MARIE GERIN-LAJOIE

TREATISE

ON

EVERYDAY LAW

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Treatise on Everyday Law

A TREATISE

ON

EVERYDAY LAW

BY

MARIE GERIN-LAJOIE

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PREFACE.

THE notions of law which are here brought together under the title "A Treatise on Everyday Law," were originally acquired for my own instruction, feeling as I did how necessary it is to understand the things by which we are surrounded, and particularly those which affect us most intimately; and surely this consideration is true of what relates to our persons, our families, our property and the constitution of our country.

As I proceeded in these studies, I became convinced of their importance and practical value, and it occurred to me that I might perhaps accomplish a useful task by writing the work which I now offer to our young people. Furthermore, the fact that France and the United States have already made these subjects part of their school curricula, should be sufficient to prove the urgent necessity of such a step.

The encouragement received by me from persons of eminence, leads me to believe that I may perhaps have attained my cherished desire to popularize a knowledge of law. I am not unaware against how many rocks I strike, in turning our laws into familiar language; so, whenever I have been able, I have respected texts, although this involved mercilessly sacrificing harmony of diction to precision of thought.

Each idea is contained in a numbered paragraph, to which I scrupulously limit it, without allowing repetition elsewhere throughout the work. References appended to a passage are the means used to show where additional explanations are to be found, as well as definitions of legal terms of any considerable importance. For these reasons I trust that by following the above method, this Treatise on Everyday Law may prove easy reading for everybody.

LETTRE DE SA GRANDEUR MONSEIGNEUR BRUCHÉSI.

Archevêché de Montréal, le 17 mars 1902.

A madame MARIE GÉRIN-LAJOIE,
Montréal.

Madame,

Vous avez bien voulu me communiquer le TRAITÉ DE DROIT USUEL que vous venez de composer.

Je l'ai fait lire à deux prêtres versés dans les questions de droit ecclésiastique et civil, et ils m'ont fait part du vif intérêt que cette lecture leur a causé. Ils y ont trouvé des renseignements utiles, clairs et concis.

J'ai voulu moi-même examiner votre travail, et je vous en félicite bien sincèrement. Les témoignages qu'on lui a rendus sont bien mérités. Dans votre position, au milieu de vos occupations et de vos devoirs domestiques, vous avez su trouver des heures pour les consacrer à des études sérieuses, difficiles et dont tant d'autres auraient été effrayés. Vous avez compris l'emploi fructueux que l'on peut faire de son temps avec de l'énergie et de la constance. Ne pourrais-je pas vous dire qu'en cela vous avez imité les exemples et suivi les conseils qui vous furent donnés au foyer paternel et au pensionnat ?

Les notions précises que vous avez réunies sur tant de questions qui intéressent au plus haut point l'individu, la famille et la société ; sur notre constitution civile, l'éducation, le mariage, les contrats, les testaments, les successions, le commerce, seront utiles aux élèves des classes supérieures de nos collèges et de nos couvents ; elles seront utiles à leurs maîtres et à leurs maîtresses, à quiconque veut connaître la législation de son pays.

C'est, il me semble, dans un petit volume, un résumé de tout le droit civil et un guide précieux pour des études approfondies. Vous avez donc fait, madame, une bonne œuvre et je lui souhaite tout le succès dont elle est digne.

Veuillez agréer l'expression de mes plus respectueux sentiments.

† PAUL, Arch. de Montréal.

LETTER FROM MR. F. P. WALTON,

Dean of the Faculty of Law, McGill University,
Montréal.

APRIL 4TH, 1902.

DEAR MADAM,

I have read with interest and pleasure your TRAITÉ DE DROIT USUEL. It is a clear and careful statement of the elements of our law, and it will be useful to many classes of the community.

It will not supersede the employment of lawyers, but that is no part of your intention.

The dream of the codifier that he can make the law intelligible to all has never been realized. The Civil Code is too abstract and condensed, and too full of latent history, for anybody but a lawyer to understand it. Your book will help the ordinary citizen.

In an enlightened society such as ours claims to be, some knowledge of his legal rights and duties, and of the laws which govern his contracts, may fairly be expected of the ordinary citizen.

I prophecy a wide sale for your book, and heartily wish it every success.

Believe me, dear Madam,

Yours faithfully,

F. P. WALTON.

LETTRE DU SUPÉRIEUR DU PENSIONNAT DU MONT-ST. LOUIS.

5 FÉVRIER 1902.

A MADAME GÉRIN-LAJOIE,

Madame,—J'ai lu avec intérêt votre travail sur le DROIT USUEL. J'espère que cette œuvre sera couronnée d'un succès digne de vos efforts intelligents.

D'après mon humble appréciation, ce livre pourra rendre de grands services dans les maisons d'éducation auxquelles vous le destinez.

Veuillez agréer les plus profonds sentiments de respect de

Votre très humble serviteur,

FR. SYMPHORIEN.

TREATISE ON EVERYDAY LAW

Book I.—CONSTITUTIONAL LAW.

CHAPTER I.

OF THE CONSTITUTION.

1. **Dominion of Canada.**—The Dominion of Canada is the federal union of British colonies in North America.

It is composed of the Provinces of Quebec, Ontario, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and British Columbia, and also of the North West and Yukon Territories.

The Dominion is governed in accordance with its charter, which is known as "The British North America Act." (See 2 B.N.A. Act.)

2. **British North America Act.**—The British North America Act is a charter which was granted us in 1867 by Queen Victoria, in compliance with the wish of her colonies to form a vast federation. This charter contains provisions for the entrance

into the union of all the British North America colonies. It gives us a form of government modelled upon that of Great Britain, and at the same time safeguards the rights of the British Crown over its colonies.

The British North America Act establishes a central authority for the Dominion, with its seat at Ottawa, for the purpose of watching over the general interests of the country, while the Act leaves to the provinces their autonomy, i. e., their independence in matters of local importance.

3. **British Sovereignty.**—Although by virtue of our constitution we enjoy a quasi-independence, nevertheless we are subject to the sovereignty of the King of the United Kingdom of Great Britain and Ireland.

The powers and privileges which we possess were conferred upon us by the British Parliament. By reason of the subordinate position which we occupy towards the Crown, we are not allowed to figure in international affairs, to engage in diplomatic negotiations with a foreign power, to have ambassadors, or to make treaties (which are really contracts, and as such can only be entered into by independent nations). Thus, England acts for us in our external relations. (1)

The King retains the right of commanding our armies, and can veto or disavow our enactments.

Nevertheless we enjoy in practice a very extensive liberty in the conduct of our internal affairs, which are intrusted to the Dominion and Provincial legislatures.

(1) We may remark here that England would not in all probability impose any treaty on us without having previously obtained our assent.

CHAPTER II.

DOMINION GOVERNMENT.

4. **Nature of the Government.**—In every government three powers are to be distinguished: the legislative, which makes the laws, the executive, which administers the affairs of the country; and the judicial, which dispenses justice.

When these three powers are merged in one person, we have an absolute monarchy; but if they are assigned to separate bodies which have acquired them by a constitution, we have a constitutional government, such as our own.

The executive and legislative powers are those ordinarily included within the term "government." The judicial, although derived indirectly therefrom, is nevertheless exercised under conditions which render it independent of either of the others.

5. **The Executive.**— The Executive is the power which administers the affairs of the country, carries on its business, disposes of public moneys, appoints to public offices, etc., and works for the national prosperity.

It is vested in the King; but our sovereign acts in these matters only through the medium of his representative, the Governor-General, who in turn governs through the persons of his responsible ministers. (See 7, "Responsibility of Ministers.")

The Sovereign is assisted in the government of the country by a council called the "King's Privy Council for Canada." Its members are chosen by the GovernorGeneral, and can be dismissed by him.

6. **The Cabinet, or Ministry.**—The Cabinet is the active principle of the executive, and is in reality the governing body. Its members belong to the Privy Council. All initiative is derived from the cabinet, which remains solely responsible to Parliament as head of the executive. (See 7, "Responsibility of Ministers.")

In forming a cabinet the Governor-General chooses a Prime Minister who associates with himself certain colleagues whose number is optional, because ministers may be named "without portfolio," i. e., without a department to manage, but without salary.

The work of the ministers is distributed among the following departments:

The Department of the President of the Council,
" Justice,
" Finance,
" Agriculture,
" the Secretary of State,
" Public Works,
" Militia and Defence,
" Railways and Canals,
" Customs,
" Inland Revenue,
" the Interior,
The Post Office Department,
The Department of Marine and Fisheries,
" Trade and Commerce.

Two branches of the public service may be placed under the direction of the same minister. The Premier and his colleagues act as one body in the management of public affairs, i. e., there is

complete reciprocal responsibility. The maintenance of the cabinet involves the support of the Prime Minister; and his defeat causes that of the entire cabinet.

7. **Responsibility of Ministers.**—The Prime Minister, or Premier, is responsible to Parliament for his administration, and for the acts of the head of the executive, i. e., the Governor-General. The members of the cabinet have seats either in the House of Commons or in the Senate. There the people, acting through their representative, take cognizance of the management of the affairs of the country, question the government and enquire as to its plans, and approve or condemn the policy of the Premier. The latter governs so long as he possesses the confidence of the Commons; otherwise, he becomes powerless to act, and must hand in his resignation. The Governor-General then accepts it, and calls to the post a person having the confidence of the people.

Nevertheless, whenever a Prime Minister, to whom the House refuses its support, has reason to believe that it no longer reflects the people's will, he may, if the Governor-General consents, obtain a dissolution of parliament and appeal to the people for vindication. If the new house is favourable to him, he remains in power, and obtains a vote of confidence.

8. **The Legislative Power.**—All laws emanate from the legislative power. This power belongs to the King (represented by the Governor-General), the Senate and the House of Commons. The Gov-

ernor-General and the two legislative bodies must act in unison when enacting into laws the drafts submitted to them.

The Houses of Parliament, with the Governor-General at their head, form what is called "The Parliament of Canada."

9. **The Governor-General.**— The Governor-General is appointed by the King. He is the head of Parliament, which is summoned and dissolved by him. But he must not allow more then twelve months to elapse between the end of one session and the beginning of the next. All bills (see 13, Bills) that have passed both houses, i. e., all measures that have been adopted must be submitted to the Governor-General and receive the royal sanction through him ; thus the Governor-General grants or refuses the royal sanction to bills. This right is exercised by him generally on the advice of his cabinet and subject to its responsibility. He may, nevertheless, reserve bills for the signification of His Majesty's pleasure. Our statutes therefore receive their sanction directly from the King. .

The Governor-General, in addition to his capacity as chief of the executive, and head of the Houses of Parliament, is moreover an imperial officer, charged with watching over the interests of Great Britain in the country. In extreme cases he could, therefore, on his personal responsibility and without consulting his cabinet, refuse to sanction laws which might appear to him to be prejudicial to the sovereignty exercised over us by England.

The Governor-General possesses a privilege which would be very dangerous for public tranquility if it were not used with prudence; this is the right to disavow acts passed by Provincial Legislatures within one year after their promulgation, or what is called the veto power. Should it appear that a legislature has exceeded its powers, the Governor-General may disavow the measures enacted by it, and sanctioned by the Lieutenant-Governor.

10. **The Senate.**—The Senate is a body now composed of eighty-one senators bearing the title of "Honourable." Its members are appointed for life by the Governor-General in Council. In the organization of the Constitution the Senate plays a restraining rather than an initiating part.

All bills passed by the Commons must be approved by the Senate before being submitted to the Governor-General for the royal sanction.

The Senate is presided over by a President chosen from among its members, and nominated by the Governor-General. He has a right to vote in all cases. In the event of an equal division of votes in the House, the decision is given in the negative.

Senators must possess the following qualifications to be entitled to their seats:

1. Be at least thirty years of age;
2. Be British subjects;
3. Possess real estate of a value of at least four thousand dollars;
4. Possess moveable or personal property or real estate up to a value of four thousand dollars over and above all indebtedness;

5. Be domiciled in the Province for which they are appointed ;

6. In the Province of Quebec a senator must be domiciled or possess real estate qualification within the senatorial division represented by him.

11. **House of Commons.**—The House of Commons is the battleground where the hottest struggles generally take place. Its members are elected by the people. At present the House consists of 213 members ; but their number can be increased. The proportion in which such increase can be made is determined by the constitution. Taking Quebec as the basis of calculation on accouut of the relative stability of its population, our Province is given 65 members as an invariable number ; and the number of members for the other Provinces is varied in the same proportion as 65 bears to the total population of Quebec.

