.

Foreign Bill of Exchange (second bill of set).

No. 4177.

Exchange for

£1,000—0—0 Stg.

Montreal, August 17th, 1904.

60 days after sight of this **SECOND OF EXCHANGE** (the first and third of the same tenor and date not having been paid) pay to the order of *John Davis* the sum of *One Thousand Pounds Sterling*, for value received.

ROBERT BROWN & SONS.

Messrs. *Spear Bros. & Clark*,
Bristol, Eng.

Foreign Bill of Exchange (third bill of set).

No. 4177.

Exchange for

£1,000—0—0 Stg.

Montreal, August 17th, 1904.

60 days after sight of this **THIRD OF EXCHANGE** (the first and second of the same tenor and date not having been paid) pay to the order of *John Davis* the sum of *One Thousand Pounds Sterling*, for value received.

ROBERT BROWN & SONS.

Messrs. *Spear Bros. & Clark*,
Bristol, Eng.

Foreign bills of exchange, when issued between private parties, are usually made in sets of three copies. Whenever they are issued between banks, two copies of a bill, as a rule, are issued. They are specially used by exporters. Their practice, when shipping merchandise, is to draw immediately upon the purchaser a bill of exchange payable at sight, or some days after sight, to any person whatever, or to their banker. As the exporters frequently have need of money, they take the bill to their local bank and the latter buys it from them, sometimes requiring for the purpose of security the hypothecation to itself of the bills of lading and policies of insurance which cover the merchandise.

The hypothecation is effected by a letter which is always issued in duplicate. The following is an example of a letter of hypothecation:—

(Original.)

Form No. 71.

Hypothecation of Sterling Bill.

Montreal, August 4th, 1904.

To Whom it may Concern :

have this day sold to The Sovereign Bank of Canada Bill of Exchange for *Four Thousand Pounds Sterling (£4,000—0—0)*, on against a shipment of per as per Bill of Lading herewith. agreement with The Sovereign Bank of Canada is that the Bill of Lading lodged as collateral security for the acceptance and payment of said Bill, and if the said Bill be accepted, the Bill of Lading is to be given up by you, if you think it proper to do so, without prejudice to your claim upon in the event of the Bill not being paid at maturity ; but if the drawee declines to accept, or if the acceptance is not satisfactory to you, or if the Bill be not paid at maturity, then you are hereby authorized to retain the Bill of Lading, and, at any time at your discretion, on, after or before arrival, to place the said in the hands of your broker for sale, on account of whom it may concern, at your discretion, and to charge all expenses, including insurance, commissions for sale and guarantee, and to apply the proceeds towards the payment of the Bill of Exchange, and in case of any deficiency, hereby agree to pay the amount of such deficiency to The Sovereign Bank of Canada, or their agents, on demand. In case of a conditional acceptance of the Drawee, hereby exonerate you and assume all liability on account of said Bill. The above shipment of property is fully insured in Insurance Co., and the policy will be transferred, if required, to you, in default of which you are hereby fully authorized to effect insurance for such an amount as you may deem necessary, for cost of which insurance you are to have a lien on the above merchandise, and hereby agree, in case of loss, that the said insurance shall be held for the benefit of The Sovereign Bank of Canada, for payment of the above mentioned Bill of Exchange.

If the documents hereby hypothecated are surrendered against payment of this Bill before maturity, the Allowance

of discount to the Acceptor is to be at the rate of one-half per cent. per annum above the advertised rate of interest for short deposits allowed by the leading Joint Stock Banks in London.

Yours respectfully,

.....

A letter of hypothecation gives the bank, to which it is addressed, the right to sell the merchandise covered by the bill of exchange. This right, so given, is security to the bank against the loss which would occur should the bill not be paid at maturity.

Bill of Exchange Between Banks.

—BANK OF CANADA.

Exchange for
Fr. 2,000.

No. 1080.

Montreal, *August 18th*, 1904.

Sixty days after sight (the original hereof not having been paid) pay to the order of ROBERT MILLER the sum of *Two Thousand Francs*, for value received.
CREDIT LYONNAIS, J. B. CHURCH.
19 Boulevard des Italiens, Asst. Manager.
Paris, France.

R. D. WELLMAN,
Accountant.

Exchange for

Fr. 1,000.

BANK OF———

No. 5990.

Montreal, *August eighteenth*, 1904.

Pay to the order of *Robert Simpson One Thousand Francs*.
CREDIT LYONNAIS, GEORGE BARRAT,
19 Boulevard des Italiens, Manager.
Paris, France.

QUESTIONS FOR REVIEW.

What is a bill of exchange or draft? How many kinds of bills of exchange are there? Distinguish between each kind? What precautions are taken to

insure the arrival of a foreign bill of exchange? When may a bill of exchange be made payable? Who are the parties to a bill of exchange at the time it is drawn? May there be original and subsequent parties to a bill of exchange? What person is the drawer of a bill of exchange? What person is the drawee of a bill of exchange? How does he become a party to the bill? What is his obligation? What person is the payee of a bill of exchange?? To whom may a bill of exchange be made payable? What person is the holder of a bill? How are bills of exchange negotiated? When must presentment of a bill of exchange for acceptance be made?¹ Of what does an acceptance consist? How is an acceptance of a bill of exchange written? What is implied by an acceptance? What is meant by an acceptance by intervention? Upon what conditions must an acceptance by intervention or an acceptance supra protest be made to be valid? When may a bill of exchange be protested? What may the drawer do in place of protesting a bill of exchange? According to what rules must presentment of a bill of exchange be made? By whom must presentment be made? To whom must presentment be made? Give two or three examples of a non-negotiable bill of exchange. Give an example of a negotiable bill of exchange payable after sight. Give an example of a demand of acceptance of a bill of exchange. Give an example of an acceptance which is sometimes annexed to a demand of acceptance of a bill of exchange. When is a demand of acceptance of a bill of exchange often used in place of a presentment of a bill for acceptance? Give an example of the three bills of a set of a foreign bill of exchange. By whom

are bills of exchange specially used? What practice do they observe in the use of bills of exchange? What security is given local banks upon whom the bill of exchange is drawn that the bill will be paid? Give an example of a letter of guarantee which is sometimes given to a local bank as security to it that a bill of exchange will be paid. Give an example of a bill of exchange between banks.

CHAPTER XXII.

CHEQUES, DEPOSIT RECEIPTS, BILLS OF LADING AND WAREHOUSE RECEIPTS.

Definition.—A cheque is a bill of exchange drawn on a bank and payable on demand.

Negotiability.—A cheque payable to a specified person or to his order becomes negotiable by his indorsement. A cheque, which is payable to bearer, is negotiable by simple delivery. If it is payable to a specified person only, it is not transferable.

Presentment for Payment.—Within a reasonable time after it is drawn, the cheque must be presented for payment, for if the bearer delays and the bank fails, the drawer and the indorsers are liberated. To prevent loss it is considered wise to have the cheque accepted or certified by the bank, for in such case the bearer has a direct recourse against the bank.

Cheque Forms.—The following cheque forms are in general use:—

A Cheque Negotiable by Indorsement.No. Montreal, *August 18th, 1904.*

THE MERCHANTS BANK OF CANADA.

Pay to *S. R. Brown* or order the sum of *Three Hundred Dollars.*

ROBERT MACAULAY.

\$300.00.

A Non-Negotiable Cheque.No. Montreal, *August 18th, 1904.*

ROYAL BANK OF CANADA.

Pay to *F. E. Grafton & Sons* only, *Fifty Dollars.*
JAMES CAMPBELL.\$50.00.

A Cheque Negotiable by Simple Delivery.No. Montreal, *August 18th, 1904.*

THE SOVEREIGN BANK OF CANADA.

Pay to *R. Simpson* or bearer, the sum of *One Hundred Dollars.*

\$100.00.

ROBERT WATSON.

It is considered prudent for him who receives a cheque payable to bearer to have it indorsed by the person who transfers it, especially if it is not accepted by the bank. The indorsement gives the holder a recourse against the party from whom he receives it.

Very frequently it happens that a man, because he is absent, or too busy or for other reasons, cannot at-

tend to the signing, making, indorsing and negotiating the notes, bills of exchange and other commercial instruments required in his business. In that case he gives a special power of attorney to some one to act for him in his name, such as the following:—

I, ROBERT WILSON, of London, England, hereby appoint Mr. David R. Murphy, K.C., of Montreal, to be my special attorney for me and in my name to make, sign, endorse, and negotiate all notes, bills of exchange and other commercial instruments as he will think necessary; and also to make and sign in my name all cheques on my account with the Royal Bank of Canada, in the manner that he shall deem suitable, the whole with as much power and effect as if I acted myself in person.

IN TESTIMONY WHEREOF I have signed at Montreal, this eighteenth day of August, one thousand nine hundred and four.

Signed in presence of:

ROBERT WILSON.

DEPOSIT RECEIPTS.

Definition.—A deposit receipt is an engagement in writing by which a bank promises to return to the depositor after notice, a fixed sum of money deposited by him, and to pay to him the interest thereon at a specified rate, provided the said deposit remains in the bank a certain time.

Negotiability.—A certificate of deposit is negotiable by indorsement. The following form of certificate may be used:

No. 1099.

\$1,000.00.

Montreal, 16 August, 1904.

Received from *John Henry Smith* the sum of *One Thousand Dollars*, which amount will be accounted for to him by this Bank and will bear interest at the rate of three per cent. per annum until further notice. Fifteen days notice of withdrawal

to be given and this Receipt to be surrendered before repayment of either Principal or Interest is made.

No interest will be allowed unless the money remains in the Bank three months. This Receipt is not negotiable.

For the SOVEREIGN BANK OF CANADA,
C. R. CUMBERLAND,
Pro Manager.

H. B. Order
Asst. Accountant.

BONS.

Definition.—A bon or an I.O.U. is a declaration made in summary form of indebtedness to the bearer or to a specified person.

Under Quebec law, bons are virtually promissory notes and, like them, are or are not, negotiable according to their terms.

Examples.—There are no special forms in which bons should be drawn. The following, or equivalent ones, may be used:

A Negotiable Bon.

Montreal, June 24th, 1904.

\$10.00.

Good on demand for Ten Dollars.

JOHN BROWN.

A Negotiable Bon.

Montreal, June 24th, 1904.

\$482.00.

Due J. G., or Bearer, Four Hundred and Eighty-two Dollars, payable in 14 days.

JAMES SMITH.

A Negotiable Bon.

Montreal, June 24th, 1904.

\$850.00.

Good to W. H. Burroughs, Esq., Advocate, or order for
Eight Hundred and Fifty Dollars on demand.WILLIAM JONES.
—————**A Negotiable Bon.**

Montreal, June 24th, 1904.

\$100.00.

James Brown, Esq., 185 St. James St., Montreal, I. O. U.
One Hundred Dollars.ROBERT JAMIESON.
—————**A Non-Negotiable Bon.**

Montreal, June 24th, 1904.

\$100.00.

Good to C. Théoret only, for One Hundred Dollars.

JAMES ELLIOT.
—————**A Non-Negotiable Bon.**

Montreal, June 24th, 1904.

\$100.00.

Due James Gordon only, One Hundred Dollars.

JAMES SMITH.
—————

BILLS OF LADING.

Definition.—A bill of lading is a writing signed and given by the captain or master of a vessel or by the agent of a common carrier acknowledging receipt in good order and condition of a quantity of specified

merchandise at the place mentioned in the bill of lading, and promising to deliver the same in like condition to the person designated and at a specified place.

Kinds.—There are three principal kinds of bills of lading:

1. An ocean bill of lading, or one which is issued at a seaport by a steamship or sailing vessel;
2. An export or through bill of lading, or one which is issued by a railway company and which covers transportation by rail and by sea;
3. An inland or railway bill of lading, or one which is issued by a railway from one inland point to another.

Copies.—The captain or master must mention on every bill of lading the number of copies in each set respectively, one of which is always kept by him and all the others are given to the shipper. In the case of an inland bill, one alone is issued and a copy of it is kept by the carrier.

Negotiability.—A bill of lading is negotiable by indorsement and delivery.

Example.—Bills of lading are, as a rule, lengthy documents containing numerous conditions. The following is a simple example of a bill of lading:

Shipped in good order and well conditioned, by JAMES MUNROE & CO., on board the steamship Labrador, whereof ROBERT BROWN is master, now lying in the port of Montreal, six thousand barrels of apples, being marked as in the margin, and to be delivered in like order and condition at the port of Liverpool (the dangers of the sea only excepted) unto ROBERT A. SMITH or his assigns, he or they to pay freight for said apples with ten cents primage and average accustomed.

IN WITNESS WHEREOF the master of said ship hath affirmed to three bills of lading each of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Montreal, Quebec, the 19th day of August, 1904.

ROBERT BROWN,
Master.

WAREHOUSE RECEIPTS.

Definition.—A warehouse receipt is one given by a person who keeps a warehouse or storeroom, acknowledging the delivery to him of certain goods for storage at his place of business.