The Commons elect a Speaker, who votes only when the House is equally divided ; he then has a casting vote.

The members are elected for five years, and the only qualification they require to possess is to be of full age and British subjects. Members who accept seats in the Cabinet must go before their constituents for re-election, except in the case of ministers without portfolio, who draw no salary.

12. **Committees.**—It is usual, in order to facilitate the study of questions submitted to the Commons, to subdivide the House into Committees, and the same practice prevails in the Senate. The members of these Committees share the wor

among themselves, and take up the study of special determinate questions. They then submit a report to the House, containing the results of their labours, and ordinarily it is after receiving information in this manner that the House comes to a vote. Thus, at every session, committees are formed on banking and commerce, railways, canals, telegraphs, private bills, etc. Special committees are formed according to circumstances.

13. **Bills.**—Bills are draft statutes submitted for the approval of Parliament. Bills are public or private. They are always introduced by members of the Houses, because only members have the right of addressing the assembly.

Bills relating to the interest of private individuals, known as Private Bills, are introduced by following a method of procedure similar to the trial of a suit. The interested parties, whether in favour of or against the proposed legislation, are represented by counsel. They can be questioned and cross-questioned ; almost all the first debates take place before the Committees, which have power, as have the Houses of Parliament themselves, to summon witnesses to appear before them for the purposes of the case.

14. **Parliamentary Languages.**— The English and French Languages are on an equal footing as parliamentary and official languages. The debates take place indifferently in either language ; and the statutes, parliamentary journals and all other official publications are, moreover, drawn up in the two languages simultaneously.

15. **Supplies.**—One of the chief causes of the influence possessed by the House of Commons is found in its power of voting supplies. Supplies are sums of money which the people, through their representatives, place at the disposal of the government for the administration of public affairs. Now, every measure having for its object the raising of money originates in the Commons. The Cabinet controls only such sums as have been voted by the Lower House, subject, of course, to the ratification of the Senate. This explains the powerlessness of the Ministers to act if they lose the confidence of the House. Nevertheless, to prevent lavish expenditure, and hasty or ill-considered legislation, the practice is for the House to vote supplies solely on the initiative of the Ministry, and with the authorization of the Governor-General.

16. **Dominion Revenues.**—At confederation the Provinces consented to give to the government of the Dominion a large part of their revenues to defray the costs of the central government; and received in exchange certain compensating advantages which we shall deal with in their proper place. Such special revenues constitute what is known as the consolidated revenue fund of Canada.

The consolidated fund must be employed for three fixed purposes: first, to pay the costs of collection; second, interest on the public debts of the Provinces at confederation; and finally, third, the salary of the Governor-General, which is now fixed at £10,000, sterling. The balance of the consolidated fund is employed for the public service.

The other revenues of the Dominion Parliament are derived from various sources, among which are the following:

Post Offices;
Public lands;
Public buildings, public harbours, etc., and
Customs and excise duties.

Moreover, the Dominion Government may, if necessary, levy taxes on the ratepayers.

17. **Taxes.**—By a tax is meant any sum levied by the government upon an individual.

Taxes are direct or indirect accordingly as they fall directly or indirectly on the taxpayer. The principal indirect taxes are customs duties, imposed on imported merchandise, and excise duties, levied on certain businesses such as those dealing with liquors and tobacco.

18. **Electoral Franchise.**—The people is the ultimate master of its destinies, because the Lower House, which is the arbiter of our laws and our governments, and disposes of our revenues, owes its election to the people. Although the number of electors is relatively very large, it nevertheless does not include the whole of the nation.

The electoral franchise for the Dominion is the same as that established for elections to the Provincial Legislatures. The following are the qualifications for voting in the Province of Quebec.

Electors must be:

1. Males;
2. British subjects;
3. Entered upon the list of electors;

4. An elector must, moreover, possess one of the following qualifications, viz. :

1. Be proprietor or occupant in good faith of an immoveable assessed at $300.00 in a city ; or at $200.00 in real value, or $20.00 in annual value, in any other place ;

2. Pay an annual rental of $30.00 in a city, and $20.00 in any other place, for real estate assessed at $300.00 or $200.00, accordingly as it is situated in a city or elsewhere ;

3. A husband may vote when his wife possesses sufficient property to confer the franchise upon a male person ;

4. Sons, grandsons, and sons-in-law, living with their parents for at least a year, may vote when the property or the amount of the rent paid by the latter are sufficient, if divided into several parts, to confer the franchise upon two or more persons.

The eldest is first entitled to vote, and then the others according to their age. The temporary absence of a son from his father's home does not deprive him of the exercise of the electoral franchise, provided his absence does not extend beyond six months of the year. He retains his right, notwithstanding an even more extended absence, when his absence is due to the fact that he is a student, i. e., when he is pursuing the study of an art or a profession ;

5. Retired farmers or proprietors, generally known under the name of *rentiers*, who are in receipt, owing to a donation, sale or otherwise, of a rent in money or in kind of at least $100,00. including therein the value of the dwelling and of other things appreciable in money;

6. When two or more persons are tenants or sub-tenants under separate leases, of different parts of the same immoveable, they are governed by the rules applying to tenants;

Nevertheless, if the amount at which the whole immoveable is assessed is not sufficient, if divided into as many parts as there are tenants or sub-tenants (parts of $300.00 or $200.00 according to the situation of the immoveable), to confer the franchise on each of them; those whose leases are the earliest in date are entitled thereto in preference to the others.

7. Schoolmasters teaching in an institution placed under the control of school commissioners or trustees. (See 33, Commissioners, Trustees.)

8. Priests, *curés*, vicars, missionaries and ministers of all religious denominations, who have been domiciled for more than five months in the place for which the electoral list is made;

9. Fishermen domiciled in the electoral district, who are proprietors or occupants of immoveables, and proprietors of boats, nets, and fishing tackle in the district, or of shares in a registered ship, the whole having a real value of at least $150.00;

10. Persons who have resided in the electoral district for a year and who earn by their work or are otherwise in receipt of an annual sum of $300.00.

Certain persons are excluded from voting by reason of the duties they discharge; such is the case with the judges of our different courts. Others again cannot vote owing to pecuniary interests between them and the government; such is the case with contractors, when they have a contract

with the government, which is not terminated within six months previous to the elections, etc.

Voting is by secret ballot.

CHAPTER III.

PROVINCIAL LEGISLATURES.

19. **Provincial Legislatures.** — When the Provinces consented to form a vast confederation, they had already been constituted self-ruling colonies, having separate and independent governments; and this life, or principle of separate existence, continues to develop in them simultaneously with the general organization of a federal government.

Each of them is governed in accordance with constitutional principles. Each has a Lieutenant-Governor at its head. Nevertheless their parliamentary systems are not identical. Thus, Ontario, New Brunswick, British Columbia, Manitoba, and the North West Territories have only one chamber, which is elective.

Prince Edward Island has one chamber whereof part of the members are appointed for life by the Lieutenant-Governor, while the remainder are elected by the people.

Nova Scotia has two chambers.

The Province of Quebec has two chambers, an upper house and a lower house.

We shall limit our studies to the constitution of this Province.

Its constitution can be considered similar to that of Ottawa. The Legislative Council corresponds o the Senate; the Legislative Assembly to the House of Commons.

To avoid useless repetition, we shall only deal here with a few matters which are peculiar to our provincial legislature.

QUEBEC.

20. **Lieutenant-Governor.**—The Lieutenant-Governor occupies in our province the same position as the Governor-General in the government of the Dominion. Like the latter he represents the Sovereign. He holds office during the pleasure of the Governor-General; but he cannot be dismissed before the expiry of a term of at least five years, unless for cause. He is head of the executive and acts only on the advice of his ministers. Like the Governor-General, he sanctions provincial statutes or refuses such sanction. He may also reserve bills for the sanction of the Governor-General.

21. **The Executive.**—The Executive consists of the King, represented by the Lieutenant-Governor and assisted by a council composed of such persons as the Lieutenant-Governor thinks fit to appoint, and among whom are the members of the Cabinet.

The following is a list of the different departments assigned to ministers in the Province of Quebec:

The Department of Justice, at the head of which is the Attorney-General;

The Department of Public Works;

The Department of Agriculture;

The Department of Colonization and Mines;

The Provincial Secretary's Department:

The Treasury Department;

The Department of Lands, Forests and Fisheries;

The Department of Public Instruction.

Public instruction, which, as we have seen, is attached to the executive, occupies such an important place in our national life, that we shall further on devote an entire chapter to it under the title of "Education."

22. **Legislative Council.** — The Legislative Council plays the same part in our provincial organization as the Senate does in that of the Dominion.

It consists of twenty-four councillors appointed for life by the Lieutenant-Governor. They must, to be qualified, i. e., to be entitled to sit in the upper chamber, possess immoveables of a value of $4,000, over and above all indebtedness, and situated within the division which they represent.

The Council is presided over by a speaker, appointed by the Lieutenant-Governor-in-Council. The speaker may vote in all cases. If the votes are equally divided, the negative prevails.

23. **Legislative Assembly.**—The Legislative Assembly corresponds to the Dominion House of Commons; like the latter, it is elective. Its members are elected for five years, unless the House is sooner dissolved. It elects a speaker, who votes only when there is an equal division.

24. **Provincial Revenues.**—The provinces at the Union divested themselves, in favour of the Dominion Government, of a part of their property. But the Dominion Government in its turn under-

took to pay a sum of money annually to the provinces. Moreover, the Dominion assumed responsibility for provincial indebtedness up to a certain amount. The Province still draws revenue from several sources, among which are: lands, forests and fisheries, taxes collected from successions, law stamps, etc.

CHAPTER IV.

EDUCATION.

25. **Education.**—Questions of education are essentially matters for the provinces. The Dominion Government can deal with them only when the provinces are proved to be neglectful, or when the rights of a Catholic or of a Protestant minority are overridden. It may then intervene and take up the cause of those who are aggrieved. The Department of Public Instruction in our Province is presided over by an officer called the Superintendent of Public Instruction. In the discharge of his duties the Superintendent is assisted by the Council of Public Instruction (See 27, Council of Public Instruction).

26. **Superintendent of Public Instruction.**—The Superintendent of Public Instruction is appointed at pleasure by the Lieutenant-Governor-in-Council. He directs the Department of Public Instruction, and is the depositary of all documents relating to the affairs of his department; copies of or extracts from such documents may be delivered by him.

His duties are manifold; he must work in a general way for the advancement of education, the arts, literature, and science; but he is obliged to comply with instructions given him by the Council of Public Instruction.

27. **Council of Public Instruction.** — The Council of Public Instruction is presided over by the Superintendent; it is composed of Roman Catholic and Protestant members as follows:

1. Ordinary bishops or administrators of all Roman Catholic Dioceses and Vicariates Apostolic, situated in whole or in part in the province, who are members *ex officio*;

2. An equal number of Roman Catholic laymen, who are appointed by the Lieutenant-Governor-in-Council during pleasure;

3. A number of Protestant members, equal to that of the Roman Catholics, all of whom are appointed by the Lieutenant-Governor-in-Council during pleasure. The Council is divided into two committees, consisting one of Catholic members and the other of Protestant members. The superintendent is *ex officio* a member of both committees; but he can only vote in the one to whose faith he belongs. Each Committee of the Council must hold separate sessions, of which it fixes the time and the number, and it elects a president.

The President of the Council and the President of each committee have a casting vote on all questions, should the votes be equal. All matters of common interest, whether relating to Catholics or to Protestants, are matters for the Council and

are referred to it. But matters of special interest to Catholics or to Protestants are referred to the respective committees.

28. **Inspectors.**— School Inspectors are appointed by the Lieutenant-Governor-in-Council. These inspectors must visit the schools, exercise superintendence over the teachers, and generally see that the regulations of the Council are faithfully observed. They then report to the Council.

To be appointed a school inspector one must be:

1. Of the male sex and have attained the age of twenty-five years;
2. Have obtained a diploma for an academy, model school or elementary school;
3. Have taught school during at least five years;
4. Not have discontinued teaching for more than five years;
5. Have been examined before authorized persons upon his fitness and ability to fulfil the duties of the office of inspector.

29. **Boards of Examiners.**— On the recommendation of either committee, the Lieutenant-Governor appoints the members of a central board of examiners to examine candidates for the profession of teaching. This board issues teachers' diplomas. An exception exists in favour of pupils of normal schools, who do not require to pass any examination before boards of examiners, and hold their diplomas from the principal of the Normal School.

30. **Teachers.**—Candidates of either sex for teachers' diplomas must, unless they hold diplomas from a normal school, pass an examination before a board of examiners, and obtain an elementary school diploma. School authorities must employ as teachers only persons holding such diplomas.

All priests, ministers of the gospel, ecclesiastics or persons forming part of a religious body organized for educational purposes are exempted from passing examinations before such boards.

Nevertheless, the Protestant Committee of the Council of Public Instruction may by resolution declare that persons of its faith, who are thus exempted from examination, shall not thereafter be entitled to such exemption.

31. **Teaching.**—Schools under the control of commissioners are divided, for the purposes of teaching, apart from normal schools for the training of teachers, into elementary schools, model schools and academies. The Catholic and Protestant committees may determine the nature of each of them and prescribe courses of study for them; but the studies of hygiene and drawing are obligatory upon all public schools, according to the acts relating to public instruction. Teachers can only make use of such books in teaching as are approved by the committee.

Education is not compulsory in the Province of Quebec; but, if the sending of children to school is not obligatory, nevertheless fathers and mothers whose children are aged from seven to fourteen years are bound to pay monthly rates in the same manner as if the children were going to school,

unless exempted therefrom owing to the illness of their children. Parents are also liberated from this obligation if they are in poor circumstances.

Besides the public schools under the control of commissioners, there exist in our province private schools and educational establishments, such as universities, colleges, convents, academies and kindergartens, which have been founded by private initiative and are free to teach. The majority are incorporated (see 49, Corporations) and enjoy privileges. Grants are frequently made to them by the government to assist them in carrying out the purposes for which they exist. Teachers in these establishments are not under the control of the commissioners. They draw up their courses of study and choose suitable books.

32. **School Municipalities.**— When a sufficient number of persons residing in the same locality consider that a school is necessary, they may, in their common interest, request that the district where they reside be erected into a school municipality. This right can be granted them by the Lieutenant-Governor, upon a report from the Council of Public Instruction establishing the necessity for such a measure. School taxes are then levied and can be collected from all persons residing in such school municipality.

The administration of such funds and of school matters is assigned to commissioners. (See 33, Commissioners, Trustees.) Persons professing a religious belief different from that of the majority may withdraw from the jurisdiction of the school commission and form a separate corporation under the administration of school trustees.

33. **Commissioners, Trustees.** — Commissioners are the representatives of the religious majority of the inhabitants of a school municipality; trustees are the representatives of the minority, i. e., the dissentients. Commissioners and trustees, although holding identical offices in relation to their co-religionists, do not sit together, but constitute entirely separate bodies, which must not be confounded.

Nothing prevents a school municipality directed by trustees from being bounded differently from the municipality administered by the commissioners.

Commissioners and trustees should watch over the interests of their respective schools. They are elected by the ratepayers and form a corporation (see 49, Corporations), in each municipality, with perpetual succession.

They may do all acts which a corporation may perform for its corporate purposes. The following are their principal duties:—To select teachers of either sex, visit schools, and follow the progress of the scholars, fix the time of examinations, administer funds collected from the ratepayers, as well as all property belonging to the corporation which they represent; build and maintain schoolhouses, etc. Commissioners and trustees may levy taxes for the maintenance of schools, and they must make a report of their administration to the Council of Public Instruction.

34. **School Taxes.**—The school tax is equally apportioned according to assessment, on all taxable real estate in the municipality, and is payable

by the proprietor, the occupant or the possessor of the taxable property.

If several school municipalities so desire, they may agree upon and organize an academy for their common needs. Trustees are appointed for the administration of such academies, and school taxes are levied for such purpose.

35. **Electoral Franchise** (for the nomination of commissioners and trustees.)—To be entitled to vote at an election of school commissioners and trustees, it is sufficient for a person to possess the following qualifications, and unmarried women possess this right to the same extent as men :—

1. He must be a proprietor of real estate ;

2. He must be entered as such on the assessment roll ;

3. He must have paid all his school taxes and other assessments.

In every municipality where a corporation of school trustees exists, persons forming part of the minority cannot vote at the election of commissioners ; and in like manner those belonging to the majority cannot vote at elections of trustees.

36. **Eligibility of Commissioners and Trustees.**—Clergymen of all religious denominations, ministering in the school municipality, although not possessing property qualifications, and all ratepayers of the male sex residing therein, and being able to read and write, and being qualified to vote, are eligible as commissioners and trustees.

37. **Charters Granted to Certain Localities.**—Certain cities such as Montreal, Quebec, Sherbrooke, etc., have obtained by charter a special school organization. Thus in Quebec and Montreal the commissioners are not elected by the ratepayers.

38. **Table of the Different Courts exercising Jurisdiction in Civil Matters in the Province of Quebec:—**

1. The Court of King's Bench, Appeal Side;
2. The Superior Court;
3. The Circuit Court;
4. The Commissioners' Court;
5. The District Magistrates' Court;
6. The Court of Justices of the Peace;
7. The Recorder's Court;
8. The Exchequer Court of Canada.

The following courts have jurisdiction by way of appeal from the civil courts of the province:—

1. The Supreme Court of Canada;
2. His Majesty in His Privy Council.

Book II. — CIVIL LAW

OF THE PROVINCE OF QUEBEC.

FIRST PART.

OF PERSONS.

CHAPTER I.

NATIONALITY, DOMICILE.

39. **Nationality.**—All persons in our country are divided into two classes:

1. British subjects;
2. Aliens or foreigners.

40. **British Subjects.** — A British subject is one whose sovereign is the King of the United Kingdom of Great Britain and Ireland, and as such is entitled to all advantages which this title confers. (See 42, Rights of British Subjects.)

The quality of British subject is acquired either by right of birth or by naturalization. (See 41, Naturalization.)

A person born in any part of the British Empire is a British subject by right of birth, as also is he whose father or grandfather by the father's side is a British subject, saving the exceptions resulting from the laws of the Empire.

41. **Naturalization.**—Naturalization is the act by which a foreigner becomes a British subject. Its effect is to put him upon an equal footing with British subjects by right of birth.

Naturalization is effected under the following conditions :

1. The person must have resided in Canada for at least three years, with the intention of remaining there; or have been in the service of the Government of Canada during a like period with the intention of afterwards so remaining or of settling in the country ;

2. He must have taken the oaths of residence, or of service, or of allegiance as prescribed by law ;

3. He must have obtained from a competent court, upon the fulfilment of the necessary formalities, a certificate of naturalization as required by law ;

4. A foreign woman is naturalized solely by the fact of her marriage with a British subject, without its being necessary for her to comply with the formalities above enumerated.

42. **Rights of British Subjects.**—The quality of British subject confers upon one who possesses it civil and political rights. All British subjects enjoy full civil rights in our province.

Political rights, on the contrary, are the exclusive privilege of persons of the male sex, of the age of majority. Among such rights are the following:—voting at Dominion and Provincial elections, holding public offices, being elected as a representative of the people in Parliament, holding judicial office, serving as jurymen, etc.

43. **Aliens.**—Aliens are all persons who are not British subjects.

Aliens, while in the country, possess almost all civil rights. (See 46, Civil Rights.) Thus, they may acquire and hold property, make transfers thereof, make or receive gifts, inherit, contract marriage, etc. Nevertheless, they are governed by the laws of their domicile (see 44, Domicile), in so far as their status and capacity are concerned (see 50, Civil Status). Aliens may be sued in our country for the fulfilment of obligations contracted in the country to which they belong. They have no political rights.

44. **Domicile.**—The law assigns to each person a legal domicile, the importance of which will readily be seen when the civil status of a person has to be determined. (See 50, Civil Status.)

The legal domicile of a person is at the place where he has his principal establishment. At such domicile all legal notices, personal services, etc., are communicated to him when necessary. Nevertheless, the following persons, whatever be their real place of residence, are domiciled as follows:

1. Married women, with their husbands;

2. Minors, with their father and mother or tutor ;
3. Persons of full age, interdicted for insanity, with their curators.

45. **Election of Dominicle.**—Domicile may for special purposes be elected elsewhere than at the real domicile. The parties to a deed may elect domicile at a place agreed upon, for the purpose of such deed ; and in such case all notifications, demands and suits relating thereto may be made and instituted at the elected domicile.

CHAPTER II.

ENJOYMENT OF CIVIL RIGHTS.

46. **Civil Law.**—Civil law has essentially for its purpose the protection of individuals and of property. It defines the nationality and regulates the relations between different individuals, protects children, fortifies paternal authority, determines the positions of husband and wife, gives binding effect to contracts, and procures peaceable enjoyment of property to such as have legitimately acquired it. Again, civil law deals with the capacity of persons, marriage, paternity, marital authority, gifts, successions, contracts in general, such as sales, leases, etc., and all matters connected therewith.

47. **Enjoyment of Civil Rights.**—All British subjects in our Province enjoy full civil rights.

Aliens are governed by our law while in our country. Nevertheless, both classes exercise such rights only according to their status (see 50, Civil Status), and the Capacity (see 48, Exercise of Civil Rights), which they possess under the laws of their domicile.

48. **Exercise of Civil Rights.**—Although the enjoyment of civil rights is, in general, common to all persons; nevertheless, persons are divided into two classes, in relation to the exercise of such rights; viz., into persons who are capable and those who are incapable.

Capable persons are those who act of their own initiative, guided by their own judgment and their own will in the exercise of their civil rights. They are free either to acquire property, or to sell or otherwise dispose of it, and to do all civil acts. In principle, all individuals of full age, without distinction of sex, have such capacity, and are entitled to exercise such rights; but this rule is subject to numerous exceptions, which must be carefully defined, because only such persons are deemed incapable as are expressly declared to be so by law.

Incapable persons are those who do not exercise their civil rights and are placed under the authority of others, such as:

1. Insane persons and idiots (see 109, Interdiction);
2. Interdicted persons (see 109, Interdiction);
3. Persons to whom a judicial adviser has been appointed (see 113, Judicial Advisers);
4. Minors (see 93, Minority);

5. Married women (see 67, Incapacity of Married women);

6. Persons civilly dead. (1)

Except in the case of the married woman, whose incapacity has been established for reasons of social order and not in her own favour, all incapable persons are declared to be such for the purpose of protecting themselves against their own weakness.

49. **Corporations.**—Persons, in law, include not only human beings, but also corporations legally constituted. Corporations are artificial or ideal persons, having a separate existence, possessing certain rights and subject to certain obligations. They are created by act of Parliament, by royal charter (2) or by letters patent (3).

The powers of corporations, their capacity to acquire and hold property, to bind themselves by contracts, to bind others to them, and in short to carry out the purposes of their incorporation, are carefully defined by law, and by their constating instruments.

A corporation is described under its own name. Unless there are provisions to the contrary, a corporation has power to choose from among its

(1) Civil death results from condemnation to certain corporal punishments. Persons civilly dead are deprived of their civil rights. They are, so to speak, blotted out from society. Thus, a person civilly dead loses the ownership of his property, and cannot acquire more. He cannot enter into contracts. Nor can he contract a marriage which will produce civil effects; if he is already married, only the marriage tie subsists, and he retains neither marital nor paternal authority, etc.

(2) A royal charter is a privilege or grant proceeding from the King.

(3) Letters patent are letters under the signature of the Governor General-in-Council, evidencing the grant of certain privileges, the creation of corporations, etc.

members a managing board by which it is represented and bound in all matters not in excess to its powers.

One of the principal privileges of corporations consists in limiting the liability of their members to the interest belonging to each of such members. No personal recourse exists against such person in the event of the corporation becoming insolvent. In case of the dissolution of a corporation, which may be due to various reasons, its affairs may be liquidated by a curator or liquidator. (See 215, Rights of Creditors on Property of a Succession.)

CHAPTER III.

OF CIVIL STATUS.

50. **Civil Status.**—In his relations with society, that is, with his fellow-beings, a man passes through different stages. By his birth he is placed in such or such a family. After his minority, he becomes free and of full age. He may contract marriage, establish a new family, and thereby increase his obligations and change his social position. Finally, he meets with the inevitable fate, and his death, by the ties which it sunders and the new situations which it creates for those who were related to the deceased, brings forcibly to mind the fact that man, from the cradle to the tomb, passes through phases and states which are of essential interest to social order.

Such rights and obligations constitute what is called the civil status of an individual.

The capacity of each individual, or in other words the exercise of his civil rights, is governed by and varies according to his status; thus, the capacity of a minor is different from that of a person of full age; and the capacity of a married woman differs from that of one who is unmarried. It is therefore of the greatest importance that the law should determine such status with precision, that it should carefully ascertain such facts, and enable third persons to perceive whether they are contracting with persons who are capable or incapable. For this purpose registers of civil status have been instituted. (See 51, Registers of Civil Status.) These books are open to the public and contain mention of the above matters.