Warehouse receipts are negotiable by indorsement and delivery.

Example.—The following is an example of a warehouse receipt:

(Special.)

Montreal, July 15th, 1904.

No. 144.

Received into Store from *The Sovereign Bank of Canada* Eight hundred and thirty-four (834) boxes butter.

23 W.D. 39	38 D. 11	62	F. & M.
43 J. O. 39	85 A.G. 12	46	J. M. 1112
11 No. 73	31 No. 73	49	Rose 2
21 D. 12	34 J. O. 40	28	Star.
36 D. 11	50	884	
40 J. A. B.	77	1255	834 Boxes Butter.
72 C. & F.	21	R. 36	
34 R. 129			
23 D. 12			

delivered only on the production of this Receipt, duly indorsed by THE SOVEREIGN BANK OF CANADA,

D. A. McPHERSON & CO.

Per pro *A. Norman Stewart*.

Originally received.....
 Date of Storage.....
 Storage paid to.....
 In *good* order.....
 Where Stored....67-63 William St...
 In Bond or Duty Paid.....
 Insured by D. A. McPherson & Co..

The foregoing warehouse receipt is easily understood. It will be observed that it contains three columns of numbers, with letters and figures, or figures simply or words placed to their right. The numbers indicate the boxes of butter, while the letters and figures, or other markings to the right serve as a description to identify the goods stored. Any other marking or description would be equally useful. Thus, at the top of the first column to the left, the following number and description are found:

"23 W. W 39," meaning 23 boxes of butter marked for identification, "W. D. 39." "W. D. 39" is otherwise meaningless. So every item of the receipt may be explained.

QUESTIONS FOR REVIEW.

What is a cheque? How is the amount expressed on a cheque? Is a cheque negotiable, and if so, how? When must a cheque be presented for payment? What is the effect of having a cheque accepted or certified by a bank? Give an example of a cheque negotiable by indorsement, of a non-negotiable cheque, a cheque negotiable by simple delivery. Make a special power of attorney authorizing James Smith to make, sign, indorse and negotiate all notes, bills of exchange and other commercial paper for you or in your name.

What is a deposit receipt? Give an example. Is it negotiable? What is a bon or an I.O.U.? Are bons negotiable? Give an example of a negotiable bon. Give an example of a non-negotiable bon. What is a bill of lading? Name the principal kinds of bills of lading and define each? Is it negotiable? Give an

example of a bill of lading? What is a warehouse receipt? Is a warehouse receipt negotiable? Give an example of a warehouse receipt.

CHAPTER XXIII.

LETTERS OF CREDIT.

Definition.—A letter of credit is a commercial instrument by which a bank, an express company, a tourist agency or any commercial house, requests and authorizes a bank or banker, or some person or firm, to give credit to a person specified in the letter or to pay him a certain sum or sums of money.

The practice of giving credit is a prominent feature of business in modern times and if properly safeguarded, is an important aid to commercial enterprise. In our intercourse with foreign countries credit is necessary and for the purpose a convenient system of credit instruments, known as letters of credit, has been developed.

Letters of credit may authorize unconditional payments of money or they may contain restrictions as to the nature of the payment to be made, whether immediate or deferred, or they may require the production of shipping documents, such as bills of lading, insurance policies and invoices, which give the bona fide holders title to certain goods, wares and merchandise, mentioned in them.

Kinds.—There are three principal classes or kinds of letters of credit, namely:—

1. Circular or Travellers' letters of credit;
2. Clean credits;
3. Commercial or documentary letters of credit.

Circular or Travellers' Letters of Credit.—A circular or traveller's letter of credit, as the name implies, is a letter addressed to a large number of banks or bankers, companies or houses located in various parts of the world, any one of them undertaking by previous arrangements to cash bill of exchange in accordance with the terms set forth in the letter. These bankers and others so addressed are referred to as the correspondents of the bank or commercial house which issues the letter of credit. The names of such correspondents are generally mentioned on a list in booklet or in pamphlet form, and sometimes tabulated on the fly-leaf of the letter of credit itself.

The following is an example of a circular or travellers' letter of credit issued in sterling by a well-known New York bank :

The National Bank of Commerce.
New York, 1904.

" To Messrs. our Correspondents.

" Gentlemen :—

" We beg to introduce and to recommend to your kind attention M. to whom you will please furnish funds in sums as required up to the aggregate amount of "Pounds Sterling, against Sight Drafts on the " Union of London & Smith's Bank, Limited, 1 Lombard " Street, London, each draft to be plainly marked " drawn " under the National Bank of Commerce in New York, Letter of Credit No. "

" We request you to buy such drafts at the rate at which you purchase demand drafts on London, deducting your charges, if any, and we engage that these drafts will meet " with due honor in London if negotiated not later than. "under the condition that the amounts thus negotiated have been inscribed on the back of this Letter. The

"letter itself must be attached to the draft which exhausts the credit.

" N.B.—Please have the drafts signed in your presence and carefully compare the signature with the one below.

" We are, gentlemen,

" Your obedient servants,

"THE NATIONAL BANK OF COMMERCE IN NEW YORK."

Cashier.

Asst. Cashier.

Holder's Signature

.....

Upon the back of the foregoing letter the following ruling is usually made:

CORRESPONDENTS WILL PLEASE RECORD PAYMENTS IN
COLUMNS BELOW.

Date of Payment	Paid by	City	Amount in Letters.	Amount in Figures.
-----------------	---------	------	--------------------	--------------------

Every payment made under such a letter is recorded by the paying bank on the back of the letter of credit and, therefore, the holder, as well as the banker, to whom the letter of credit is subsequently presented, knows how much of it is still unused. These credits are usually issued in sterling and occasionally in francs. When they are issued in dollars for the use of travellers on this continent only, they are termed "domestic" letters of credit, to distinguish them from the letters of credit issued to travellers going abroad.

Nearly every bank can furnish its customers with circular letters of credit, which are, as a rule, purchased at the current rate of exchange on London, plus a regular commission. They are sometimes issued to the applicant upon the deposit of approved

securities or upon the guarantee of some reliable party well-known to the bank. It is estimated that a total sum varying from ten to twenty-five million dollars is annually remitted by American bankers to London, England, in order to cover the drawings of travellers using their circular letters of credit in Europe.

Clean Credit.—A clean credit letter differs from a circular letter of credit in the fact that it is addressed to one particular bank, banker or firm. The terms of a letter of this kind may be modified to suit the requirements of the customer. The following is the usual wording adopted:

Montreal, June 6th, 1904.

"The Manager,
"Bank of Scotland,
"London, England.

"Sirs :—

"This will introduce to youin whose
"favor we beg to establish a credit with you to the extent of
".....to be availed of by cheques
"on you, which please pay on our account and forward at
"our debit in due course.

"This credit will remain in force until.....day of
"..... 190 , and cheques drawn hereunder should state
"on their face that they are drawn under Credit
"No.

"We bespeak for your usual courtesies,
"for which we thank you in anticipation.

"Yours faithfully,

"Countersigned:—

Commercial Letters of Credit.—Commercial or documentary letters of credit are used by merchants and manufacturers in importing goods from foreign countries. A customer of a bank in good standing, fills out an application form setting forth such particulars as the name of the firm in whose favor the cre-

dit is to be issued, the amount of the credit and its term, the nature of the goods to be imported, the port of destination and where insured. The application for such a letter of credit may read thus:

To the Sovereign Bank of Canada,190.....

Dear Sirs,—

We request you to open bya credit with.....foraccount in favor of of for the sum of.....available by drafts at sight against usual documents for.... invoice cost of.....to be shipped to

Bills of lading to order of THE SOVEREIGN BANK OF CANADA.

Insurance will be covered by us in Produce to be shipped not later than

It is understood that THE SOVEREIGN BANK OF CANADA is not in any way responsible for the description or quality of the merchandise shipped, or for the correctness of the documents presented by the parties in whose favor or to whom the credit is issued.

We will insure the property covered by the bills of lading in an approved company or companies, against all marine risks, and against loss or damage by fire, for their full insurable value, and will assign the policies therefor to the Bank, or have the loss, if any, made payable to the Bank, at the Bank's option.

We hereby agree to sign the usual contract, hypothecating and pledging the said goods to the Bank as collateral security for the payment of the said drafts, and authorize the Bank to take possession of and dispose of said goods, at any time, for its security or re-imbusement.

It is also understood and agreed that no failure or omission on our part to carry out any of the provisions of this letter, or of the contract referred to in the preceding paragraph, under which the letter of credit will be issued, shall be deemed a waiver by the Bank of any of its rights or remedies thereunder, unless such waiver shall be in writing and signed by the Bank.

.....

A commercial or documentary letter of credit is issued in duplicate and may read as follows:

No. _____

THE SOVEREIGN BANK OF CANADA.

Montreal, 190

To The London Joint Stock Bank, Limited.

Princes Street, London, E. C.

Gentlemen,—

At the request of we hereby authorize of or any other parties whose drafts you may be directed by the written order of the said to accept under this Credit, to value on you at sight for any sum or sums not exceeding in all Pounds Sterling in payment of the invoice cost of

..... to be shipped to

The shipments must be completed and the bills drawn on or before and advice thereof given to you in original and duplicate, such advice to be accompanied by Bill of Lading filled up to order of THE SOVEREIGN BANK OF CANADA with abstract of invoice indorsed thereon for the property shipped as above. All the Bills of Lading issued, except the one sent to us by the vessel carrying the cargo and the one retained by the Captain of the said vessel, are to be forwarded direct to you. Original invoice to be forwarded to us, properly certified.

All bills drawn under this Credit to state on their face that they are drawn under The Sovereign Bank of Canada, Credit No.

And we hereby agree with the drawers, indorsers and bona fide holders of Bills drawn in compliance with the terms of this Credit that the same shall be duly honoured on presentation at your office in London. Insurance in order at.....

For

THE SOVEREIGN BANK OF CANADA.

For £.....

.....
Manager.

.....
Accountant.

The customer on receipt of a commercial letter of credit enters into a contract with the bank, undertaking to pay all drafts drawn under the credit fifteen days before their maturity in London, at a special rate of exchange. He also pledges, hypothecates and assigns to the bank as collateral security, all bills of lading, policies of insurance and the proceeds thereof received in connection with the drawings under the credit and agrees to re-imburse the bank for all charges incurred and, further, to absolutely guarantee repayment to the bank. He assumes these obligations by a contract such as the following:

.....190.....

The Manager,

THE SOVEREIGN BANK OF CANADA.

.....

The undersigned having received from you the Letter of Credit, of which a true copy is on the other side, hereby agree to its terms, and in consideration thereof hereby jointly and severally agree to provide in fifteen days previous to maturity of the Bills drawn in virtue of said Credit, sufficient funds in cash, at the current rate for prime Banker's Demand Bills on London, to meet the payments of the same with per cent. commission: and that all the property which shall be purchased or shipped in compliance with the terms of the said letter of Credit, the Bills of Lading therefor, the Policies of Insurance thereon, and the proceeds thereof, are hereby pledged, hypothecated and assigned to you as collateral security for the payment of the Bills referred to, and for the payment of all sums that may be now due, or that may hereafter become due by the undersigned to THE SOVEREIGN BANK OF CANADA, and shall be held subject to your order on demand, with authority to take possession and dispose of the same at your discretion, with or without notice for your security or re-imbursement, and the payment of all expenses, including commissions for sale and guarantee; and the undersigned further agree to give you any additional security that you may require, and to execute any further documents if required by you.

It is understood that any Bills of Exchange which you may be willing to receive in settlement of this Credit shall be and are hereby guaranteed by the undersigned; that in all payments made to you the Pound Sterling shall be calculated at the current rate of exchange in for prime Banker's Bills on London, existing at the time of settlement, and that interest shall be charged at the rate of five per cent. per annum, or at the current rate of discount of the Bank of England if above five per cent.

This obligation is to continue in force, and to be applicable to all transactions, notwithstanding any change in the composition of the firm or firms, parties to this contract, or in the user of this credit, whether such change shall arise from the accession of one or more new partners, or from the death or secession of any partner or partners.

In the event of any suspension, or insolvency, or assignment for the benefit of creditors on the part of the undersigned or in the event of the non-fulfilment of any obligation, or of the non-payment at maturity of any acceptance under said credit, or under any other credit issued by THE SOVEREIGN BANK OF CANADA on account of the undersigned, or of any indebtedness to the said Bank on the part of the undersigned, all obligations, acceptances, indebtedness and liabilities whatsoever, direct and indirect, of the undersigned shall thereupon (with or without notice) mature and become due and payable.

It is further agreed that the Insurance Policy or Policies covering all merchandise shipped under the annexed Credit shall be placed in your hands, loss, if any, payable direct to you.

Insurance as follows : (here mention where insurance is to be issued).