The civil status of a person is determined according to the laws of his domicile, and follows him everywhere; for instance, a Frenchwoman who is travelling may come to Canada and wish to enter into a contract here; but if she is married she cannot validly bind herself or give legal effect to the contract which she proposes to enter into, except within the limits of the capacity allowed her in France by the law of her domicile.

Let us take a further example; a young man from Toronto, aged twenty years, borrows considerable sums of money at Quebec; he can execute valid acknowledgments towards third parties only in so far as the Ontario law allows him.

51. **Registers of Civil Status.**—Registers of civil status are documents for recording acts of birth, marriage and burial. As they have been established for the purpose of publicity, any person may consult them, and obtain extracts therefrom. Such extracts, issued and certified by the officer of civil status (see 52, Officers of Civil Status), make full proof to the same extent as the registers themselves, of the facts therein contained.

The registers are kept in duplicate; i. e., the acts are entered therein in two different books. One of these duplicates is deposited every year in the office of the Prothonotary of the Superior Court; the other is retained as part of the records of the church or religious congregation charged with its custody. In order to prevent fraud, each book is authenticated before being used, i. e., it is presented to the judge, prothonotary or clerk of the district, in order that the latter may certify the number of pages it contains and may number and paraph them. Upon the fulfilment of these formalities, the book may be used for the purpose intended.

Acts are entered therein, in successive order and without blank spaces. All blanks must be filled with an erasing line, so that nothing can afterwards be inserted therein. Figures cannot be used in drawing up these acts; on the contrary, everything is written out, without abbreviation. If it becomes necessary to strike out a part of the act or to make additions to it, each marginal note or erasure is acknowledged and signed by the parties in the same manner as the body of the act itself, and mention is made thereof. The officer of civil

status must read aloud to the parties the act which he has drawn up. All acts of civil status must be executed in the presence of witnesses.

52. **Officers of Civil Status.**—Curés, priests, and ministers, authorized to perform baptisms, marriages and burials are civil officers, to whom the law intrusts the keeping and custody of registers for recording births, marriages and deaths of persons belonging to their faith. A minister cannot be compelled to enter in the registers the status of persons not belonging to his denomination. Births of children, other than Roman Catholics, when not elsewhere registered by a competent officer, must be recorded within four months from date in the office of the Secretary-Treasurer or Clerk of the municipality of their domicile, or else with the nearest justice of the peace.

53. **Acts of Birth.**—Acts of birth set forth:

1. The date of the birth of the child;

2. That of its baptism, if performed; its sex, and the names given to it;

3. The names, surnames, occupation and domicile of the father and mother and also of the sponsors, if there be any.

When the father and mother of any child presented to the public officer are unknown, the fact is mentioned in the register.

4. Finally, the act is signed in both registers by the officer officiating, the father and mother, if present, and the sponsors, if there be any. If any of them cannot sign, their declaration to that effect is noted.

54. **Acts of Marriage.**—These acts set forth :

1. The day on which the marriage was solemnized ;

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

3. Whether the parties are of age, or minors ;

4. Whether they were married after publication of bans, or with a dispensation or license ;

5. Whether it was with the consent of their father, mother, tutor or curator, or with the advice of a family council, when such consent or advice is required ;

6. The names of the witnesses and whether they are related or allied to the parties, and, if so, on which side, and in what degree ;

7. That there has been no opposition, or that any opposition made has been disallowed ;

8. The act of marriage is signed by the officer who solemnizes the marriage, by the parties, and by at least two witnesses, related or not, who have been present at the ceremony ; and, if any of them cannot sign, their declaration to that effect is noted.

55. **Acts of Burial.**—Acts of burial set forth :

1. The day of the burial ;

2. That of the death, if known ;

3. The names, surnames, and quality and occupation of the deceased ;

4. The act is signed by the person performing the burial service, and by two of the nearest relations or friends there present ; if they cannot sign, mention is made thereof.

No burial can take place before the expiration of twenty-four hours after the decease; except in the cases provided for by law and by police regulations. But, in the case of certain contagious diseases, not only may exceptions to this law be allowed, but a fine may even be imposed if the burial does not take place within a shorter delay.

It belongs solely to the Roman Catholic ecclesiastical authority to designate to the place in the cemetery in which each individual of such faith shall be buried; and if the deceased cannot, according to the canon rules and laws, be interred in ground consecrated by the liturgical prayers of such religion, he receives civil burial in ground reserved for that purpose and adjacent to the cemetery.

When there is any sign or indication of death having been caused by violence, or when there are other circumstances which give reason to suspect it, or when the death happens in any prison, asylum or place of forcible confinement other than lunatic asylums, the burial cannot be proceeded with until it is authorized by the coroner or other officer whose duty it is to inspect the body in such cases.

56. **Acts of Religious Profession.** — The making of solemn vows in religious communities recognized at the conquest (1) is deemed a change of status involving the civil death of the person making profession. (See 48, Exercise of Civil Rights). The Superior of such communities is, therefore, authorized to keep registers of acts of

(1) The religious communities existing here at the conquest are the Ursulines of Quebec and of Three Rivers, the Sisters of the Hotel Dieu, Montreal, and of the Hotel Dieu and of the General Hospital of Quebec.

religious profession. Such Superior is, moreover, subject to the obligations of an ordinary officer, and she must issue copies or extracts from such acts to all demanding them.

57. **Rectification of Registers.**—If any error or omission has been committed in the entry made in the register of an act of civil status, as for example, when, in an act of birth, the name of the mother of the child has been omitted, or the name of the family has been misspelled, application for rectification may be made to the court; but registers can be thus corrected only after a judgment authorizing such correction has been obtained.

CHAPTER IV.

OF MARRIAGE.

58. **Marriage.** — Marriage is the legitimate union of man and woman for the purpose of founding a new family.

The legal position of married persons is defined by the Code. The parties cannot derogate from the laws which it establishes, by making special agreements when such laws are founded upon considerations of public order, or are due to

motives of good morals (1). Thus, the consorts cannot derogate from the rights resulting from marital or paternal authority. But great liberty is granted to them to make contracts of marriage relating to their property (see 85, Contracts of Marriage) as they think fit.

59. **Conditions Required for Marriage** :

1. To contract marriage a man must be of the age of fourteen years and a woman twelve years ;

2. The parties must contract marriage freely, i. e., give their full assent thereto ;

3. Minors wishing to contract marriage must first obtain the consent of their parents. If the parents are not agreed, the consent of the father suffices. If one of the parents cannot make known his wishes, owing to infirmity or other cause, the consent of the other is sufficient. If a minor has neither father nor mother, he must obtain the consent of his tutor ;

4. Persons wishing to contract a second marriage can only do so after the first has been dissolved.

60. **Impediments to Marriage.** — A person competent to contract marriage may nevertheless in certain circumstances be deprived of such right, as, for example, when too close ties of relationship (see 63, Relationship) exist between him and the person whom he wishes to marry.

Marriage is always prohibited in the direct line, i. e., between ascendants and descendants, and

(1) The law never permits derogation by private agreement to be made from laws founded upon considerations of public order or good morals.

between persons bound by ties of affinity (see 64, Affinity), whether legitimate or natural, in the same case. In the collateral line, marriage is prohibited between brother and sister, legitimate or natural; and between uncle and niece, and aunt and nephew. The civil law allows marriage between a man and his deceased wife's sister; but it prevents a woman, except under dispensation, from marrying the brother of her deceased husband. Nevertheless, for Catholics, the prohibition extends to all cases; and marriage between a brother-in-law and sister-in-law is always forbidden. There are other obstacles resulting from relationship, affinity, or other causes, according to the different religious beliefs of the parties; but the latter may be relieved therefrom in accordance with the discipline of their religion.

61. **Publication of Marriage.**—The marriage must be made public, and bans are the principal way in which this is done. The bans must mention the names, surnames, qualities or occupations and domiciles of the parties to be married, and whether they are of age, or minors, and the names, surnames, occupations and domiciles of their fathers and mothers. They are made during three consecutive Sundays or Holy Days, with suitable intervals, in the church of the place where each of the parties is domiciled. If the last publication took place more than a year before the celebration of the marriage, it is of no effect, and the publication of bans must be begun over again.

It is the duty of all duly qualified persons to oppose the marriage, whenever there are good grounds for so doing.

As bans are intended to give publicity to the marriage, the word "domicile" (see 44, Domicile) cannot evidently bear in this connection the same sense that it generally does. In the present case, it means the place where the parties to be married actually reside, and where they are best known. Thus, a minor may be at service in Montreal, and his parents may live at Sorel, where he consequently has his legal domicile; in such a case the bans should be published in the church of the parish where the minor lives, and also at the place of his legal domicile, which would be Sorel.

A residence of six months in a certain place is sufficient to create a presumption of domicile. If a party who is to be married has not occupied his new home for that period, he, nevertheless, should have the bans published there, as well as at the place of his last residence, provided, nevertheless, that the latter place be within the limits of the Province, for if the last domicile was not in Quebec, the necessity of publishing bans abroad would not be so imperative. Clergymen celebrating marriage supplement the bans in such a case by enquiring into the status of the parties. Dispensations from one or more bans may be obtained. Catholics apply for this purpose to their bishop, generally through their parish priest. Protestants and others obtain such dispensation from persons authorized by the Lieutenant-Governor to issue marriage licenses.

62. **Solemnization of Marriage.**—Marriage must be solemnized openly, by a competent officer, in the presence of two witnesses.

All ministers of the Gospel, priests, *curés*, etc., are authorized to solemnize marriage between persons of their faith.

In all places where the decrees of the Council of Trent have been promulgated, Catholics cannot, without obtaining a dispensation, apply to any person other than the curé of their parish for marriage.

The marriage may take place at either of the domiciles of the parties. The officer solemnizing the marriage must call for the certificates of birth of the parties; when they are minors, he must ascertain whether their parents or tutors have given their consent, and whether bans have been published, or, when oppositions have been made, whether they have been discharged.

63. **Relationship.**—When children are born of a marriage, ties of relationship are thereby created between them and their parents.

Relationship is in the direct line, when it exists between ascendants and descendants. But relationship also exists in the collateral line; i. e., persons may be related, although one is not the issue of the other, if they are nevertheless sprung from a common ancestor; as for example, brother and

sister are relatives in the collateral line. The gap between two generations is called a degree:

Peter.

First degree:

... James, son of Peter.

Second degree:

... Joseph, son of James,
grandson of Peter.

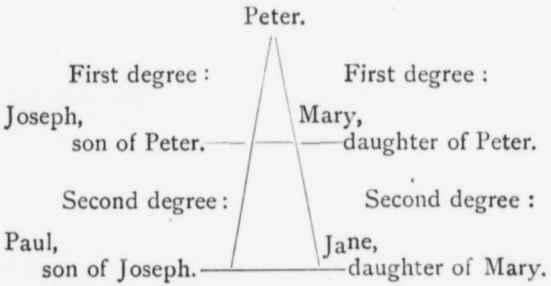
Third degree:

... Maurice, son of Joseph,
great-grandson of Peter.

The direct line is divided into the direct line descending, and the direct line ascending, accordingly as we ascend or descend the scale of relationship.

In the collateral line, the degrees are reckoned differently, accordingly as the canon or the civil law is followed.

Relationship according to the canon law is reckoned as follows:



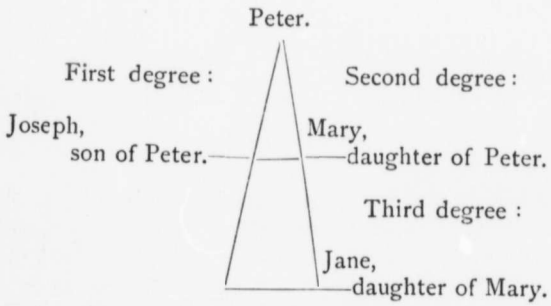
We commence with a common ancestor, and descend to those between whom we wish to establish the relationship, counting only one degree for all persons belonging to one and the same generation. Thus, in the example cited above, Jane and Paul are relatives in the second degree. If the lines are unequal, we take, as first term, the degree of relationship nearest to the common ancestor, and, as second term, the degree of relationship of the one who is farthest removed from the common ancestor; in this way, uncle and niece are related from the first to the second degree. It is in this way that impediments to marriage, aris-

ing from relationship, are reckoned in the case of persons governed by the canon law.

Relationship is reckoned differently according to the civil law.