The circumstances, under which commercial or documentary letters of credit may be used, vary. For the purpose of illustration the case of a Montreal merchant requiring an importation of silks from Yokohama, Japan, may be cited. The merchant would procure from his bank a commercial letter of credit, payable in pounds sterling and forward it to his broker in Yokohama. The broker in Yokohama would purchase the silks for his Canadian customer, according to the orders received, and

the shipment would be delivered to the steamship company at the seaport and the necessary ocean bills of lading would be issued. These are issued in sets of three, four and sometimes as many as eight, all of which, along with the policies of insurance and the invoices of the silk would be attached to the bill of exchange, drawn in accordance with the terms set forth in the credit. The Yokohama broker would take these to some local banker, who would purchase the bill of exchange at the best rate for London bills drawn at the specific term mentioned in the letter of credit. The Yokohama bank would then forward one bill of lading with the original invoice direct to the Montreal bank which issued the letter of credit, all the remaining documents being sent, attached to the bill of exchange to London, where, upon acceptance by the drawee bank in London, they would be detached and forwarded in due course to the Montreal bank, which would then be in possession of all the documents covering the shipments. These documents would be handled by the Montreal bank according to the standing of its customer. If his standing is such as to warrant his receiving the goods forthwith, before the payment of the bill of exchange, the banker would allow him to take delivery of the goods from the carrying company upon his signing a trust or bailee receipt, by which he would undertake to receive the proceeds in trust for the bank. The following form of receipt is generally used :

Form 174.

Drawn against L/C No..... £.....Due in London
.....

BAILEE RECEIPT.

Received from THE SOVEREIGN BANK OF CANADA.
.....
.....
.....
.....

and hereby undertake to sell the property therein specified, for account of the said Bank, and to collect the proceeds of the sales thereof, and to deposit the same immediately on receipt thereof in the said Bank, at..... to the credit of..... hereby acknowledging..... to be Bailee of the said property for the said Bank.

The Bank may at any time cancel this Bailment or Trust, and, in such event,..... hereby undertake and agree to return all unsold goods at once on demand, or to pay the value of the said goods, at the Bank's option.

Dated at..... the..... A.D. 190....
.....

Should, however, the customer's standing not warrant delivery of goods in this manner, the goods would be warehoused and insured in the bank's name and, as delivery of same would be required, the bank would surrender upon payment, portions of the shipment. These payments would be credited by the bank to their London agents on account of their acceptances under the credit.

Advantages.—Several advantages result from the use of commercial letters of credit. Of these the following may be enumerated:—

1. Importers may buy goods in any part of the

world, on a cash basis, without advancing any money until their arrival, and in some instances until after some disposition has been made of them;

2. Shipments of goods may be secured within a specified time, and the title to them passes into the hands of a local banker, before any money is paid upon them, and finally

3. A means is provided of conducting business between parties residing in countries remote from each other, and at the same time affording them, whether buyer or seller, a large and equal measure of security.

QUESTIONS FOR REVIEW.

What is a letter of credit? How is credit procured for travellers in foreign countries? Are letters of credit negotiable? Is the payment of money, under a letter of credit, conditional or unconditional? What are the principal kinds of letters of credit? Where are the foreign correspondents of a bank? How are the names of foreign correspondents mentioned? Write an example of a circular letter of credit. Indicate the ruling which is generally made upon the back of a letter of credit. When payment under a letter of credit is made, how is such payment recorded? How can a banker, to whom a letter of credit is subsequently presented, know how much of the credit is still unused? In what kind of money are letters of credit usually issued? When they are issued in dollar, for travellers on this continent, by what name are they known? Why? At what rate are letters of credit usually purchased? From whom can letters of credit

usually be obtained? Are they ever issued to the applicant upon the deposit of an approved security? Are they ever issued upon the guarantee of some reliable party? What amount of money is annually remitted to London, England, in letters of credit by American bankers for the use of Americans? In what regard does a clean credit differ from a circular letter of credit? Write an example of a clean credit. When are commercial or documentary letters of credit used, and by whom? How does a customer apply for a commercial letter of credit? Write a form of application for a commercial letter of credit. Write a commercial letter of credit. When a commercial letter of credit is given a customer upon his application, what contract does such customer make with the bank? Write out a copy of the contract which the customer makes with his bank. How must payment be made by a Montreal silk merchant upon an importation of silks from Yokohama? Write out a form of a trust or bailee receipt. When a customer's standing does not warrant delivery of the goods to him, previous to payment, in what way may the bank safeguard its interests? What advantages result from the use of commercial letters of credit?

CHAPTER XXIV.

ABANDONMENT OF PROPERTY.

Definition.—An abandonment of property is the surrender made by a debtor of all his property, both movable and immovable, personal and real, for the benefit of his creditors.

An abandonment consists of the filing of a declaration by the debtor, announcing the surrender of his property for the benefit of his creditors, and of the filing in court of a statement of all his property, including the names and addresses of his creditors, and the amount due each.

By whom made.—The following persons may make an abandonment of their property for the benefit of their creditors:

1. A debtor who has been arrested upon a writ of *capias ad respondendum*;

2. A trader, who has ceased his payments, and upon whom a demand of abandonment has been made by any creditor whose claim is unsecured for a sum of \$200.00 or upwards.

Any creditor may have a writ of *capias ad respondendum* issued against his debtor whenever the latter owes him a personal debt of \$50.00 or upwards, and such debt has been created or is made payable within the limits of the Province of Quebec and Ontario in any case wherein the defendant:

1. Is immediately about to leave the Provinces of Quebec and Ontario, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant; or

2. Is secreting or making away with, has secreted or made away with or is immediately about to secrete or make away with, his property, with intent to defraud his creditors in general or the plaintiff in particular, and the plaintiff will thereby be deprived of his recourse against the defendant;

3. Is a trader who has ceased his payments, and has

refused to make a judicial abandonment of his property for the benefit of his creditors, although duly required to do so.

A writ of *capias ad respondendum* cannot issue: ters of *capias*.

1. Against priests or ministers of any religious denomination whatever;
2. Against septuagenarians;
3. Against women.

The Superior court alone has jurisdiction in matters of *capias*.

How a Demand of Abandonment is Made.—A demand of abandonment must be:

1. Signed by the creditor or by his agent under a special power of attorney, and if the creditor is a corporation, by its president, manager, or its local agent under a special power of attorney.
2. Served upon the debtor like a writ of summons.
3. Produced at the office of the court with the claim under oath, accompanied by vouchers and a special power of attorney, if any, under which the demand has been made.

Contestation of Demands.—A demand of abandonment may be contested by a petition which must be filed within two days after service of the demand, and be served upon the demanding party as soon as possible.

Debtor's Declaration of Abandonment.—The debtor must, within two days from the service upon him of the demand of abandonment, file in the court a declaration of the abandonment of his property, and at the same time he must also file a statement of the property which he so abandons, and do so within the four

days which follow such demand. If the demand is made upon a partnership and one or more of its members are dead or absent from the Province, the declaration and statement may be signed by the surviving or resident partners. In that case the abandonment does not affect the private property of the dead or absent partners.

The Debtor's Statement.—The debtor's statement of the property he abandons must be made under oath and its contents must indicate:

1. The seizable property, both movable and immovable, which he owns;
2. The names and addresses of his creditors with the amount of their respective claims, and an indication of the nature of each debt, whether privileged, hypothecary or otherwise.

Effect of Abandonment.—An abandonment deprives the debtor of the enjoyment of such property as is liable to seizure, as well as the possession of his books of account and titles of debt, and gives his creditors the right to have such property sold for the payment of their respective claims. Although all the property of a debtor he abandoned, he is liberated only in so far as the creditors are paid. Should he ever become owner of additional property, he may be required to abandon it also until his debts are paid in full.

Provisional Guardian.—Immediately after the filing of the declaration that the debtor consents to abandon, whether it is accompanied by the statement or not, the prothonotary appoints a provisional guardian whom he, as far as possible, selects from the most interested creditors. The provisional guardian as soon

as appointed, takes immediate possession of all the property abandoned. He retains possession temporarily and until he is succeeded by a more permanent official called a curator.

Powers of Provisional Guardian.—The provisional guardian may summarily dispose of any perishable goods, and take conservatory measures, under the direction of the judge, or in the absence of the latter, of the prothonotary.

Obligation of Provisional Guardian.—Within five days after the filing of the statement of property the provisional guardian must give notice of the abandonment:

1. By inserting an advertisement to that effect in the *Quebec Official Gazette*;
2. By a registered letter, posted to the address of every creditor and setting forth the date of the filing of the statement, and the amount and nature of each claim.

The Curator.—The provisional guardian is relieved from his office by the appointment of a more permanent official called a curator, in whose hands the movable and seizable effects of the debtor are placed. The curator acts upon the advice of inspectors appointed for the purpose, and is always subject to the summary jurisdiction of the judge. In other words, he can take no proceedings of any kind without having an order from the local judge.

Appointment of Curator and Inspectors.—For the purpose of advising as to the appointment of a curator and inspectors a meeting of the creditors is called before the judge, by a registered notice posted to the address of everyone and also inserted in an English

and French newspaper. Such meeting must be held between the fifth and fifteenth day after the publication of the notice calling it.

The judge appoints the curator and inspectors chosen by the majority in number and in value of the creditors present or represented at such meeting who have filed sworn claims.

Curator's Duties.—The curator takes possession of all the property mentioned in the statement, as well as of the debtors' books of account and titles of debt, and administers the property until it is sold or realized. He has, in like manner, a right to receive, collect, and recover any other property belonging to the debtor, which the latter has failed to include in his statement, except such as is by law exempt from seizure.

The curator's first act is to announce his appointment by an advertisement in the *Quebec Official Gazette*, and by a registered notice posted to the address of every creditor. In the same notice the curator must also call upon the creditors to file their sworn claims with him within a delay of thirty days.

In the interest of the creditors the curator may be required to give security, the amount whereof is fixed by the judge. The security may be given to one or more of the creditors or to all, if an application is made to the judge for the same. Any property not belonging to the debtor, which is in the curator's possession, by virtue of the abandonment, may be recovered by the person thereto entitled upon a petition to the judge. The curator with the permission of the judge upon the advice of the creditors or inspectors may exercise all the debtor's rights of action and all the actions possessed by the mass of the creditors. The curator can

sell the claims and movable property of the debtor in the manner prescribed by the judge upon the advice of the parties interested or of the inspectors.

Upon the application of the curator authorized by the inspectors, or upon application of a hypothecary creditor, without a notice to the debtor, the judge may authorize the curator to sell the immovable property, or order him to issue a warrant to the sheriff requiring him to seize and sell such immovable property. The money realized by the sale remains in the hands of the sheriff, who must pay it to the parties entitled to the same and do so in accordance with special dividend-sheets prepared for the purpose.

Curator's Register.—A curator must keep a register containing:

1. The name and description of the debtor;
2. The date of the abandonment;
3. The amount of moneys realized;
4. The amount of each claim;
5. The amount paid to each creditor;
6. The amount of the collections;
7. The amount of his disbursements and fees.

Creditor's Rights.—The creditors are entitled to examine the curator's register during reasonable hours at the curator's place of business. Within two months following the day on which the last dividend-sheet is payable, the curator must deposit his register in the office of the court to which it appertains. Within the same delay he must prepare a certificate of all his proceedings and file it in the office of the superior court with all papers and documents relating to his management.

The moneys realized by the curator must be dis-

tributed by him among the creditors by means of dividend-sheets prepared after the expiration of the delay for the production of the creditors' claims. As regards his dividend-sheets the curator must observe the following formalities:

1. He must give notice of the preparation of the sheets by the insertion of an advertisement in the Quebec Official Gazette;

2. He must post a copy of the sheets, with a notice of the date on which they are payable, by registered letter to the addresses of the creditors who have filed their claims or whose names appear in the statement.

The dividend-sheets are payable fifteen days after the observance of these formalities.

Contestation of Claims.—Claims or dividends may be contested by any party interested or by the curator at the expense of the estate, if he is so instructed by the inspectors and obtains the permission of the judge. The contestation filed by a creditor or by the curator is immediately transmitted by him to the prothonotary of the court to be summarily decided by the judge.

Examination of Debtor.—Any creditor at any time after the filing of the statement, or the curator with the authorization of the inspectors may summon a debtor to appear before the judge or the prothonotary and examine him on oath concerning his statement of the property he abandoned and the condition of his affairs.

Contestation of Debtor's Statement.—Any creditor or the curator authorized by the inspectors may contest the debtor's statement of the property which he has abandoned, and do so on the following grounds:

1. The fraudulent omission to mention property of the value of \$100.00;

2. Fraudulent misrepresentations therein with respect to the number of creditors or the nature or amount of their claims;

3. Secretion by the debtor within the year immediately preceding the filing of the statement of any portion of his property with intent to defraud his creditors.

Contestations of the statement, if made, must be made within four months from the day on which the advertisement of the curator's appointment appears in the Quebec Official Gazette.