The scale of relationship is formed as above, but the degree of relationship is determined as follows:

We begin with one of the parties, taking him as the first degree, ascend to the common ancestor and then descend in the other collateral line until we reach the person with whom we wish to determine the degree of relationship.



In this case, Joseph and Jane are relatives in the third degree. In matters relating to successions, relationship is counted in the above manner.

64. **Affinity or Alliance.**—Affinity or alliance is the tie which exists between a married person and the relatives of the person to whom he is married. Degrees of affinity are reckoned in the same manner as those of relationship.

CHAPTER V.

OF MARRIAGE.—(*Continued*).

65. **Duties Common to Husband and Wife.**—Husband and wife mutually owe each other fidelity, succour and assistance. They also owe each other the education of their children, whom they are obliged to supply with food, bring up and maintain. But the children in their turn will later be obliged to furnish alimony to their father and mother, or other ascendants who are in want. This obligation is rendered more onerous by the ties resulting from marriage, because sons-in-law and daughters-in-law are also obliged, in like circumstances, to maintain their father-in-law and mother-in-law. Nevertheless, the obligation no longer exists if the tie which bound them to a new family is broken; for instance, when the consort, through whom the affinity existed, and all the children, issue of the marriage, are dead. The obligation also ceases when the mother-in-law contracts a second marriage.

66. **Legal Position of the Consorts in Marriage.**—Husband and wife form a community of which the moral union should be as close as possible, and of this community the husband is the head. He gives his name to the children who are born of their union. Into his hands the wife surrenders her liberty and a large portion of her rights, particularly the authority which nature has bestowed upon her over her children, and only retains a moral obligation to watch over them.

The husband is bound to protect his wife, to receive her in his home, and to supply her with all the necessaries of life according to his means and condition. In return the wife promises him obedience, and is obliged to follow him wherever he thinks fit to reside.

This dependence of the wife upon her husband causes her to be classed in society among those persons who are considered incapable.

67. **Incapacity of Married Women.** — The incapacity of married women, i. e., their inability to exercise their civil rights, is absolute. This incapacity is established not as a protection in their own favour, but for the exclusive advantage of their husbands. Even the fact that it would be impossible for the wife to prejudice herself or her husband by exercising alone and on her own initiative, the civil rights possessed by every British subject would not render her capable. So a married woman cannot, without the consent of her husband, receive a donation.

The law thus in principle excludes married women from all important acts, and affects all their proceedings with absolute nullity.

The incapacity of married women may be summed up as follows:—A wife cannot be a party to a lawsuit without being authorized for that purpose by her husband; she cannot dispose of her property, bind herself or contract without the concurrence of her husband. Nevertheless, if she is separate as to property (see 88, Separation of Property), she is allowed to perform acts of administration only.

If she is a public trader, a wife may, nevertheless, bind herself without such authorization for all that relates to her commerce; but she cannot become a public trader without such authorization, express or implied.

The rule as to the incapacity of married women is subject to two exceptions, the first of which relates to her power to make a will. As this act takes effect only on the dissolution of the marriage, it has been the opinion of the legislature that no inconvenience would result from allowing the wife the liberty of making a will. Again, a married woman may deposit in a savings bank, in her name, and without authorization, her savings up to an amount of two thousand dollars. These institutions have obtained the privilege of keeping such deposits, and of delivering them over only at the request of the depositor.

68. **Marital Authorization.**—But is the wife destined to play an absolutely passive part during marriage? No, her husband may relieve her of her incapacity by assisting her, or giving her what is called marital authorization. Such authorization renders the wife fit for the moment to exercise her

civil rights as before her marriage. The law subjects her to only two restrictions, which are the following:

1. Married women can never, even with their husbands' authorization, bind themselves for their husbands; for example, become sureties or indorsers for them. (See 146, Suretyship.)

2. Husband and wife are reciprocally forbidden to confer benefits upon each other during marriage.

The marital authorization must be express. It is ordinarily given by the intervention of the husband in, and his signature to, the act executed by the wife. Or again, the authorization may be given in a formal way in writing. In every case the authorization must be special; a general authorization is null.

We have hitherto dealt with the case where the husband is capable of giving his authorization to the wife, when the latter requests it; but if the husband has disappeared, is in prison, is insane, or cannot give his wife an authorization to act, does the wife, therefore, regain her independence? No, a married woman never regains her liberty otherwise than by the dissolution of the marriage. If her husband is an absentee, or is interdicted, or is incapable of giving his authorization, she may be authorized by the judge, if the latter thinks fit to do so. Here we may remark, that if a husband, without just reason, refuses to authorize his wife, as may be the case when the consorts are on bad terms, or are separated, for example, the wife may overcome such ill will by obtaining a judicial authorization.

69. **Separation of the Consorts.**—In certain cases specially laid down by the law, consorts may obtain from the court a separation which puts an end to their common life, and changes their respective rights and duties. To produce civil effects, a separation can never be affected voluntarily ; it must be obtained judicially.

The following are the principal effects of a separation :

A separation of the consorts always involves separation of property (see 88, Separation of Property). It frees the wife from the obligation of following her husband, and deprives the latter of a part of the rights which he might have exercised over the property of his wife ; the wife regains the administration of her fortune if she had been deprived of it. But the liberty granted to a married woman is never complete. The wife needs the authorization of her husband, or, in default thereof, that of the judge, before she can perform any important acts and particularly those relating to the alienation of her immoveable property.

For whatever cause the separation may have taken place, the consort against whom it is granted loses all pecuniary advantages conferred upon him by the other consort by the contract of marriage.

When the wife who has obtained a separation does not possess sufficient property to enable her to live suitably, according to her condition, the husband is bound to pay her an alimentary allowance (see 200, Alimentary Allowance), according to his means. Moreover, the obligation is re-

ciprocal, and the husband of a rich wife may obtain an allowance from her whenever it is clear that he is incapable of supporting himself.

When there has been a separation of the consorts, the custody of the children is generally given to the consort who obtained the separation ; unless the court orders, in the interests of the children, that all or some of them be intrusted to the other consort or to a third person. Up to the time judgment is rendered upon these questions, the children remain under the authority of the father.

As a separation should only be granted in exceptional cases, and creates a condition of things which is dangerous to the stability of families, it is evident that the law should facilitate in every way the reconciliation of the consorts. Thus, the latter may effect such reconciliation of themselves, when they please, without the necessity of resorting to legal formalities. The fact of reconciliation is sufficient to put an end to the civil effects of the separation ; and matters are replaced in the same condition as before.

CHAPTER VI.

MARRIAGE COVENANTS.

70. **Marriage Covenants.**—By marriage covenants are meant the provisions which govern the property of the consorts ; and the latter should be careful to use good judgment in their selection, for they are forbidden to change them after marriage. They cannot evade the rigour of this law by afterwards making gifts in favour of each other,

because they are absolutely forbidden to confer benefits upon each other during marriage. It is only by way of exception that the husband is granted the liberty of insuring his life in favour of his wife. (See 248, Insurance.)

Marriage covenants comprise, either legal community, or the covenants stipulated by marriage contract. (See 85, Contracts of Marriage.)

71. **Legal Community.**—If the consorts have been married without making any marriage contract, and are domiciled in the Province of Quebec, they are governed by the common law, which is that of community. As this term indicates, the consorts under this system contribute each their part to the creation of a common fund, of which the husband becomes the proprietor and master, and over which the consorts have rights which are very unequal.

The consorts may, moreover, possess personal property which we shall call their private property.

In legal community, the property of the consorts is divided into three parts :

1. The property of the community ;
2. The private property of the husband ;
3. The private property of the wife.

72. **Private Property of the Consorts.**—The consorts retain the following as their private property :

1. The immoveables which they possessed at the time of the marriage ;
2. Those which they acquired by succession or by an equivalent title ;
3. Moveables or immoveables given or bequeathed to them during marriage, where the

donor or testator has expressly stipulated that the property should not fall into the community ;

4. The amount received in replacement of private property, when the latter has been alienated. (See 80, Returns, Reprises and Replacements.)

We must remark that the revenues of private property are detached therefrom and fall into the community, of which the husband is the master and head. Such private property is, in consequence, composed only of the naked ownership of the things above enumerated.

The husband alone administers the private property of himself and of his wife. But he cannot alienate the private property of the wife without previously obtaining her consent.

73. **Assets of the Community.** — The assets of the community consist :

1. Of all the property which the consorts have acquired during marriage, by whatsoever title ; moveables or immoveables, whether resulting from the industry of the husband or the wages of the wife, if she is engaged in paid work ; except, as we have already seen, immoveables derived from ascendants, by successions or an equivalent title, and property given to them on the express condition that it shall not fall into the community ;

2 Of all the moveable property which the consorts possess on the day when the marriage is solemnized, which includes, under existing conditions, financial and commercial securities, which constitute a considerable portion of fortunes at the present time ;

3. Of the revenues of the private property of the consorts.

74. **Liabilities of the Community.** — The property of the community must be employed for the following purposes :

1. To provide for the maintenance of the consorts, the education and support of the children, and all the other charges of marriage ;

2. To pay the debts of the husband, contracted before marriage ;

3. To pay the debts of the wife, contracted before marriage, provided they have been duly established at the time, or that they have been clearly proved. If such debts have not been so established, the creditors of the wife can recover the amount only out of her private property, and after the dissolution of the community ; because they cannot, during marriage, deprive the husband of the enjoyment, to which he is entitled, of the property of his wife ;

4. The community is bound to pay all interest and arrears, or other charges due upon the private property of the consorts ;

5. The repairs and maintenance of such immoveables as do not fall into the community ;

6. The debts, whether capital sums or interest, contracted by the husband during marriage ;

7. The debts contracted by the wife with the authorization of her husband ;

8. Pecuniary condemnations incurred by the husband, for criminal offences or misdemeanors, may be recovered out of the property of the community ; the wife must therefore bear her share of them : "The law is severe, but it is the law." On the contrary, pecuniary condemnations incurred by the wife are not borne by the com-

munity. They are recoverable only out of her private property, and after the dissolution of the community, so as not to prejudice the rights of the husband over the property of his wife. But it would be otherwise if the act which subjected the wife to a pecuniary condemnation was done with the consent of the husband, or at least with his approbation ;

9. The community must, moreover, discharge debts contracted by the wife for daily necessities, food, expenses, etc., which according to present usage, are part of her duties. This is not because the wife is relieved in this case from her ordinary incapacity, but because the law considers that in so doing she is acting under a tacit mandate (see 188, Mandate) given her by her husband.

75. **Administration of the Common Property, and Rights of the Husband over the Community.**—The husband is entitled to the administration of the property of the community, not only as administrator, but as proprietor (see 119, Ownership); in other words, he is the absolute master of them, and disposes of them uncontrolledly. He may sell (see 167, Sale), hypothecate (see 147, Hypothec), alienate, and even, if he pleases, give (see 225, Gifts) the property of the community, without the concurrence of his wife. The law adds: provided he acts without fraud. But this restriction upon the absolute liberty of the husband over the common property is of very little utility to the wife, and is not intended to check waste or squandering of the common property; it merely means that the husband cannot so act that, at the

dissolution of the community (see 79, Dissolution of the Community), when the common property is equally divided between the consorts, he will obtain, indirectly and by devious means, a larger share than that of his wife. The most ordinary instance of fraud is where the husband makes large gifts to a person whose heir he himself is.

76. **Rights of the Wife over Her Private Property and over the Community Property.** —The wife common as to property cannot administer her private property, nor initiate any measure relating to it; she intrusts everything to her husband, to whom she gives up unreservedly even the enjoyment of her revenues; and she reserves only a right of control over the naked ownership of her private property, which the husband cannot alienate without previously obtaining her consent.

If the wife consents to the alienation of her private property, the price may be paid into the common fund, and she will be entitled to recover it from the community on its dissolution. If the property of the community is insufficient, she is repaid from the private property of the husband.

The replacement of the wife's property may also be made during marriage, i. e., new property may be acquired to replace what formerly belonged to her. But such replacement can be made only with the express consent of the wife.

When the wife will be entitled to such replacement at the dissolution of the community, and the maladministration of the husband gives reason to fear that she will not be repaid, the wife may sue

for the immediate realization of her share in the community, and to obtain the administration of such share, as well as of her private property. This is done by a suit for separation of property.