The contesting party is also bound within the same delay to prove his allegations by all legal means. The judge, however, may prolong the delay for making such proof, but not beyond two months. If the contesting party makes proof of any one of his allegations, the judge may condemn the debtor to be imprisoned for a term not exceeding one year.

QUESTIONS FOR REVIEW.

What is meant by an abandonment of property? Of what does an abandonment of property consist? By whom may an abandonment of property be made? Under what circumstances may a person have a writ of *capias* issued against his debtor? Against what persons can a writ of *capias* not issue? What court has jurisdiction in matters of *capias*? How is a demand of abandonment of property made? How may a demand of abandonment be contested? When must the debtor make his declaration of abandonment?

What statement must he also file when he makes his declaration of abandonment? By whom is a declaration of abandonment and statement of property signed, when the demand is made upon a partnership, and one or more of its members are dead or absent from the Province? Is the private property of dead or absent partners affected when an abandonment is made by the resident members of the partnership? How is the debtor's statement of the property, he abandons to be made? What must the contents of the debtor's statement indicate? What is the effect of an abandonment of property? To what extent is a debtor liberated from his obligations by making an abandonment of his property? Under what circumstances can he be required to make a second abandonment? What official takes immediate possession of the property abandoned? Who succeeds him? What are the powers of a provisional guardian? What are the obligations of a provisional guardian? How is the provisional guardian relieved from office? By what official? How are the curator and inspectors appointed? What are the curator's duties? Does the curator give security for his administration of the property placed in his hands? By whom is the amount of security determined? May security be given to only one or more of the creditors? How is security obtained? How is property, which does not belong to a debtor and which has come into the creditor's possession by virtue of an abandonment, recovered by its owner? How may the curator sell the debtor's immovable property? How may the curator sell the claims and movable property of the debtor? How are the moneys, realized by the sale of the debtor's immovable property, paid to the

parties entitled to the same? What are the contents of a curator's register? May the creditors examine the curator's register, and, if so, at what time and where? When must the curator deposit his register in court? Within what delay must he prepare a certificate of all the proceedings and file it in court? What papers and documents must be filed with his certificate? How must the moneys, realized by the curator, be deposited by him? When are the curator's dividend-sheets prepared? What formalities must the curator observe as regards his dividend-sheets? When are the curator's dividend-sheets payable? When and how may claims or dividends be contested? By whom may a debtor, who has made an abandonment of his property, be examined? Before whom may such examination take place? For what purpose? Who may contest the debtor's statement of the property abandoned? Upon what grounds may such a contestation be made? Within what delay must a contestation of the debtor's statement be made? Within what delay must the contesting party prove his allegations? What additional delay may a judge allow a contesting party? What condemnation may be imposed upon the debtor if a contesting party proves his allegations?

Finis.

APPENDIX.

A Receipt on Account.

\$50.00.

Montreal, July 9th, 1904.

Received from William J. Brown, *Fifty Dollars* on account.
With thanks.

JOHN WILSON.

A Receipt in Full of Account.

\$50.00.

Montreal, July 9th, 1904.

Received from William J. Brown, *Fifty Dollars* in full of
account to date. With thanks.

JOHN WILSON.

A Receipt in Full of all Demands.

\$50.00.

Montreal, July 9th, 1904.

Received from William J. Brown, *Fifty Dollars*, in full of
all demands against him. With thanks.

JOHN WILSON.

A Lease of Property.

AGREEMENT IS HEREBY MADE at the City of Mont-
real, this *First day of May, One Thousand Nine Hundred and
Four,*

BETWEEN

THOMAS SMITH, *of the City of Montreal, Province of
Quebec, Merchant.*

Party of the First Part,

AND

JAMES BROWN, *of Westmount, said Province, Traveller.*

Party of the Second Part.

THE WHOLE AS FOLLOWS :—

1. The said party of the first part, hereinafter called the

lessor, does hereby let to the party of the second part, herein-after called the lessee, who hereby doth rent and lease from the said lessor that house and lot known as No. 4222 West-ern Avenue, Westmount, the said lot being known as lot No. 222, on the official plan and book of reference for the parish of Montreal ;

2. The present lease shall begin May 1st, 1904, and extend to May 1st, 1906 ;

3. The said lessee hereby acknowledges to have inspected said premises and hereby declares that the same are in a good condition of repair ;

4. The said lessee hereby agrees to make all repairs known as tenant's repairs, and the said lessor all repairs known as land-lord's repairs ;

5. This lease is made for the annual rental of Three Hun-dred Dollars (\$300.00), which the said lessee hereby promises to pay unto the said lessor in monthly instalments of Twenty-five Dollars (\$25.00) each, the first whereof shall become due on June 1st, 1904.

IN TESTIMONY WHEREOF the parties hereto have signed these presents in duplicate, at Montreal, on the day and year first above written.

Witness
William Wilson.

THOMAS SMITH,
JAMES BROWN.

A Lease of Service.

AGREEMENT IS HEREBY MADE at the *City of Mont-real*, this *Eleventh day of July, One Thousand Nine Hundred and Four*,

BETWEEN

ALEXANDER BROWN, *of the City of Montreal, Province of Quebec, book-keeper,*

Party of the First Part,

AND

CHARLES DAWSON, *of the same place, Merchant,*

Party of the Second Part.

1. The party of the first part hereby agrees to work as book-keeper for the party of the second part, in the latter's store at Montreal, for three years commencing from this date ;

2. In consideration of the said party of the first part's ser-vices as book-keeper the said party of the second part here-by agrees and promises to pay unto the said party of the first part, the sum of Fifty Dollars (\$50.00) per month, payable on

the Eleventh day of each month during the said term of three years, the first payment to become due on August 11th, 1904.

And the said parties of the first and second part have signed these presents in duplicate, at Montreal, this Eleventh day of July, One Thousand Nine Hundred and Four.

Witness,
W. Smith.

ALEXANDER BROWN.
CHARLES DAWSON.

A Special Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS that I, JAMES WILSON BROWN, of the City and District of Montreal, Province of Quebec, have made, constituted and appointed, and by these presents do make, constitute and appoint William Patterson, of the same place, my true and lawful attorney for me and in my name, place and stead to take all such legal and other proceedings as may be necessary for the recovery of any sum or sums in damages which may be due me by Company by reason of the injuries sustained by me by my having been run over on the Fifth inst., at the corner of Victoria Square and Craig Street, by a team of horses belonging to the said Company and driven by one of its employees in the conduct of said Company's business; to receive payment of the sum or sums so recovered and to give and grant unto the said Company, upon its payment of the said sum or sums to him, my said attorney, a full and complete acquittance and discharge therefor, the whole upon such terms and conditions as to my said attorney may seem best, giving as I hereby do to him my said attorney full and complete authority to determine the sufficiency or insufficiency of any sum or sums offered by said Company in settlement of my claim against said Company, in all respects according to his absolute discretion as fully and effectively as I could do if personally present with full power of substitution and revocation hereby ratifying, confirming and agreeing to all that my said attorney or his substitute shall lawfully do or cause to be done in the premises, by virtue hereof.

IN WITNESS WHEREOF I have hereunto set my hand this Eleventh day of July in the year One Thousand Nine Hundred and Four.

Witnesses,
Robert Smith,
William Caldwell.

JAMES WILSON BROWN.

A Certificate of Stock.

Incorporated under the laws of the Province of
Quebec by letters patent.

Capital,	No. 250.	25 Shares.
\$200,000.	THE ROYAL ASBESTOS COMPANY.	
2,000 Shares	This certifies that..... <i>Robert Wilson</i>	
\$100.00 each.is entitled to..... <i>Twenty-five</i>	
par value.shares of the capital stock of the ROYAL ASBESTOS COMPANY , transferable on the books of the Company by indorsement hereon and surrender of this certificate.	
	Montreal, <i>July 11th</i> , 1904.	
	JAMES MORISON ,	JOHN WELLIVER ,
	Secretary.	President.

A Proxy.

I, COLIN WALTER McNEE of Ottawa, Ontario, hereby appoint GEORGE L. BROWN, of Montreal, Quebec, a shareholder of THOMAS BROWN & SON COMPANY, to represent me by proxy and to vote and act for me at all meetings of the Company and in my name and stead to do all things with regard to the business of the Company that I might legally do if personally present.

WITNESS MY HAND, at the City of Ottawa, Province of Ontario, this Eighteenth day of June, One Thousand Nine Hundred and Four.

Witness

COLIN W. McNEE.

Articles of Partnership.

AGREEMENT IS HEREBY MADE at the City of Montreal, this Eleventh day of July, One Thousand Nine Hundred and Four,

BETWEEN

CHARLES JAMES BROWN, of the City of Montreal, Province of Quebec,

Party of the First Part,

AND

ROBERT WILLIAM SMITH, of the same place,

Party of the Second Part,

1. The said above named parties shall become partners as merchants, and by these presents do agree to be co-partners

together under the firm name of BROWN & SMITH in the conduct of a general grocery business, wholesale and retail, at St. James Street, Montreal ;

2. The co-partnership of the said parties shall commence on the Twelfth day of July, One Thousand Nine Hundred and Four and continue three years, that is to say to the Twelfth day of July, One Thousand Nine Hundred and Seven ;

3. That both said parties shall each contribute for the purposes of the said co-partnership business the sum of Five Thousand Dollars (\$5,000.00) in cash ;

4. That during the continuance of the said co-partnership the parties hereto shall devote all their time and skill to the conduct of the co-partnership business and to the utmost of their skill and power will exert themselves for their joint interest, profit and benefit ;

5. That on the First of February of each year during the continuance of the present co-partnership business there shall be an equal division between the parties hereto of the profits accruing from the conduct of the said partnership business which shall remain undivided over and above the monthly drawings provided in paragraph 6 hereof for said parties.

6. The parties hereto shall each draw from the funds of the said partnership business a monthly living allowance of One Hundred Dollars (\$100.00) the first whereof becoming due on August 12th, 1904 ;

7. The said parties at the end or other sooner termination of their present co-partnership business each to the other shall and will make a true, just and final account of all things relating to their said partnership business and in all things truly adjust the same ; and all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, whether in money, goods, wares, fixtures, debts or otherwise, shall be divided between them.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands in duplicate the day and year first above written.

Witness,
John Mackie.

CHARLES JAMES BROWN.
ROBERT WILLIAM SMITH.

GLOSSARY.

Abandonment.—(1) The surrender of a ship or goods to the insurer ; (2) the surrender made by a trader of all his property, both movable and immovable, for the benefit of his creditors.

Abolish.—To make void; to cancel.

Abrogate.—To repeal; to annul; to abolish entirely.

Absolute Conveyance.—A transfer of property without condition or reservation.

Acceptance.—(1) The act by which the person upon whom a bill of exchange or other order is drawn, engages to pay it; (2) the bill after it has been accepted.

Acceptor.—One who accepts an order, a draft or bill of exchange.

Accptilation.—The acquittance of a debt by a creditor without receiving payment.

Accommodation Paper.—Commercial paper for which no consideration passed between the original parties.

Accord.—Agreement.

Account.—A systematic arrangement of debits and credits with particulars of the same under the name of a person. Book-keeping is the science of accounts.

Account Current.—A running account.

Accountant.—One skilled in accounts or engaged in keeping books.

Account Purchase.—An abbreviation of the phrase "account of the purchase" of goods; a formal statement of goods purchased by an agent for his principal containing commission and expenses connected with the shipment of goods.

Account Sales.—An abbreviation of the phrase "account of the sale" of goods; an account drawn out by a commission agent to his principal, showing a detailed account of the sale of goods to him, less the charges for freight, commission and other incidental expenses.

Account Stated.—An account balanced and rendered and assented to by the parties although not paid.

- Acknowledgement.**—The act by which a party, who has executed an instrument, declares or acknowledges it before a competent officer to be his act or deed.
- Action.**—The formal means of recovering one's right in a court of justice; a suit.
- Act of God.**—Any accident produced by a physical cause which is irresistible, such as lightning, tempest.
- Actuary.**—The active officer in a life assurance company; one skilled in the science of annuities.
- Ad Valorem.**—According to the value; a term used in fixing the rates and duties on imports.
- Adjudication.**—The act of a court in giving judgment in suit or controversy.
- Administrator.**—One who is appointed to take charge of the property or estate of a person dying without having made a will, who must give an account of his management.
- Advances.**—Money paid by a commission merchant to his principal before any sale of the goods as a part of what they will probably sell for.
- Adventure and Joint Adventure.**—Terms used to express shipments of goods by a merchant on his own account, or on a joint account with another. It may consist of the import or export of goods to be sold on commission or otherwise.
- Advertising.**—Publicity; the most familiar form of advertising is by the medium of newspapers and magazines.
- Advice.**—Information given with reference to a shipment or other important matter.
- Affidavit.**—A statement in writing signed by the person making it, and sworn to before a commissioner, a notary public, or other officer authorized to take oaths.
- Affinity.**—The connection which arises by marriage between each of the married persons and the kindred of the other.
- Affreightment.**—The hiring of a ship for the conveyance of goods.
- Agency.**—The relation existing between two parties when one is authorized to do certain acts for the other with other parties.

- Agent.**—One who acts: usually applied to a person who does business for and in the name of another.
- Agio.**—A term used to denote the difference between the real and nominal value of money.
- Allowance.**—The deduction made from weights, etc.
- Allonge.**—A slip of paper attached to a document to lengthen it.
- Alien.**—A person who is a subject of a foreign country.
- Alimony.**—A sum of money paid by one person for the maintenance of another given in proportion of the wants of the latter and the former's ability to pay.
- Alteration.**—The changing of the words or figures of a written instrument by the holder after it has been executed and delivered.
- Amotion.**—The removal of an officer of a corporation.
- Amalgamation.**—The fusion of two or more companies or firms into one.
- Amount.**—The sum total of two or more sums or quantities.
- Annuity.**—A sum of money payable once a year.
- Annulment.**—The act of making void.
- Ante-Date.**—To inscribe upon any document a date earlier than that on which the document is written.
- Apparent Authority.**—The power which a principal has allowed his agent to seem to have to act for him.
- Appurtenances.**—In a deed or lease, things which go with the land, as the right of way or a yard which has always been used with it: things belonging to another thing.
- Appraisal.**—A value set upon goods or property of any kind.
- Appraiser.**—One who appraises or values.
- Arbitration.**—The investigation and determination of a cause or matter in controversy by an unofficial person or persons mutually chosen by the contracting parties.
- Arbitrator.**—A person selected by the parties to a dispute to decide or assist in deciding the same.
- Articles of Co-Partnership.**—The written agreement by which a co-partnership is formed.
- Articles of Association.**—A paper signed by the organizers of a corporation preliminary to its organization, setting

- forth its name, purposes and plan, and forming the basis of the corporation.
- Articles of Incorporation.**—Another expression for Articles of Association.
- Assent.**—The act of agreeing to do anything; consent.
- Assets.**—The property of every description belonging to an individual, firm or company.
- Assessment.**—A valuation of property or profits for the purpose of taxation.
- Assessor.**—One who assesses or values property.
- Assignment.**—The transfer of property by a debtor to certain persons called "assignees" in whom it is vested for the benefit of his creditors.
- Assignee.**—The person to whom the debtor transfers all his property for the purpose of having it distributed among his creditors; one to whom anything is assigned.
- Assignor.**—One who assigns property.
- Association.**—The union of persons in company for the transaction of business.
- Assortment.**—A variety of sorts or kinds adapted to various wants.
- Assurance.**—A guarantee or indemnity.
- Assure.**—To make sure against loss; another term for insure.
- Assured.**—The party agreeing to pay the premium of insurance; a person to whom a guarantee against loss is given; another term for insured.
- Attachment.**—The seizure of a defendant's property by legal process in order to satisfy any judgment which may be rendered against him in a suit.
- Attorney.**—An agent; an advocate.
- Auction.**—A method of selling goods to the highest bidder.
- Auctioneer.**—One who sells goods at auction.
- Audit.**—The examination and authentication of accounts.
- Auditor.**—A person appointed to examine accounts.
- Authority.**—The power given by a principal to his agent to do certain acts for him with other parties.
- Average.**—(1) A term used to denote damages or expenses resulting from accidents at sea; (2) the mean time for the payment of certain items due at different times.

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- Avoirdupois.**—The common standard of weights for all commodities except precious metals and drugs.
- Award.**—The decision of arbitrators.
- Bailment.**—Delivery of goods in trust upon a contract, express or implied, that the trust will be faithfully executed on the part of the bailee. The bailor is he who delivers; the bailee he to whom delivery is made.
- Balance.**—The difference between the two sides of an account, that is, the sum required to make the two sides equal.
- Balance of Trade.**—The difference between the exports of a country and its imports. A balance of trade may be calculated between a country and any other country, or between a country and all other countries.
- Balance Sheet.**—A statement showing the assets and liabilities of a business.
- Bank Bill.**—A written promise to pay to the bearer on demand a certain sum of money issued by a bank and used as money.
- Bank Cheque.**—An order on a banker to pay a certain sum of money when the order is presented.
- Bank Draft.**—A written order by one bank on another for the payment of a specified sum to a person named therein or to his order.
- Bank Note.**—Another expression for bank bill. A common promissory note made payable at a bank.
- Bankruptcy.**—The condition of a trader who has discontinued his payments.
- Bargain.**—A common synonym of contract.
- Barratry.**—Any breach of duty committed by the master of a vessel, or a seaman, without the consent of the owner, by reason of which the ship, or cargo is injured.
- Barter.**—To trade by exchange of goods, in distinction from trading by the use of money.
- Beneficiary.**—(1) In life insurance, the person to whom a policy is made payable; (2) the person for whose benefit another holds the legal title to real estate.
- Betterments.**—Improvements made to real estate which render it better than mere repairs would do.
- Bill of Exchange.**—A direction in writing, by the person who

- signs, ordering the one to whom it is addressed to pay a third person a definite sum of money at a specified time.
- Bill of Lading.**—A document delivered by a carrier to one sending goods by him, acknowledging that they have been received by him, for transportation to a certain place. It is both a receipt and a contract.
- Bills Receivable.**—Notes, drafts or other securities for money, which a merchant holds.
- Bills Payable.**—Notes a merchant has to pay when they become due.
- Blank Credit.**—Permission given a person, or firm, to draw on another to a certain amount, for convenience of trade.
- Blank Indorsement.**—One in which no particular person is named as the one to whom payment is to be made. It consists of the indorser's name alone.
- Board of Trade.**—An association of business men, for the general advancement of commercial interests, for example, the Montreal Board of Trade.
- Body Corporate.**—A corporation.
- Bona Fide.**—In good faith, as distinguished from "mala fide," in bad faith.
- Bond.**—A written instrument by which one agrees to pay to another a certain amount of money, unless something else specified therein is done.
- Bonded Goods.**—Those which remain in the custom warehouse until the duties are paid.
- Bonus.**—(1) An additional premium paid for the use of money beyond the legal interest; (2) a sum of money paid to a party over and above that to which he is entitled by his contract; (3) a sum of money voted by a municipal council to a party, on condition that the latter executes a contract of benefit to the people of the locality, for example, a railway bonus.
- Bottomry Bond.**—An obligation given for a loan upon a vessel and accruing freight.
- Bought and Sold Note.**—A written memorandum of sale, delivered by a broker effecting a sale, to the buyer.
- Book Debts.**—The debts owing to, or by a merchant, as shown by his books.

- Breach.**—In the law of contracts, the violation of an agreement or obligation.
- Bribery.**—Receiving or offering a reward to affect the contract of a public officer.
- Broker.**—One engaged in negotiating contracts for the purchase or sale of property in which he has no interest.
- Brokerage.**—The commission or percentage charged by a broker for services.
- Bullion.**—Any kind of gold or silver in the mass.
- Business Paper.**—Commercial paper for which there is a consideration given when it originates.
- By-Laws.**—The private laws or regulations made by a corporation for its own government.
- Cancellation.**—The manual act of erasing or destroying a writing.
- Capita (per.)**—By the head.
- Capital.**—Investment in business.
- Capital Stock.**—The fund or property, as a whole, contributed or supposed to have been contributed to a corporation or an organization as its property.
- Carat.**—The weight which expresses the degree of fineness of gold.
- Cargo.**—The lading or freight of a vessel.
- Cash Discount.**—An allowance made for payment in ready money.
- Carrier.**—One who carries goods of others, or transports passengers from one place to another.
- Caution.**—Equivalent in meaning to bond or security.
- Caveat.**—In patent law a notice from an inventor not to use a patent of a particular description to another.
- Caveat Emptor.**—A Latin phrase meaning "let the purchaser beware," and applying to a case in which the thing sold is before the buyer and he examines it.
- Certificate of Deposit.**—A certificate issued by a bank or banker, showing that a certain sum of money has been deposited there, payable to a certain person, to his order or to bearer. It is an American expression and corresponds to "deposit receipt," used in Canadian Commercial

- Law. A certificate of deposit is negotiable, but a deposit receipt is non-negotiable.
- Certificate of Stock.**—A certificate given by a proper officer of a corporation, showing that a certain person owns a certain number of shares of the capital stock.
- Certification of Cheque.**—The signature of the proper officer of a bank written across the face of the cheque, sometimes with and sometimes without the word "certified," or "good." It is the recognition by the bank that the cheque is good and the bank is bound to pay it.
- Chancery Division.**—The High Court of Justice is divided into two divisions: the one called the King's Bench division, and the other the Chancery division.
- Charter.**—(1) A special act of a legislature creating a particular corporation; (2) to hire or let a vessel or part of it.
- Charter Party.**—The written instrument by which the owner of a vessel lets it or part of it to another.
- Charter Ship.**—One let wholly or in part.
- Chattel Mortgage.**—A conditional sale of personal property, one which is to become void if a certain thing happens. A chattel mortgage is chiefly used as security for the payment of money. There is no chattel mortgage in the Province of Quebec.
- Cheque or Check.**—A written order for money drawn upon a bank or banker and payable immediately.
- Civil Remedy.**—The method of redressing, by means of a suit for damages or for specific performance, an injury inflicted by one person upon another.
- Clearing.**—(1) The obtaining of permission for a ship to leave port; (2) the exchanging of drafts and settlement of balances between different houses.
- Clearing House.**—An office where bankers settle daily with each other the balances of their accounts.
- Clearance.**—A certificate from the custom-house that a ship has permission to sail.
- Coasting.**—The trade carried on between different ports of the same country.
- Coin.**—Pieces of metal, usually gold or silver, impressed with a public stamp, and used as money.

- Collateral.**—Property pledged as security for the performance of a contract; usually commercial paper deposited with a bank or banker as security for a loan.
- Commerce.**—(1) The exchange of commodities; (2) trade.
- Commercial Paper.**—Written evidences of indebtedness, in common use among merchants.
- Commission.**—(1) A sum given for the performance of a service; (2) a charge of so much per cent. by an agent on the sale of goods for his principal, or upon the collection of a sum of money.
- Commission Merchant.**—One employed by others to sell for them merchandise which they send to him.
- Common Carrier.**—One who, as a business, undertakes, for hire, to transport from one place to another, passengers or goods.
- Common Law.**—(1) The unwritten law as distinguished from written or statute law; (2) the old law of England that derives its force from long usage and custom. (3) In the English sense there is no common law in the Province of Quebec. The Civil Code is, however, sometimes referred to as common law, regulating, as it does, the legal rights of people in the absence of agreement to the contrary.
- Common Seal.**—The seal of a corporation.
- Compact.**—An agreement between parties, similar to a contract.
- Company.**—An association of persons for a common enterprise.
- Competency of Witness.**—The legal fitness of a witness to give evidence on the trial of an action.
- Composition Deed.**—An agreement between an insolvent debtor and his creditors by which, upon payment to each creditor of a fixed proportion of his claim, they all agree to release the debtor from the balance of their claims.
- Compromise.**—An agreement between a debtor and his creditors, by which they agree to accept a certain proportion of the amounts due, and discharge him from the remainder.
- Concurrent.**—Existing together. A consideration is concurrent when the acts of the parties are to be performed at the same time.

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- Condition Precedent.**—An act which must be performed by one person before one is liable, or in order to make him liable.
- Confirmation.**—The ratification of a contract which was voidable, whereby it is made valid.
- Conflict of Laws.**—The difference between the laws of two or more states.
- Consanguinity.**—Relation by blood.
- Consent.**—A concurrence of the wills of two or more contracting parties.
- Consideration.**—The reason or inducement in a contract upon which the parties consent to be bound.
- Consignee.**—One to whom merchandise, given to a carrier by another person, for transportation, is directed.
- Consignment.**—The goods shipped through a common carrier by the consignor to the consignee.
- Constitution.**—The rules of law by which the people of a state or nation are governed, based upon usage and custom as the English constitution, or upon legislative enactment as the Constitution of Canada.
- Contract.**—An agreement between two or more persons to give, to do, or not to do a particular thing.
- Contra.**—Opposite.
- Contraband.**—Prohibited merchandise or traffic.
- Conversion.**—An unlawful exercise of ownership over goods or personal property belonging to another.
- Conveyance.**—(1) The act of carrying by land or water; (2) the means of conveyance (3) a written instrument by which an estate in lands is transferred from one to another.
- Co-Partnership.**—Same as partnership.
- Copyright.**—The exclusive privilege, secured from a government, for printing, publishing and selling copies of writings or drawings.
- Corporation.**—An artificial being or person endowed by law with a capacity of perpetual succession and of acting in certain respects like a natural person. When it consists of one individual, it is termed a "corporation sole," and when it is composed of several individuals it is called a "corporation aggregate."