77. **Legal Effects of Acts of a Wife Common as to Property.**—If the want of the husband's authorization, in cases where such authorization is requisite, involves the nullity of the wife's acts, which nullity may be invoked by all who have a present and existing interest,—on the other hand, a wife common as to property may validly do all acts of civil life when she is authorized by her husband. Such authorization has the effect, under the system of community, of binding the husband also. All obligations legally contracted must be fulfilled by the community. The husband is responsible for the debts of the wife when he has authorized them. (See 74, Community.)

When a wife, who has failed to obtain her husband's authorization, obtains authorization from the court, the effect is different. She alone becomes responsible, and no longer binds the community. As she has not the enjoyment of any property, even of her private property, her creditors must await the dissolution of the community to collect their claims.

78. **Wife Common as to Property, Engaged in Trade.**—A wife who is common as to property and is authorized for the purpose by her husband, may become a public trader. In such cases the ordinary laws of community are derogated from, for the purposes of her trade. Not only

does she become able to enter alone into commercial transactions, but she binds the property of the community in so doing. It was necessary thus to extend the liability of wives who are traders, because otherwise the lack of certainty with which third parties would have met in dealing with a married woman would have rendered it impossible for her to pursue her business affairs with any degree of prosperity.

CHAPTER VII.

DISSOLUTION OF THE COMMUNITY.

79. **Dissolution of the Community.** — The object of the dissolution of the community is to render the property of the consorts distinct. The common property is then divided into two equal parts, of which one goes to the husband or his heirs, and the other to the wife or her heirs.

The community is dissolved :

1. By the natural death of either consort ;
2. By separation from bed and board ;
3. By separation of property.

Dissolution by separation of property can never be effected by the mere consent of the consorts; it must always be granted judicially, at the suit of the wife only, when her interests are imperilled. The husband cannot sue for it.

80. **Returns, Reprises and Replacements.** —When the dissolution takes place, the consorts must *return* to the community, before partition, the sums which they owe it. Then they must make their *reprises*, or, in other words, they withdraw from the community what they are entitled to receive intact; as, for example, a house bequeathed to the wife by her father.

If a thing no longer exists in kind, a *replacement* is made; i. e., a like amount is given in its stead.

The pretakings of the wife take precedence of those of the husband; she may recover her claims, not only out of the husband's share in the community, but also out of his private estate or property.

The husband, on the contrary, takes his *reprises* only out of the share of the community which falls to his wife.

81. **Partition of the Community.** — The *reprises* and *replacements* having been made, each party takes back his or her private property, and the common fund is divided into equal shares, of which one goes to the husband and the other to the wife (or their respective heirs).

The partition of the assets manifestly involves that of the liabilities, in the same proportion, i. e., the consorts are each bound to pay half the debts, but the liability of the consorts is different in this respect. The wife obtains certain privileges by reason of her non-interference with the affairs of the community. Thus, while the husband may be sued for the entire amount of the debts of the

community, the wife is responsible, either toward creditors or toward her husband, only to the extent that she has benefited by it.

82. **Renunciation of the Community.**—The wife or her legal representatives (i. e., her heirs) are free to accept or to renounce the community. This is an important privilege, which tends to compensate the wife for the passive part fulfilled by her during marriage.

By renouncing, the wife frees herself from all obligations to the creditors. But a wife who renounces cannot appropriate the common property; she must give up everything. The law is severe in this respect. Should she take anything from the community, she loses this privilege; and such an act will be regarded as an unconditional acceptance on her part. She is, nevertheless, allowed to retain her wearing apparel and linen in use for her own person, but not her jewelry, except what she received as wedding presents. She may, nevertheless, while she is deliberating, continue to live in the house where she has been dwelling, and to use community money to pay living expenses, servants, etc., according to her rank in life.

By renouncing, the wife does not lose her right to her *reprises* and *replacement*. (See 80, *Returns, Reprises* and *Replacements*.)

In any event, the mourning of the widow is chargeable to the husband's heirs, who must, under any system of matrimonial rights, supply her with it to a suitable extent.

To be entitled to renounce, the wife must, within three months after a dissolution of the community, make a faithful inventory, in notarial form, of all it contains. The law then allows her forty days to deliberate, and to decide whether she will accept or renounce the community.

If the dissolution occurs during the lifetime of the consorts by separation, and in certain cases where dishonest practices would be impossible, an inventory is not required; for instance, where all the property has remained in the possession of the husband.

83. **Effects of the Dissolution of the Community.**—The dissolution of the community has different effects accordingly as it is caused by death or by separation of the consorts.

When it is caused by natural death, as the effects of marriage no longer exist, the wife, if she survive, regains her civil liberty to its full extent, and the independent enjoyment of her rights.

When the separation occurs during the lifetime of the consorts, and is therefore decreed judicially, the situation of the wife is different. She then comes under the rules relating to Separation of Property (see 88, Separation of Property). She receives her share of the community and administers it and collects the revenues derived from it, but still remains subject to the general rule which forbids her to do alone and without the authorization of her husband, or, in default thereof, of the court, certain important acts which would tend to the alienation of her immoveables.

A wife so separated must contribute, according to her means and in a just proportion, to the expenses of marriage.

When the dissolution of the community has been obtained for the purpose of protecting the wife against the insolvency of the husband, its re-establishment can be effected only by a deed in the form of a notarial minute, which is deposited in the office of the prothonotary of the court which rendered the judgment of separation.

84. **Legal Usufruct of the Surviving Consort.**—After the dissolution of the community and in the absence of any will to the contrary, the surviving consort has the enjoyment of the property of the community coming to his children from the deceased consort. Such usufruct lasts as to each child until he is of the age of eighteen years or until he is emancipated. It ceases when the surviving consort contracts a second marriage.

The obligations incurred by this enjoyment are:

1. Those to which usufructuaries are held. (See 126, Ob. of Usufr.)
2. The food, maintenance and education of the children, according to their fortune;
3. The payment of arrears and interest on capital sums;
4. The funeral expenses and expenses of the last illness of the predeceased consort;
5. The surviving consort is also bound to make an inventory of the common property and effects, under penalty of being deprived of the usufruct.

CHAPTER VIII.

MARRIAGE CONTRACTS.

85. **Marriage Contracts.** — The contract of marriage is the act by which the future consorts withdraw themselves from the effects of legal community, and make special provisions as to their property rights. Great liberty is allowed them to make all kind of agreements, provided they do not derogate from laws affecting good morals and public order.

Even third parties who intervene in these contracts are allowed to make gifts in contemplation of death to the future consorts and the children to be born of the marriage. Such gifts are always prohibited in other cases, as destroying the freedom of willing. (See 216, Wills.)

Contracts of marriage must be in notarial form, except in a few localities for which special laws exist. They can be entered into only before marriage, and take effect only after the solemnization of the ceremony. When either party is a minor, he must be assisted by his father or mother, curator or tutor.

The systems of matrimonial rights generally adopted are provided for and regulated by the Code; but it is lawful for the future consorts to modify them if they so desire.

The systems which may be adopted in marriage contracts are the following:

1. Conventional community;
2. Exclusion of community;
3. Separation of property.

86. **Conventional Community.** — Conventional community is that by which the parties, while accepting the rules of legal community as governing their property, nevertheless agree to special conditions modifying it. Such as the following, for example:

1. That each of the consorts shall pay the debts due by him or her before the marriage;

2. That moveables, present or future, shall not fall into the community or shall fall into it only in part;

3. That the community shall comprise the whole or a part of the immoveables, present or future, i. e., of the private property;

4. That, in the event of the wife renouncing the community, she shall be allowed to take back what she has brought into it, free and clear; for instance, to take back her moveables;

5. That the survivor shall draw, before partition, a fixed amount known as "preciput";

6. That there will be between the consorts a universal community, or community by universal title; i. e., consisting of all their moveables and immoveables, or of a part thereof only;

7. That the consorts shall have unequal shares.

But it is to be noted that the liability for debts must be in proportion to the share of the profits. Nevertheless, if it be stipulated that one party shall withdraw a fixed share in the community, for instance $10,000, he is not obliged to contribute to the debts.

Under this system, whatever be the composition of the common property or of the private property of the consorts, the entire administration of such property remains with the husband.

87. **Exclusion of Community.** — Under exclusion of the community, the property of the consorts is not held in common, but remains distinct. The wife renounces the administration of what belongs to her, and intrusts its management to her husband, who collects the revenues in like manner as a usufructuary (see 124, Usufruct), and is deemed to receive them to defray the expenses of marriage. The husband is, on his side, bound to see to the maintenance and preservation of such property.

Under this system, which is not very favourable to the interests of the wife, the latter does not receive her revenues, except through the instrumentality of her husband. She is thus incapable of collecting her rents, for example. But she may, if she has had the foresight to do so, stipulate that, while leaving the administration of her fortune to her husband, she reserves the right of collecting herself, and on her own separate receipts, the whole or part of her revenues for her support and personal needs.

The husband under this system cannot dispose of the immoveables of his wife without previously obtaining her consent.

88. **Separation of Property.**—Separation of property is a covenant by which each of the consorts retains his or her private property. It differs from exclusion of community in that, by such a contract, the wife possesses the administration of her property, subject to the obligation of contributing, according to her means, to the expenses of marriage and the support of her children.

The wife who administers her property, receives sums due and gives receipts therefor, sees to the maintenance of her immoveables, and uses her revenues as she pleases, by spending or saving them. Her affairs are, in fine, distinct from her husband's. She may enrich herself without the concurrence of her husband, and on her own sole initiative.

But the liberty thus conferred upon her in regard to acts of administration does not relieve her from the incapacity under which she labours as a married woman ; and such incapacity prevents her from doing alone any act which would tend to the alienation of her immoveables. The wife can in such matters act only with the authorization of her husband, or, failing it, with that of the court. Thus, without such authorization, she cannot encumber her property, hypothecate or sell it, or otherwise dispose of it, whether by gratuitous or by onerous title.

Whenever a wife separate as to property has left the enjoyment of her fortune to her husband, the latter is not bound to account to her for such of its products as have been consumed ; and if she makes such a demand upon him, he is only liable for such products as exist.

89. **Dower.**—Dower is a sum which the wife and children have a right to take by privilege out of the property of the husband, at his death, whatever be the system under which the consorts have married. This dower is essentially a right of survivorship. But nothing prevents dower from becoming open and exigible by separation from

bed and board, or by separation of property, provided always that such effect results from the terms of the marriage contract.

Dower is personal to the wife and children; their heirs consequently cannot represent them in the exercise of this right.

Dower is either legal or customary, or prefixed or conventional.

Customary dower is derived from the law alone, and results from the mere fact of marriage. It consists in the usufruct (i. e., the enjoyment), for the wife, of one-half of the immoveables which belong to the husband at the time of the marriage, and of one-half of those which accrue to him during marriage from his father or mother or other ascendants.

It consists for the children in the naked ownership of the same property. Hence, the latter enjoy their dower only on the death of their mother.

Prefixed or conventional dower is that which the parties have agreed upon. It excludes customary dower. Thus, it is lawful for the consorts, by the contract of marriage, to declare that dower shall affect other property than it generally does; they may agree that the dower of the wife shall be different from that of the children; that the wife shall have the full ownership of the property; that the dower shall consist of a sum of money, etc.

90. **Inalienability of Property Subject to Dower.**—The characteristic feature of dower is the inalienability of the property subject to it. The alienation by the husband of an immoveable subject to dower, as well as all charges and hypo-

thecs with which he encumber it, in nowise affects the dower of the wife or that of the children, unless there has been an express renunciation on their part. (See 91, Renunciation of Dower). Thus, they may claim property subject to dower, into whatever hands it passes; and such property cannot be acquired by prescription.

Nevertheless, to be good as against third parties, dower is subject to the ordinary rules as to registration. (See 235, Registration). All property subject to it must consequently be specially described in the registers; a general inscription being of no avail. Such registration may be made by the wife, or by the children, or by any interested party. The husband, is, moreover, as is generally the case, bound to see to the registration of his wife's rights as they arise.

91. **Renunciation of Dower.**—The wife is at liberty to renounce dower. This renunciation may be effected:

1. By the contract of marriage;

2. During marriage, by a wife of full age or the children on their express declaration. Thus, the wife and children may allow the alienation, in whole or in part, of the property affected with dower. Renunciation by the mother involves that of the children, when their rights exist concurrently on the same property.

92. **Enjoyment of the Dower.** — The wife who takes customary dower does so as a usufructuary. (See 124, Usufruct). She may use it, but is bound to preserve its substance, or the naked

ownership. She must maintain in good order the property affected with dower, and prudently administer it, and attend to current repairs; but such as cannot be effected without laying out heavy sums are chargeable to the owners.