- Counter-Claim.**—Same as set-off.
- Counterfoil.**—The part of a writing (as the stub of a cheque, receipt or note) kept for reference, and on which are noted the main particulars contained in the corresponding part, which has been issued.
- Countermand.**—A counter order; a revocation of a former order or command.
- Course of Exchange.**—The current price of bills of exchange between two places.
- Covenant.**—Any promise contained in a signed instrument.
- Coverture.**—The legal state and condition of a married woman.
- Credit.**—Trust given to one who owes.
- Credit, Sale on.**—A sale in which the payment is to be made at some future time.
- Credential.**—The official warrant of a delegating power, authorizing the holder to act in a specified capacity.
- Criminal Remedy.**—The method of punishing a wrongdoer for some wrong committed by him against society.
- Currency.**—The money of a country. The term is also applied to notes, bills of exchange, &c.
- Damages.**—Compensation in money to be paid by one person to another for an injury inflicted by the former upon the latter.
- Day.**—Twenty-four hours. An entire day.
- Days of Grace.**—Days (usually three) allowed by law for the payment of bills of exchange and notes beyond the day expressed for payment on the face of them.
- Debenture.**—A certificate of drawback entitling the importer to return duties on goods shipped again.
- Debt.**—An amount owing from one party to another.
- Decimal.**—From the Latin decem, signifying ten; any system of counting by tens.
- Del Credere.**—An acknowledgment by an agent to guarantee, in consideration of an additional commission, the payment of all goods he has sold, whether he himself receives payment or not.
- Deed.**—A written contract, sealed and delivered.
- Default.**—Omission; neglect or failure.

- Defence.**—A legal excuse made by a defendant to a plaintiff's action, showing why he ought not to be responsible to the plaintiff in damages for an alleged injury or claim.
- Delivery.**—The transfer of a written instrument from the person accepting it, or the grantor, to the person entitled to receive it, or the grantee.
- Demand.**—Presentment for payment.
- Demand Note.**—A note made payable by its terms "on demand," or one in which no time of payment is specified.
- Demurrage.**—The allowance to be made by a shipper to a vessel owner, as damages for detention of his vessel beyond the time specified in the charter party.
- Deposit.**—A bailment or delivery of goods to be kept and returned without recompense.
- Deposit Receipt.**—A receipt issued by a bank or banker, acknowledging that a certain sum of money has been deposited and is payable to a certain person, his order or to bearer, upon specified conditions.
- Deposition.**—The testimony of a witness, reduced to writing to be used in court.
- Deviation.**—In the law of marine insurance, a voluntary departure without necessity from the regular course of the specific voyage.
- Devisee.**—One to whom a thing is bequeathed.
- Disability.**—Want of qualification; incapacity to do a legal act.
- Discount.**—(1) The taking of interest in advance; (2) a deduction from a price asked, or from an account, debt or demand.
- Disfranchisement.**—Expulsion of a member from a corporation.
- Dishonour.**—The non-payment of negotiable paper when it is due, or the refusal to accept such paper when it is drawn, subject to acceptance.
- Distress.**—The taking of personal property to enforce the payment of something due, as rent.
- Distribution.**—(1) The division among those entitled, called the next of kin, of the personal property of one dying without a will; (2) any division of property among people according to their respective rights.

- Domicile.**—The place where a man has his permanent home, and to which he intends to return, if absent.
- Dower.**—A right upon the property of a husband in favor of his wife as usufructuary, and of his children as owners.
- Draft.**—Another word for bill of exchange.
- Drawee.**—The person upon whom a bill of exchange is drawn, who is directed to make the payment.
- Drawer.**—The person who draws or makes a bill of exchange.
- Duplicate.**—A copy.
- Duress.**—Personal restraint or compulsion.
- Duty.**—A government tax.
- Earn.**—(A premium) to become entitled to the premium because the risk has been assumed and incurred.
- Effects.**—All kinds of personal property.
- Ejectment.**—A form of lawsuit to regain possession of real property.
- Embargo.**—An order given by public authority, prohibiting the departure of ships or goods from port.
- Embracery.**—The attempt to corrupt or influence a jury.
- Enact.**—To make a law or establish by law.
- Estate.**—Property, especially land.
- Eviction.**—The forcible removal of a tenant from land leased by him, or doing of any act by the landlord which deprives the tenant of the use of the land.
- Exchange.**—(1) A collective term denoting drafts or bills of exchange upon parties in another country; (2) the remittance of money between different countries, by which sums in the money of one country are exchanged for sums of equivalent value in that of another; (3) the giving or receiving of one thing for another.
- Executed.**—(Of a contract) finished.
- Execution.**—(1) A written command issued by a court to a sheriff or bailiff after judgment, directing him to enforce it; (2) the act of signing and sealing a legal instrument, or giving it the form required to make it valid.
- Executor.**—One to whom is committed the execution or the carrying out of the terms of a will.
- Exemplary Damages.**—Damages allowed as a punishment for

- a wrongful act, deliberately or maliciously committed. Such damages are in addition to actual damages.
- Express.**—A messenger or vehicle sent on a special errand; a regular conveyance for passengers.
- Extradition.**—The surrender by one government to another of a person charged with crime.
- Fac-Simile.**—An exact likeness.
- Factor.**—An agent employed to sell goods on commission.
- Face Value.**—The amount for which a bill or other commercial instrument is drawn.
- Fail.**—To become unable to pay one's debts as they become due. The word is so applied to persons in commercial life.
- Finance.**—Pertaining to money; the public revenue.
- Financier.**—An officer of revenue; one skilled in money matters.
- Fire Insurance.**—A contract to pay the owner of certain property all his loss to a certain amount, if it is damaged or destroyed by fire within a certain time.
- First of Exchange.**—The first copy of a set of a bill of exchange.
- Firm.**—All the members of a partnership taken collectively.
- Fixtures.**—Articles of personal property which have become affixed to land.
- Flotsam.**—A term applied to goods lost by^r shipwreck and floating in the sea.
- Foreclosure.**—(1) The process of cutting off the right or interest of the mortgagor and his assignees in mortgaged premises; (2) a bar to fying a plea.
- Foreign Bill.**—A foreign bill of exchange.
- Forfeiture.**—A loss of property, right or office, as a punishment for some illegal act or negligence. Sometimes the word is used for the thing forfeited.
- Form.**—A particular arrangement; a systematic method of expressing facts.
- Franchise.**—A privilege, or right, conferred by a grant from a government upon individuals.
- Free Trade.**—The policy of conducting international commerce without duties.

- Fraud.**—Any cunning, deception or artifice used to circumvent, cheat or deceive another.
- Freight.**—The compensation to be paid a carrier for the transportation of goods, or the goods themselves while being transported.
- General Assignment.**—A transfer by a failing debtor of all his remaining property to some one, for the purpose of having it distributed among his creditors.
- General Average.**—A contribution made by the owners of a vessel and cargo toward the loss sustained by one of their number, whose property has been sacrificed for the general safety.
- General Partner.**—A partner in a limited partnership, who is responsible for the debts to the same extent as in an ordinary partnership.
- General Ship.**—A vessel navigated by its owner, receiving and carrying freight indifferently for all who apply.
- Goods.**—Same as chattels and effects.
- Goodwill.**—A benefit arising from the fact that a person trading or doing business at a particular place, will continue to do so. It is a property subject to transfer.
- Gratuity.**—A free gift; a donation.
- Greenback.**—A name applied to some American paper money.
- Guarantee.**—To^s agree to hold oneself responsible if another person does not do a certain thing he has agreed to do. It means the same as guaranty, but is used both as a verb and as a noun, while the latter is only used as a noun.
- Guarantor.**—One who agrees to hold himself responsible if another person does not do a certain thing he has agreed to do. It is another word for surety.
- Guaranty.**—(1) An agreement to hold oneself responsible if another person does not do a certain thing he has agreed to do. In this sense it means the same as guarantee; (2) an agreement to hold oneself responsible if a certain thing does not turn out to be as represented. In this sense it means the same as warranty.
- Guaranty Commission.**—The commission paid to a commission merchant who guarantees to his principal the payment of the money for which the goods may be sold.

- Guardian.**—One entrusted with the care of a person or property.
- Harbour.**—A place where ships may lie at anchorage and in safety; a port for loading and unloading.
- Heir.**—One who inherits land or other property upon the death of the owner.
- Highway.**—A passage, road or street, which every citizen has the right to use.
- Hire.**—A bailment in which a compensation is to be given for the use of a thing, or for the labour and services performed upon it.
- Honour.**—To pay a note or bill of exchange when it becomes due, or to accept a bill of exchange when it is presented for acceptance.
- Hotel Keeper.**—One whose business is to provide food and lodging for anyone who may ask and pay for them.
- House.**—Another name for firm.
- Hypothecate.**—To pledge as security.
- Idiot.**—One who never had reasoning power.
- Implied Contract.**—An agreement which is implied from all the circumstances of a transaction.
- Imposts.**—Duties on imported goods.
- Incompetency.**—Lack of necessary legal qualifications.
- Incorporate.**—To form into a corporation.
- Incumbrance.**—A lien upon land as by a judgment or a hypothec.
- Indemnity.**—Compensation for damages suffered, or that which is given or promised to a person to prevent his suffering damage.
- Indorsement.**—(Of commercial paper) (1) a name, with or without other words, written on the back of the paper; (2) an agreement implied in one's writing one's name on the back of commercial paper to pay it if the principal debtor does not.
- Indorser.**—The person who makes an indorsement.
- Indorsee.**—The person in whose favor the indorsement is made.
- Infant.**—In law a person who is under the age of twenty-one years.

- Infringement.**—(Of a patent) the making, using or selling of a patented article without the permission of the owner of the patent.
- Infringement.**—(Of a copyright) the printing, publishing or selling of a copyrighted article, without the permission of the owner of the copyright.
- Infringement.**—(Of a trade-mark) the using of another's trade-mark or an imitation of it, without his permission.
- Injunction.**—An order or direction of a court compelling a certain person or corporation to refrain from doing some particular act or thing.
- Innkeeper.**—Another word for hotel keeper.
- Insolvency.**—The state of being unable to pay one's debts.
- Instalment.**—Part of a sum paid or to be paid at a certain time.
- Insurable Interest.**—A person has an insurable interest in the object insured whenever he may suffer direct and immediate loss by the destruction or injury of it.
- Insurance.**—A contract of indemnity against loss from certain causes.
- Insured.**—The person in whose favor a policy of insurance has been issued.
- Insurer.**—The person or company issuing a policy of insurance.
- Interest.**—Compensation allowed for the use of money; the compensation paid by a debtor to his creditor as recompense for the delay to pay a debt.
- Invalid.**—Of no legal force.
- Inventory.**—(1) An account or catalogue of goods or movables; (2) in law a lease or schedule in writing of the goods, chattels, and credits (and sometimes of the real estate) of a testator or of an intestate made by an executor or an administrator.
- Investment.**—The laying out of money in the purchase of property or the placing of it with a view to derive a revenue therefrom.
- Jetsam.**—A term applied to goods thrown overboard, and which sink to the bottom of the sea.
- Jettison.**—(1) The casting out from a vessel of a part of the cargo, with a view to lighten it and to avoid a shipwreck;

- (2) the cargo thus cast out. If the goods float, they are called flotsam.
- Joint Stock Company.**—(1) A species of partnership possessing some of the characteristics of corporations; (2) a corporation.
- Joint Tenants.**—Two or more persons who are lessees together of the same real estate.
- Jointure.**—An estate of lands settled on a woman in consideration of marriage.
- Judgment.**—The sentence of the law pronounced by a court upon any matter contained in the record, or in any case tried by the court.
- Judgment Debtor.**—A person against whom a judgment is obtained.
- Judicial Sale.**—A sale directed by a court, as a sale on the foreclosure of a hypothec.
- Lagan.**—A term applied to goods sunk in the sea and attached to a cork or buoy that may be fished up again.
- Landlord.**—(1) One who owns or rents or leases lands or houses; (2) the host or keeper of an inn; an innkeeper.
- Law.**—The rules by which society compels or restrains the actions of its members; an external rule of human conduct enforceable by the state.
- Law Merchant.**—The general body of usages in matters relating to commerce.
- Lay Corporation.**—A corporation composed of lay persons or for lay purposes, as distinguished from religious or charitable corporations.
- Lease.**—A contract by which one person grants to another, for a period, the enjoyment of a thing or of personal service in return for a rent or price which the latter obliges himself to pay.
- Legacy.**—A gift by will. It is usually applied to money or personal property.
- Legal Tender.**—That kind of money which by law can be offered in payment of a debt.
- Legal Holidays.**—Certain days appointed by law upon which it is recommended that people refrain from their ordinary

- business. They are called non-judicial days, for upon them no court proceedings of any kind can be done.
- Legal Rate.**—(Of interest) that rate established by law to apply to all cases where interest is allowed, but in which the parties have not specified any rate.
- Legislature.**—A body created by a constitution and given power by it to enact laws upon certain subjects, for example the Legislature of the Province of Quebec.
- Lessee.**—A person to whom a lease is made.
- Lessor.**—(1) Another name for the owner of property; (2) one who owns and rents or leases lands or houses.
- Letters Patent.**—The written instrument by which a government grants a patent right or creates a corporation.
- Letter of Credit.**—Written direction by some well-known bank, banker, house or firm authorizing the party to whom it is addressed to draw in a particular manner for any amount of money he chooses up to a specified limit.
- Liability.**—A debt or claim against a person.
- License.**—A permission or right granted to another, by one having authority, to do an act which would be illegal if not authorized.
- Lien.**—A right which one person has to retain the property of another by way of security, for a debt or claim.
- Liquidate.**—To pay; to settle an account.
- Liquidated Damages.**—Damages agreed upon by the parties to the contract, at the time of the making of the contract to be paid by the party failing to perform it.
- Litigation.**—The act of litigating; a judicial contest; a suit at law.
- Loan.**—A bailment of an article for use or consumption without award. If the loan is for consumption, the article is to be returned in kind; if the loan is for use, the article is to be returned without compensation for the use.
- Log-Book.**—A ship's journal containing a minute account of the ship's course and a reference to every occurrence of the voyage.
- Lottery.**—A scheme for the distribution of prizes won by chance.

- Low Water Mark.**—That part of the shore of the sea to which the waters recede when the tide is lowest.
- Lucid Intervals.**—Periods from time to time, in cases of lunacy, in which the person afflicted becomes sane.
- Lunatics.**—Persons who have lost their reason.
- Maintenance.**—Support by means of food, clothing and other conveniences.
- Maker.**—(Of a note) the person making the original promise; the signer.
- Mandate.**—A bailment of personal property in which the bailee undertakes to do something, usually without compensation, for the bailor with the thing bailed. The bailor is generally termed the mandator, and the bailee the mandatary.
- Mania.**—A form of insanity.
- Manufacture.**—The process of converting raw materials into articles for use and sale.
- Maritime Law.**—That branch of the law which relates to the affairs of navigation and shipping.
- Marine Insurance.**—A contract to pay to the owner of property, a certain portion of his loss, if it is damaged or destroyed while on the sea within a certain time.
- Marriage Settlement.**—An agreement made by parties contemplating marriage, by which the title to real or personal property is changed. A settlement of the kind is effected in the Province of Quebec by a contract in notarial form, the contracting parties thereof regulating the future ownership and control of their property.
- Maturity.**—The time at which commercial paper legally becomes due.
- Maximum.**—The highest price or rate.
- Measure of Damages.**—A rule by which the damages sustained by a person are to be estimated.
- Mercantile Law.**—The body of rules or law pertaining to business transactions.
- Merger.**—The absorption or extinction of one contract in another.
- Medium of Exchange.**—The coinage or specie of a country.

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- Minimum.**—The lowest price or rate.
- Minor.**—Another word for infant.
- Misrepresentation.**—A false and fraudulent statement made by a party to a contract relative to a particular fact, knowing that the statement is untrue.
- Money.**—The common medium of exchange used in civilized countries.
- Monopoly.**—The sole right to make or use a certain article.
- Month.**—Generally in this country a calendar month or period of 30 days.
- Monuments.**—Permanent land-marks indicating the boundaries of land.
- Mortgage.**—A word used in English law which signifies the same thing as hypothec.
- Municipal.**—Belonging to a municipality which may be a country district, a village, a town or city.
- Municipal Corporation.**—A public corporation created by the government for purposes of local administration, as a country district, a village, a town or city.
- Necessaries.**—Such things as are proper and required for the sustenance of man.
- Negotiable Paper.**—Commercial instruments, such as bills of exchange or notes, which may be transferred from one person to another by indorsement and delivery or by delivery simply accordingly as they are payable to order or to bearer.
- Negotiation.**—In commercial law the act by which negotiable paper is put into circulation by being passed from one of the original parties to another.
- Net or Nett.**—That which remains of a weight or quantity after certain deductions.
- Net Proceeds.**—The amount due a consignor after deducting charges attending sales.
- Net Weight.**—The neat or exact weight of goods after deducting tare.
- Nominal Damages.**—Those given for the violation of a right from which no actual loss has resulted.
- Non-Acceptance.**—(Of a bill of exchange) the neglect or re-

- fusal of the person drawn upon to accept the draft made upon him.
- Non-Claim.**—The omission to make a claim within the time limited by law.
- Non-Suit.**—The name of a judgment given against a plaintiff when he is unable to prove his case.
- Nonuser.**—A failure to use rights and privileges.
- Notary Public.**—An officer appointed variously under the laws of different countries, whose acts are respected by the law merchant and the law of nations, and hence have force out of his own country.
- Notice of Protest.**—The notice given to a trader or indorser of a bill, or an indorser of a negotiable note, by a subsequent party that it has been dishonoured either by non-acceptance or by non-payment.
- Notice to Quit.**—A request of a landlord or lessor to his tenant or lessee to quit the premises.
- Novation.**—The substitution of a new obligation for an old one, which is thereby extinguished.
- Nuisance.**—Anything that unlawfully injures or damages a person in the enjoyment of life or property.
- Nuncupative Will.**—An oral will declared by a testator at the point of death, before witnesses and afterwards reduced to writing. The power to make nuncupative wills is usually confined to persons in the army or navy.
- Oath.**—A pledge given by the person taking it, that his promise is made under an immediate sense of his responsibility to God.
- Obligation.**—A legal tie by which one person is bound towards another to give, to do, or not to do something.
- Open Policy.**—One in which there is no valuation of the thing insured.
- Oral Contract.**—A contract made by means of spoken words.
- Order.**—Command; direction. An informal bill of exchange or letter of request requiring the party to whom it is addressed, to deliver the property of the person making the order to some one therein described.
- Ordinance.**—A rule, or order, or law.

- Outlawed.**—A debt is said to be outlawed when it has existed for such a length of time that the law prevents it from being collected.
- Par.**—Equality of value. Bills of exchange and stocks are at par when they sell for their face value. They are above or below par when they are worth more or less than their face value.
- Parol Contract.**—Any agreement or contract not in writing. It is often used as synonymous with oral contract.
- Particular Average.**—(1) A loss to be borne by the particular owner or his insurer; any average not general; (2) a partial loss of the property insured; any loss or damage not a total loss.
- Parties to Commercial Paper.**—The maker (of a note), the drawer (of a bill of exchange or cheque), the drawee or person drawn upon (in a bill of exchange or cheque), the payee (of any kind of commercial paper), the acceptor (of a bill of exchange) and the indorser (of any kind of commercial paper.)
- Partners.**—The members of a firm or partnership. Dormant partners are those whose names are concealed from the public. Ostensible partners are those whose names are held out to the public as the members of the firm. Nominal partners are those who appear to the public as members of the firm, although they have no real interest in it.
- Partnership.**—The rules resulting from an agreement between two or more persons to place their money, effects, labour and skill, or some or all of them, in some enterprise or business, and divide the profits and bear the losses in certain proportions.
- Pawn.**—Same as pledge.
- Payee.**—The person to whom the payment of any kind of commercial paper is directed to be made.
- Payment.**—The fulfilment of a promise, or the performance of an agreement; usually the delivery of a sum of money in discharge of an obligation.
- Penalty.**—Forfeiture, the sum to be provided for non-performance of an agreement.
- Per Centum, or Per Cent.**—By the hundred.

- Perils of the Sea.**—All the dangers naturally incident to navigation.
- Personal Property.**—All property which is not real estate.
- Piracy.**—Any forcible robbery on the high seas.
- Pledge.**—A contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him with the owner's consent, in security for his debt.
- Pledgee.**—A person in whose possession a thing is placed, or which, being already in his possession, is retained by him in security for a debt.
- Pledgor.**—A person who puts his property in the possession of his creditor, or who allows property already in the latter's possession, to be retained by him as security for a debt.
- Policy.**—A written contract of insurance.
- Post-Dated.**—Having date subsequent to that at which it is actually made.
- Post Office Order.**—An order for money issued by the Post Office Department.
- Power of Attorney.**—An authority in private writing or in notarial form, by which one party appoints another to act for him.
- Preference.**—(1) The paying or securing to one or more of his creditors, by an insolvent debtor, of the whole or a part of their claim to the exclusion of his other creditors: (2) the right which a creditor has acquired over others to be paid first out of the assets of his debtor.
- Premium.**—The consideration or price paid for insurance.
- Prescription.**—A means of acquiring or of being discharged, by lapse of time and subject to conditions established by law.
- Presumption.**—An inference of law from known facts of the existence or truth of some other fact.
- Price.**—The consideration given in money for the purchase of a thing.
- Price Current, or Price List.**—A list of the market prices of merchandise and stock. It is usually published.
- Prima Facie.**—Literally at the first appearance. *Prima facie*

evidence is that which is sufficient to establish a fact, unless it is contradicted.

Principal.—(1) A party for whom another is authorized to do certain acts with third parties; (2) a sum of money at interest.

Probate of Will.—The proof of the will of a deceased person before a court or judge, and the judgment thereupon of such court or judge. The proof so given is to the effect that the will in question is in fact what it purports to be.

Profit.—(1) Pecuniary gain in any transaction; (2) what is left of a revenue after the expenditure is deducted.

Pro Forma.—According to form.

Promissory Note.—A written promise, signed by the person promising, to pay a certain sum of money at a certain time to a person named, or to his order, or to the bearer.

Prosecute.—To proceed against by legal measures.

Protest.—A formal notice to the sureties of a note or bill of exchange, stating that the same was not paid at maturity; or to the drawer of a bill of exchange, stating that the same was not paid upon presentment.

Proxy.—(1) One who represents another; (2) a writing by which one authorizes another to vote in his place.

Quarantine.—Restraint of intercourse to which a ship is subjected, upon the supposition that she may be infected with disease.

Quasi.—As if; as though.

Quasi Corporations.—Bodies like corporations, although strictly not corporations.

Quotation.—The prices of goods, course of exchange and rates of freight which are quoted in the various markets, or, by one merchant to another.

Ratification.—Giving force to a contract which otherwise is not binding.

Real Covenant.—A covenant connected with the conveyance of land, and which runs with the land, and which any owner of the land can enforce, although he be not a party to the instrument in which the covenant is contained.

Real Estate.—Same as real property.

Real Property.—That kind of property which is fixed or im-

- movable, and includes land or whatever is erected or growing upon it, and what is beneath or above the surface.
- Realty.**—Same as real property.
- Rebate.**—Same meaning as discount or abatement.
- Receipt.**—A written acknowledgment by one receiving money or other property that it has been received.
- Receiver.**—Usually a person appointed by a court to take and hold property in dispute, the property of a bankrupt or the property of a dissolved corporation.
- Recording.**—(Of Deeds, &c.) (1) handing the paper to the proper officer to be entered or recorded; (2) the entry of record of a deed or other paper by a proper official.
- Redeem.**—(A pledge) to pay the debt for which a pledge is held so as to recover it back.
- Re-enact.**—To enact anew.
- Registry.**—The entering or recording of real estate, conveyances in books of public record.
- Re-insurance.**—Insurance effected by the insurance company to protect itself against insurance risks which it has assumed.
- Release.**—An instrument in the general form of a deed that in distinct terms remits the claim to which it refers; and, although reciting only a nominal consideration, extinguishes the debt.
- Remedy.**—The legal means employed to enforce a right or redress an injury.
- Rent.**—Compensation for the use of real property.
- Remittance.**—Money or notes sent from one person to another.
- Renewal of a Note.**—The payment of a note by the giving of a new one.
- Reprisal.**—The act of seizing ships or property as indemnity for unlawful seizure or detention.
- Rescission.**—The annulling or dissolution of contracts by mutual consent, or by one party.
- Resources.**—Effects; property of any kind, another term for assets.
- Respondentia Bond.**—The obligation given for a loan made upon the cargo of a vessel.

- Responsibility.**—(1) Liability; (2) the having of sufficient property to pay all ordinary obligations.
- Retire.**—(A note) the paying of a note when it becomes due.
- Returns.**—The value of goods returned by a consignee to a consignor.
- Revenue.**—The annual produce of rents, excise, customs and duties collected by a nation, country or province.
- Revenue Law.**—A law imposing a tax or duty for the purpose of creating a revenue.
- Revert.**—To fall again into the possession of the donor; or of the former proprietor.
- Right of Survivorship.**—A right of the survivor to the property or interest of a deceased joint tenant, which in other cases would go to his heirs.
- Right of Way.**—The right of the owner of a place of real estate to pass over another's property at a certain place.
- Riparian Owners.**—Those who own land bounded by a water course.
- Sample.**—A specimen.
- Sale.**—An exchange of goods for money or credit.
- Salvage.**—(1) Property saved from a wreck or loss at sea; (2) compensation given for services rendered in saving property from a wreck.
- Satisfaction.**—(1) Payment of a legal debt or demand; (2) the discharging or cancelling of a judgment or a mortgage, by paying the amount of it.
- Scrip.**—Certificate of stock.
- Seal.**—(1) An impression upon any impressionable substance; (2) a piece of paper pasted on with intent to make a seal of it.
- Sea-Worthiness.**—The fitness of a vessel in all respects of materials, equipment and construction for the service in which it is employed.
- Searching A Title.**—(To real estate) examining the successive deeds and records relating to the property in question.
- Security.**—(For a debt) some right which a creditor has to rely upon, besides the mere promise of his debtor. Guaranty, lien, pledge and mortgage are instances of security.