The wife undertakes to preserve the property affected with dower by giving the security of her oath; but, if she remarries, she is bound to give security (see 146, Suretyship), i. e., to procure another person, who binds himself, with her, to bear such costs as her negligence may impose on him.

The dowager who does not fulfil the duties to which she is bound, or who abuses her position, may be deprived of the enjoyment of the dower. She is also deprived of it when, after being sued by her husband for desertion or adultery, the latter dies, without any reconciliation having taken place between them.

It may perhaps be thought that a person may be at the same time a dowered child and an heir called to the succession of his father. But such is not the case. The two qualities are distinct, and a child can enjoy dower only when he renounces his heirship. So, when a child takes dower, he is not bound for any debts of the succession. If he takes the quality of heir, the contrary is the case: he becomes the debtor of the creditors of the succession. (See 211, Accept. of Succ.)

CHAPTER IX.

MINORITY.

93. **Minors**.—A minor is a person who has not yet reached the age of twenty-one years. The law has special provisions relating to the custody of his person and the administration of his property.

94. **Paternal Authority.**—A child, up to his coming of age, is subject to the authority of his father and mother, to whom he owes, equally and always, honour and respect. He is obliged to live with them, and has no legal domicile other than theirs.

As a rule only the father exercises authority over a child during marriage. The mother's authority is manifested only in case of the predecease of the husband, or when the latter, owing to absence, infirmity, etc., becomes physically unable to express his will. But the mother always retains a right of supervision over her children, and, consequently, a moral influence, of which she cannot be deprived, even in case of separation, when the custody of the children is refused her.

Parents are equally bound to educate and to support their children. They have a right of moderate correction over them, which they may delegate or transfer to others, as, for instance, to teachers to whom they intrust the child.

To sum up, paternal authority is exercised over the person of the child and includes :

1. A right of custody ;
2. A right of education ;

3. A right of correction, as sanction to the two preceding rights.

This authority of parents over their offspring results from the mere fact of the marriage of the consorts, and is inalienable.

95. **Property of Minors.**—A child who is a minor may have a private fortune. Evidently, his tender age does not allow of his administering it. This duty falls upon the father, and, failing him, the mother. But parents cannot thus represent their minor children until they have been judicially appointed tutors to the property of such children.

96. **Tutorship.**—Tutorship is a public office, established in the interest of social order, and by it a capable person undertakes to manage the affairs of an incapable minor, and to represent him in the exercise of his civil acts.

When a child has neither father nor mother, the tutor (see 99, Duties of Tutors) is vested with a part of the paternal authority, relating to the custody and education of the child. All tutorships are dative, i. e., they are conferred officially, by the court, the judge or the prothonotary, on the advice of a family council. (See 97, Family Council). The office is ordinarily obligatory, and the appointee is bound to perform its duties, unless he shows sufficient grounds to be excused.

97. **Family Councils.**—A family council is a meeting of those related or allied to the minor, called for the purpose of assisting the court, and of giving advice as to the minor s interests.

The council is composed of seven persons, chosen as equally as possible from both the paternal and maternal line. Women are excluded, except the mother and other female ascendants during widowhood. They are represented by their husbands in case they remarry.

In default of male relatives, friends are called.

The first duty of the council is to agree upon a tutor, who is then approved by the prothonotary, the judge or the court.

The convocation of a family council may be demanded by all persons related or allied to the minor, by his creditors, and by all interested parties.

Under the head of Duties of Tutors we will see in what manner the council is summoned to give its opinion in regard to the most important acts in the life of the minor.

98. **Tutors.**—The tutor is the person upon whom the tutorship is conferred. This office is essentially one for males, only men of full age being qualified for it. Nevertheless, by way of exception, the mother, after the decease of the father, and female ascendants, may be appointed to the office of tutrix.

The father is legally entitled to be tutor to his child; and he is never permitted to refuse so to act, even if he is himself a minor; the law presumes that nature produces sufficient solicitude in him to correct the inexperience due to his youth.

The mother, in the same case, and female ascendants, during widowhood, may be appointed to the office of tutrix, but they are free to accept or refuse it.

If a mother or other ascendant remarries, she loses the tutorship, but she may be appointed anew to the office jointly with her second husband, if the family council deems proper.

A tutor is appointed by the court, judge or prothonotary of the district where the minor is domiciled, on the advice of a family council.

Such appointment may be made at the request of any relative of the minor, without regard to sex, or on the demand of any person interested.

In entering upon the office, the tutor must make oath to fulfil faithfully his obligations. If he neglects his duties, or proves unworthy of the position, he may be removed.

99. **Duties of Tutors.**—Tutors have to perform many different duties. Thus, a tutor may be bound to take the place of the parents, and in such case he has the custody of the minor's person; or again, he may be charged only with the administration of the minor's property.

The custody of a minor's person is generally intrusted to the same tutor as has the administration of the property; but the rule is not absolute; it may happen that two separate persons are appointed to these offices. In like manner, when the property is situated in different and distant places, several tutors may be appointed to the property of the minor.

The tutor having the custody of the minor must see to his education, and he must show as much care in this respect as the parents would have done. But nothing prevents the tutor from intrusting the minor to a third party to whom he

delegates his powers, in the same manner as the parents would have been entitled to do.

A tutor cannot consent to the marriage of his pupil without previously consulting the family council and obtaining its approval.

The tutor must exercise, in the management of the minor's property, the care of a prudent administrator. But his powers extend only to purely administrative acts, such as those relating to the investment of moneys and of revenues, their management, and actions relating to such matters. The tutor cannot do important acts on behalf of his pupil, such as those tending to the alienation of the immoveables of the minor. Unless he obtains the authorization of the judge or the prothonotary, on the advice of the family council, a tutor is forbidden to borrow for his pupil, to alienate or hypothecate the immoveables, or to assign or transfer any capital sums or shares of the minor, in financial, commercial or manufacturing companies. Such authorization is granted only in cases of necessity or for an evident advantage.

The tutor cannot, moreover, except when authorized, institute an action at law which would involve a considerable part of the fortune of his pupil.

If the tutor has matters to litigate with the minor, he can no longer represent the latter, and a tutor *ad hoc*, or for the special purpose, is given to the minor while such litigation lasts.

The tutor can neither buy the property of his pupil, nor take it on lease, nor accept the transfer of any right or of any debt against the minor.

On entering office, the tutor proceeds to make an inventory of the property of the minor, in the presence of the subrogate tutor. (See 104, Subrogate Tutors). He causes all the moveables of the minor to be sold, except those which are necessary for use, and invests the proceeds. All excess of revenue is capitalized within six months after its receipt; failing which, the tutor is liable for the interest which such sums should have earned.

100. **Sale of Minors' Property.**—The sale of property belonging to minors must generally be made by public auction, to the highest bidder, except in the case of certain securities which the court may allow to be sold on the stock exchange through a broker or other person selected for that purpose. To prevent fraud and preserve the fortune of minors intact, tutors are forbidden to acquire the property of their pupils by purchase, lease, etc., except when the sale is by forced licitation, in which case the tutor cannot be suspected of wishing to aggrandize himself at the cost of the person whose interest he is supposed to protect.

101. **Legal Hypothec of Minors.**—A minor has a legal hypothec on the property of his tutor (See 147, Hypothec), to recover all damages which the latter may cause him by negligence or bad management. The tutor is bound to register such hypothec himself, and the subrogate tutor must, as his first duty, see to the observance of this formality.

102. **Acts of Minors.**—Can a minor bind himself by his own act, i. e., without the authorization of his tutor?

A distinction must be drawn between two different classes of acts done by the minor, viz., those which the law treats as absolutely null, and those which are merely voidable.

The following acts are regarded as absolutely null, and as though they had never been passed:

1. The minor can never make a will;

2. He cannot give by gratuitous title, except by contract of marriage;

3. He cannot sue or be sued, but may bring an action for wages up to an amount of $50, provided he has completed his fourteenth year;

4. A minor cannot of himself accept or refuse a succession.

Within these limits a minor may in general bind by his act persons with whom he contracts. It is admitted that he may better his condition, and enrich himself. But he can also invariably obtain the anullment of contracts entered into by him of his own motion, if he suffers lesion, i. e., if he is prejudiced, i. e., if such acts are to his disadvantage. Nevertheless, he is not allowed to enrich himself at the expense of others; the minor who wishes to have a contract set aside for lesion must restore to the other party all advantage already derived from the contract by him.

A minor may engage in trade, provided he has been authorized for such purpose. He then becomes like a person of full age, able to do all acts relating to his business

Minors, like married women, are allowed to make deposits in their own names in savings banks, and to withdraw them on their own receipts.

103. **Account of Tutorship.**—The tutor is obliged to render an account of his administration of his pupil, when the latter comes of age, or is emancipated. (See 107, Emancipation). If the minor dies, his heirs receive the account in his stead. Expenses sufficiently justified are allowed therein. The minor is unable to exempt the tutor from his obligation to account; and any discharge by the minor to the tutor, before such account is received, is null and of no effect. The law in this way protects the minor against the influence which may still be exercised over him by his tutor.

When the tutor dies before the close of his term of office, his heirs must account to his successor.

104. **Subrogate Tutors.**—A subrogate tutor is always appointed to the minor at the same time as the tutor, and by the same act. Such subrogate tutor must supervise and safeguard the interests of the minor against any acts of usurpation or negligence on the part of the tutor. For this reason the subrogate tutor is bound to be present at the inventory which the tutor must make of the property of his pupil. He must see that the act of tutorship is registered, etc. Nevertheless, he does not by the mere operation of law replace the tutor, when the latter becomes incapable of fulfilling his duties, but he is obliged to obtain the nomination of a new tutor, or of a tutor *ad hoc*, according to circumstances.

105. **Expiration of Tutorship.** — Tutorship expires:

1. By the death of the minor;
2. By his coming of age;
3. By his emancipation.

CHAPTER X.

MAJORITY, EMANCIPATION, INTERDICTION.

106. **Majority.**—Persons of either sex reach majority at the age of twenty-one years.

Majority confers on a person liberty and the exercise of all civil rights. A person of full age can fix his domicile where he thinks fit, adopt any trade or profession he pleases, contract marriage, make agreements and contracts of all kinds, and alienate his property and dispose of it according to his wishes, provided he is not declared incapable by law. (See 48, Ex. of Civ. Rights).

107. **Emancipation.**—Emancipation is an intermediate state, through which the minor may pass before reaching his majority. By emancipation the law relieves him from tutorship and withdraws him even from paternal authority, but it does not, however, confer upon him the same freedom as it allows to persons of full age.

This status takes for granted a certain ability on the part of the minor, because he is allowed the

administration of his property; but he is assisted by a curator in performing all acts of importance. He must even, in very many cases, obtain the assistance of a family council, notably in regard to the alienation of his immoveables.

A minor is emancipated by law when he contracts marriage. He may also be emancipated by the court, judge or prothonotary, on the advice of a family council, upon his own petition or on that of any person interested in him.

108. **Curators to Emancipated Minors.**—A curator is appointed to every emancipated minor. It is his duty to assist the latter, and authorize him to act when he undertakes important acts; to be, in fact, a kind of counsellor. The curator has no authority over the person of the minor. He must be present when the account of tutorship is rendered to the emancipated minor.

Any person of full age, of either sex, may be appointed curator. A husband has a right to be appointed curator to his minor wife, emancipated by marriage. If, on the contrary, the husband is an emancipated minor, the wife may be appointed curatrix.

109. **Interdiction.**—Interdiction is an incapacity to which the law subjects certain persons in the possession of their rights, when it is shown that they are unfit to manage their affairs. Only those persons whom the law specifies may be interdicted, viz.:

1. Persons of full age or emancipated minors who are in a habitual state of imbecility, insanity

or madness, even though they have lucid intervals;

2. Habitual drunkards, who are assimilated to madmen;

3. Again, persons who commit acts of excessive prodigality, and who give reason to fear that they will dissipate the whole of their property, may be interdicted.

Interdiction deprives a person of the administration of his property, and, in certain cases, of the control of his person. Interdiction may be assimilated to tutorship; and we can apply to it what has already been said of the latter, in regard to the formalities to be observed in obtaining it, and the persons who may make the application and may fill the office of curator. (See 110, Cur. to Int.)

The name of the interdict must be posted in the office of the prothonotary of the district where the interdiction is pronounced, in order to make the fact public, and prevent third parties from contracting with the interdicted person.

110. **Curators to Interdicted Persons.**—In rendering judgment of interdiction, the law gives the interdicted person a curator, whose duties and responsibility are the same as those of a tutor, with this exception, that a curator to a person interdicted for insanity or drunkenness must take charge both of the person and of the property of the incapable person; while curators to prodigals only administer their fortunes.