- Seize.**—To take possession of by legal process.
- Set of Exchange.**—The copies of a foreign bill of exchange taken together. Each copy is a perfect instrument by itself, and the payment of any one renders the others void and without effect. When a foreign bill of exchange is issued between private parties, there are usually three copies in a set, but when it is issued between banks, only two copies are used.
- Set-Off.**—The claim which one party has against another who has a claim against him; a counter-claim.
- Severance.**—The separation of a part of a thing from another, for example, the separation of machinery from a mill. In such case the machinery while annexed to the mill was immovable property. By the severance it became movable property.
- Shareholder.**—Another term for stockholder.
- Shipment.**—(1) The delivery of the goods, within the time required, on some vessel destined to a particular port which the seller has reason to suppose will sail within a reasonable time; (2) the goods shipped.
- Shipper.**—One who gives merchandise to another for transportation.
- Shipping Articles.**—The agreement between the master of a vessel and the seamen determining the nature of the contract.
- Sight.**—The time when a bill of exchange is presented to the drawee.
- Sight Draft.**—A draft payable at sight.
- Signature.**—The name or sign of any person written by himself.
- Sine Die.**—Without a date; without fixing a day.
- Solvent.**—Sound; able to pay all liabilities.
- Specific Performance.**—The actual performance of a contract by the party bound to fulfil it.
- Specie.**—Coin as distinguished from paper money.
- Speculation.**—The purchase, with a view to obtain a profit, of land, stocks, goods and other things in anticipation of a rise in value, and as distinguished from purchases made in the course of regular trade.

- Statute.**—An act of a legislature.
- Statute of Frauds.**—An English statute, generally re-enacted in this country, requiring certain contracts to be made in writing and designed to prevent fraud and perjury.
- Stock.**—Same as capital stock. It is also used to denote the shares into which the capital stock is divided.
- Stockholder.**—The owner of one or more shares of the stock of a corporation.
- Stoppage in Transitu.**—A stoppage by a seller of goods sold on credit before reaching their destination, upon learning of the buyer's insolvency.
- Storage.**—Money received for storing goods in a warehouse.
- Sub-Agent.**—A person appointed by a person to perform some duty relating to his agency.
- Sub-Contract.**—A contract made by one who has agreed to perform labour or service with a third party for the whole or part performance of said labour or service.
- Subject-Matter.**—The subject or matter presented for consideration in some written or oral statement or discussion.
- Sublease.**—A lease from a tenant to another person of the whole or part of the land or other property for a part of the time.
- Subpoena.**—A command given in the name of the Sovereign, ordering, under a penalty, the attendance in court of the person addressed in such command.
- Subtenant.**—A tenant of a tenant.
- Subrogation.**—The substitution of one person or thing in the place of another, particularly the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter.
- Suit.**—The prosecution of some claim or demand in a court of justice.
- Supra Protest.**—Under protest. An acceptance of a bill of exchange supra protest, is one made by a third person after its protest for non-acceptance by the drawee, or after its protest for better security. Such an acceptance is made with the consent of the holder before the bill is overdue by any person who is not already liable thereon, for the honour of any party liable thereon, or for the

the honour of any person for whose account the bill was drawn.

Surety.—One who has agreed with another to make himself responsible for the debt, default or mistake of a third party.

Suretyship.—The liability or contract of a surety.

Surrender Value.—The amount which an insurance company will pay for an unexpired policy.

Tare.—An allowance in the purchase and sale of merchandise for the weight of the package in which the goods are contained. It may also be an allowance for the waste or diminution in the quality or quantity of the goods.

Tariff.—A list or table of duties or customs to be paid on goods imported.

Tax Deed.—A deed given by an officer of the law charged with the collection of taxes to the purchaser of land sold for taxes at a tax sale.

Tenant.—One to whom another has granted, for a period, the use of certain immovable property.

Teller.—An officer of a bank who counts over money deposits or pays out money on cheques.

Tender.—An offer of a sum of money in satisfaction of a debt or claim by producing and offering the amount to the creditor and declaring a willingness to pay it: the making of such offer by depositing the money in the General Deposit Office of the Province, through a local court.

Testator.—One who has died leaving a will.

Third Party.—(1) A party with whom an agent does certain authorized acts for his principal; (2) any person other than the two persons or parties to a transaction.

Title.—(To property) the right to own it; the ownership.

Tonnage.—The carrying capacity of a vessel.

Tort.—A private wrong or injury other than the breach of a contract.

Trade-mark.—The symbol, emblem or mark which a manufacturer puts upon the goods he manufactures.

Transfer.—The conveyance of title or property from one person to another by a gift, a sale or an exchange.

Trespass.—(1) Any unauthorized entry upon the immovable

property of a person; (2) any wrongful act of one person whereby another person is injured.

Trustee.—One who holds money or property for the benefit of another.

Ullage.—The quantity of liquor necessary to make up for the leakage of a cask or bottle, or that part of a cask or bottle not filled with liquor.

Underlease.—Another word for sublease.

Undertenant.—Another word for subtenant.

Underwriter.—Another word for insurer.

Usage.—Uniform practise; custom.

Use and Occupation.—Terms representing the liability of a tenant to pay reasonable rent for premises occupied by him with the approval of the owner, or without agreement as to the amount of rent.

Usury.—Illegal interest.

Valid.—Having force; of binding force; legally sufficient or efficacious; authorized by law.

Validity.—Legal strength or force; the quality of being good in law.

Valued Policy.—One which fixes the value of property insured.

Vendee.—One to whom anything is sold; a purchaser; a buyer.

Vendor.—A seller, the person who sells a thing.

Vendor's Lien.—An equitable lien allowed the vendor of land sold for the unpaid price.

Void.—Of no force or effect.

Voidable.—That may be avoided; not absolutely void.

Via.—By way of.

Wager Policy.—A policy made when the insured has no insurable interest.

Wages.—Compensation for services.

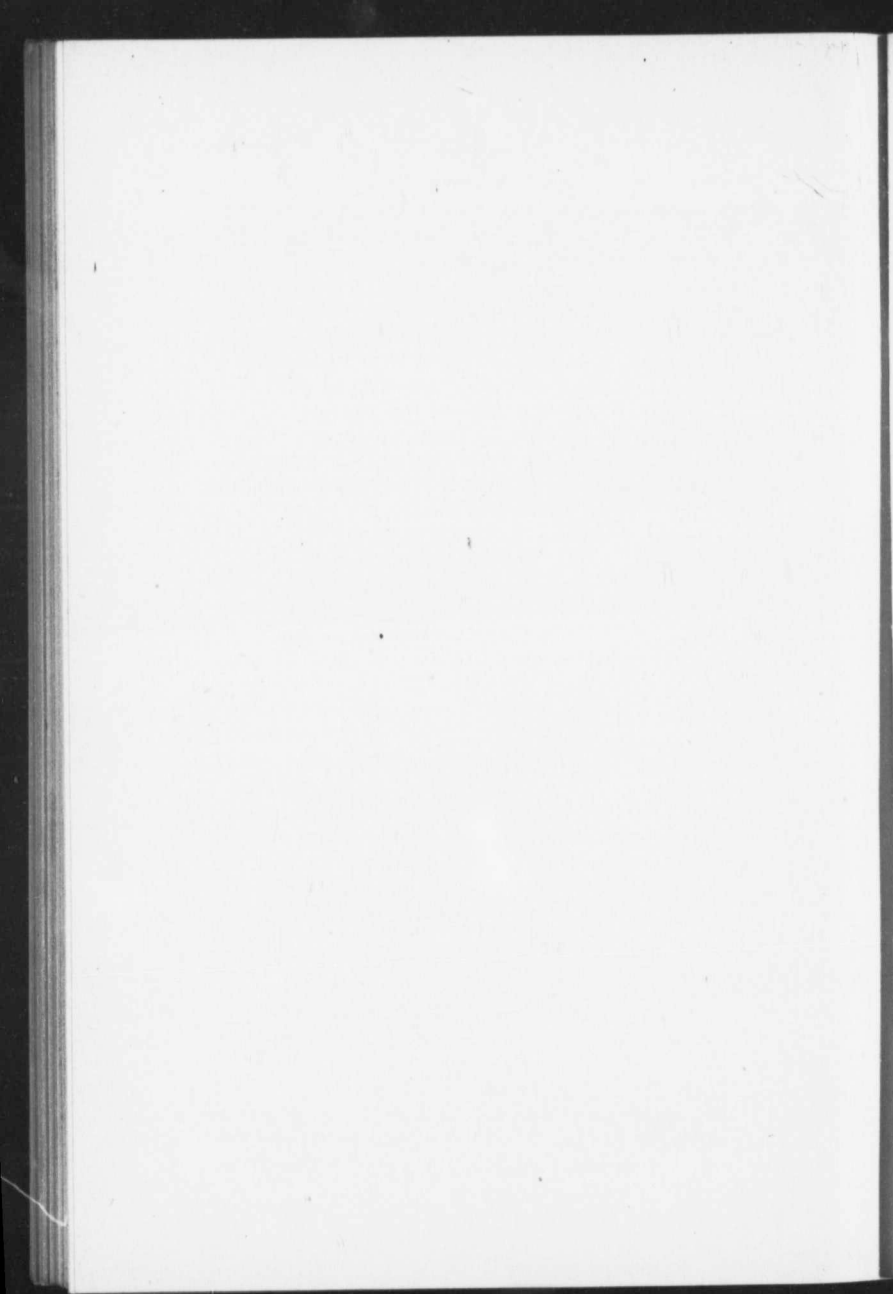
Waiver.—An abandonment of a right, or a refusal to accept it.

Ward.—A minor under guardianship.

Warehouse.—A building in which goods are stored.

Warranty.—An agreement to hold oneself responsible, if a certain thing does not turn out as represented.

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- Waste.**—Spoil or destruction done or permitted to lands, houses and similar property; loss; useless expense.
- Way bill.**—A writing in which are set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land.
- Wharfage.**—The compensation paid the owner of a wharf for the privilege of landing goods upon it, or loading from it.
- Wharfinger.**—The owner of a wharf who maintains it for the purpose of receiving and shipping merchandise.
- Winding Up.**—The process of liquidating the assets of a partnership or corporation, for purposes of distribution. Statutes relating to such process are called winding-up acts.



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CORRECTIONS.

Page	1, line	3, insert a comma after law.
"	2,	" 24, for <i>ance</i> read <i>once</i> .
"	4,	" 1, for <i>civil</i> read <i>Civil</i> .
"	4,	" 2, for <i>law</i> read <i>Law</i> .
"	9,	" 18, for <i>lay</i> read <i>law</i> .
"	20,	" 17, for <i>creditors</i> read <i>creditor</i> .
"	20,	" 18, for <i>debtors</i> read <i>debtor</i> .
"	25,	" 19, for <i>Notary Public</i> read <i>notary public</i> .
"	36,	" 12, for <i>of</i> read <i>or</i> .
"	37,	" 8, insert a period after 1 and a period after 2.
"	50,	" 1, for <i>inn-keeper</i> read <i>innkeeper</i> .
"	71,	" 26, for <i>it</i> read <i>is</i> .
"	101,	" 13, for <i>valued</i> read <i>value</i> .
"	104,	" 16, cancel the words <i>deposit receipts</i>
"	108,	" 2, for <i>one</i> read <i>a</i> .
"	131,	" 27, for <i>negotiability</i> read <i>non-negotiability</i> .
"	131,	" 27, cancel the words <i>certificate of deposit is negotiable and in their place</i> read <i>deposit receipt is non-negotiable</i> .
"	131,	" 28, cancel the word <i>certificate and in its place</i> read <i>deposit receipt</i> .
"	132,	" 4, for <i>Receipt</i> read <i>receipt</i> .
"	136,	" 11, for " 23 <i>W. W. 39</i> " read " 23 <i>W. D. 39</i> ."
"	138,	" 6, for <i>bill</i> read <i>bills</i> .
"	151,	" 23, for <i>he abandoned</i> read <i>be abandoned</i> .
"	160,	" 38, for <i>years</i> read <i>years</i> .
"	169,	" 16, for <i>fo</i> read <i>of</i> .
"	184,	" 29, for <i>after another</i> read <i>person</i> .
"	191,	" 2, for <i>evchange</i> read <i>exchange</i> .
"	198,	" 21, for <i>valued</i> read <i>value</i> .