111. **Removal of Interdiction.**—Interdiction ceases with the causes which necessitated it; but

it cannot be removed without observing the formalities prescribed for obtaining it, i. e., the interdiction must be removed judicially, on the advice of a family council.

112. **Acts Done By Interdicted Persons.**— Clearly, acts done by persons interdicted for imbecility, insanity or madness, are always voidable, because such persons are incapable, by the mere fact of their infirmity, from giving a binding consent. It is thus not necessary to prove lesion, to have their acts annulled.

But in the case of prodigals it is different. Their incapacity is established in their own favour, to prevent third persons from taking advantage of their weakness. They are in the same position as minors. (See 102, Acts of Minors). They can bind third parties with whom they contract, provided the act be to their advantage, but if on the contrary the act be prejudicial to them, they can have it set aside for lesion.

113. **Judicial Advisers.**— A judicial adviser is given to persons who, without being absolutely insane or prodigal, are nevertheless of weak intellect, or so inclined to prodigality as to give reason to fear that they will dissipate their property or seriously impair their fortune.

The powers of the judicial adviser may be compared with those of curators to emancipated minors. (See 108, Curators to Emancipated Minors). He is appointed with the same formalities, and only assists the person to whom he is given.

Nevertheless the judgment appointing a judicial adviser may define his powers, and enlarge or limit them, according to circumstances.

When a demand for interdiction is refused, the court has power to order that a judicial adviser be appointed to the person whose interdiction was sought.

SECOND PART.

OF PROPERTY.

CHAPTER XI.

OF PROPERTY, OWNERSHIP.

114. **Property.**—Property is anything capable of being the subject of a right of ownership (see 119, Ownership), and which may be acquired. Thus, the air and light used by all, although most valuable, are not property in the eye of the law, because we cannot acquire ownership over them, i. e., possess them to the exclusion of everybody else. But laws of public order may determine the manner in which common things shall be used.

Property is divided into corporeal (see 115, Corp. Prop.), and Incorporeal (see 116, Incorp. Prop.), and into moveables (see 118, Moveable Prop.), and immoveables (see 117, Imm.)

115. **Corporeal Property.**—Corporeal property is that which, having a physical existence, is perceptible by our senses; for example, the villa which I possess is a corporeal property.

116. **Incorporeal Property.** — Incorporeal property is that which can only be perceived by the mind and has no physical existence; for

example, the debt you owe me is an incorporeal property, which is physically manifested only by the deed which evidences it, but with which it must not be confounded.

117. **Immoveables.** — An immoveable is in general a thing forming part of the earth, or so incorporated with it as to form a whole therewith. A garden, a field, are therefore immoveables; so is a house, because it is attached to the earth.

Moreover, things attached with iron and nails, so as to be incorporated with the immoveable, such as a chimney mantel, a mirror, etc., when they are placed as a permanency, become immoveable by destination. Things which a proprietor has placed on his real property, to form a necessary and inseparable part of it, are immoveable by destination; such as manure and straw and other substances intended for manure, and the utensils necessary for working forges and factories. Rights and actions connected with the possession of an immoveable, rights of usufruct of immoveables, and rights of use and habitation (see 127, Use, Habit), and servitudes (see 128, Serv.), are also immoveable by reason of the objects to which they are attached.

The law may declare certain property to be immoveable, such as sums of money due minors as proceeds of immoveables sold during their minority. Sums of money are declared immoveable by law when they have been given by ascendants to descendants in consideration of marriage, and as the separate private property of the donees.

All immoveables situated in the Province of Quebec are governed by our laws, even when they belong to foreigners.

118. **Moveable Property.**—This expression is used to denote objects which are not attached to the earth, and may be easily moved from one place to another, such as horses, tables, materials obtained from the demolition of a house, boats, scows, and generally all manufactories not built on piles and not forming part of the realty, etc.

Certain things also become immoveable by the destination of law, such as constituted rents and other perpetual and life rents (see 199, Rents), except those resulting from emphyteusis (see 186, Emphyt.), obligations and actions having moveables for their object, and shares or interests in financial, commercial or manufacturing companies, even when such companies possess immoveables. (1).

Moveables are not governed by territorial laws, i. e., by the law of the place where they are situated, but by those of the domicile (see 44, Dom.) of the person possessing them. This must never be lost sight of in dealing with acquisitions, alienations and transmissions of such property. Nevertheless, local laws of public order, and pertaining to sovereignty, such as questions of jurisdiction of the courts over lawsuits, procedure, and modes

(1) It may be remarked that nowadays considerable fortunes may be entirely moveable. Our laws, which were made for times when moveables formed only a very negligible part of private property, are less solicitous of their preservation than in the case of immoveables. This is seen particularly in matters of minority, where tutors may freely deal with the moveables of their pupils, but have not the same liberty to alienate their immoveables.

of execution and attachment, evidently apply to moveables.

The term "furniture" is applied to all things designed to furnish and ornament apartments, such as carpets, beds, seats, clocks, china and other objects of a like kind. It also comprises statues and pictures, but not collections of pictures which are in galleries or particular rooms. The same rule applies to collections of china and other articles.

119. **Ownership.**—To be owner of a thing is to possess it to the exclusion of everybody, and to be free to enjoy it and dispose of it in the most absolute manner, provided no use is made of it contrary to law.

No one can be compelled to give up his property. Nevertheless it is permissible, for purposes of public utility, as for instance for the construction of a road, to expropriate, i. e., to oblige a person to transfer his property, on being indemnified.

Ownership in a thing gives the right to all it produces, and to all that is joined to it as an accessory, so as to form with it a complete whole.

The fruits arising from a thing may be natural, industrial or civil.

They are natural when they spring spontaneously, and without the intervention of man, such as wild fruits, and the increase of animals.

Fruits are industrial when they are due mainly to the labour of man, and require his work for their development, such as crops, and everything requiring cultivation before growth.

Lastly, civil fruits are a product derived from a thing which could not increase naturally, but which, under an agreement between the parties, returns revenues, such as rents of houses.

Natural or industrial fruits, so long as they are not detached from the thing which produced them, are considered as sharing the nature of such thing; thus, fruits hanging to a tree, or standing crops, are immoveable. As soon as they are detached, on the contrary, they become moveable.

The right of ownership therefore includes the possession and the enjoyment of the thing; it is complex and may be divided into parts; its constituent parts are the following:

1. The simple possession of the thing; this is known as the naked ownership of a thing;

2. The enjoyment of a thing and the collection of its fruits; this may constitute a right of use (see 127, Use, Hab.), of usufruct (see 124, Usufr.), or of habitation (see 127, Use, Hab.), according to circumstances.

These constituent parts, or dismemberments, of the right of ownership are not always vested in the same person, and different persons may own them respectively.

Ownership confers upon him who possesses it, either in part or in its entirety, the right of claiming the thing, and of taking possession of it wherever it be. This is what is meant by having a real right in a thing, as distinguished from a personal right, which is only the power of compelling a person to deliver a thing to us.

Under our Code, all property has an owner. It is either the property of the Crown (see 120, Prop.

o fthe Crown), or of municipalities (see 121, Prop. of Mun.), or of other corporations, or, lastly, it belongs to individuals.

120. **Property of the Crown.**—The property of the Crown is divided into property belonging to the public domain, and property of the Crown properly so called. The former includes everything which the entire nation is free to use and enjoy, and which cannot be alienated, such as roads and highways maintained by the government, navigable and floatable rivers and streams (1), as well as their banks, ports, harbours, and roadsteads, etc.

The latter, or property of the Crown properly so called, comprises those things, the destination of which is not incompatible with private ownership, and which the Crown may dispose of to private individuals, such as Crown lands, which are granted to settlers.

In the latter category are included properties without owners, vacant estates, those of persons dying without representatives, or whose successions are abandoned.

121. **Property of Municipalities.** — The property of cities, villages and other municipalities, is divided like that of the Crown into public property and private property of the municipality, accordingly as it is destined for public or private use. In the former class are comprised streets, roads, public works, etc.

(1) By floatable streams is meant those on which rafts of wood or timber can be floated. Watercourses which are only floatable in the sense that logs are cast into them without being fastened together, and are left to be impelled by the current, are not classed among floatable streams.

122. **Treasure.**—The ownership of a treasure, i. e., of any buried or hidden thing, of which no one can prove himself owner, rests with him who finds it in his own property; if the treasure is found by chance, by a person other than the owner of the property, it belongs half to him who found it and half to the owner of the property.

123. **Things Lost.**—Things lost and found by other persons, or the proceeds of their sale, if they have been alienated, continue to belong to their original owner; but the latter when he claims them, must pay an indemnity to the person in whose possession he finds them, for the costs of their preservation, etc. When the things are not claimed they belong to the finder; but if anything is found on the sea or seashore, without being claimed by the owner, it belongs to the Crown.

In many municipalities by-laws are enacted regulating the notices to be given, the right of the owner to reclaim his property, and the indemnity due to the finder.

Special laws exist as to things found in or upon the River St. Lawrence, or the navigable portions of its tributaries.

CHAPTER XII.

DISMEMBERMENTS OF THE RIGHT OF PROPERTY, AND SERVITUDES.

124. **Usufruct.**—Usufruct is a dismemberment of the right of ownership. It confers on him who possesses it the right of enjoying a thing in the same way as if he were himself the proprietor, but subject to the obligation of preserving the substance and handing it over later to the owner.

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

Usufruct may be established by law or by the will of man, upon property of all kinds, moveable or immoveable.

125. **Rights of the Usufructuary.** — The usufructuary therefore appropriates the natural, industrial and civil fruits of a thing.

He may sell or alienate the usufruct to the same extent as he himself exercises it.

126. **Obligations of the Usufructuary.**— The usufructuary can enter into the enjoyment of his right only after having made an inventory. He must use, in regard to the thing over which his enjoyment extends, the care of a prudent administrator, and make such repairs as are necessary for its maintenance. Nevertheless, the greater

repairs are not chargeable to him, but to the proprietor. However, the usufructuary must pay to the latter interest on capital sums expended, so long as his enjoyment lasts.

If the proprietor and the usufructuary must each, in the proportion we have stated, contribute to the maintenance of the thing over which the usufruct exists, the obligation nevertheless ceases when the thing completely perishes from age, or is otherwise destroyed by a fortuitous event. Neither of them is then obliged to restore it.

The usufructuary must give security, i. e., give a guarantee for his good administration to the proprietor, unless the instrument creating the usufruct exempts him in express terms from doing so. Nevertheless, the vendor or donor who has divested himself of a thing, reserving the usufruct to himself, is not obliged to give security.

When the usufructuary is unable to give security, the moveable and immoveable property of which he has the enjoyment is leased or sequestrated ; sums of money comprised in the usufruct are invested ; provisions and other moveable things which are consumable by use are sold, and their proceeds are likewise invested. The interest of such sums of money, and the rent from leases, belong to the usufructuary. Nevertheless, he may, on the simple security of his oath, retain such moveables as are necessary for his own use.

When a person receives by universal title the usufruct of an estate, he must manifestly bear a part of the debts, corresponding to the revenues he obtains. The usufructuary and the proprietor contribute as follows:—the proprietor pays the

amount of the debt, and the usufructuary pays interest on it, so long as his enjoyment lasts, in proportion to his right, as for instance, a quarter or a half.

If the usufructuary is willing to advance the amount the proprietor should contribute, the principal is restored to him at the end of the usufruct, without interest.

A usufructuary who abuses his enjoyment, and allows the things subject to the usufruct to be impaired, may be deprived and dispossessed of his right; in which case the proprietor enters into possession of his property, subject to such obligation as the courts may impose, of paying a certain revenue to the usufructuary.

127. **Use and Habitation.**—A right of use is a right granted to a person to enjoy a thing for his requirements and those of his family ; when applied to a house, it is called a right of habitation.

Rights of use and habitation are established only by the will of man. They differ from usufruct, in that such rights are entirely personal to him who possesses them ; he who has a right of use can enjoy such fruits only so far as is necessary for his own needs and those of his family; and he cannot alienate them. If then, a person has been given the use of two horses and the right of living in a house, he cannot lease his right.

If a person entitled to a right of use takes all the fruits of an estate, or occupies the whole of the house, he is liable for the expense of cultivation, the cost of repairs, and the payment of taxes, as the usufructuary is. If he acquires only a part of the enjoyment, he contributes to the expenses in the same proportion as he enjoys.

128. **Servitudes.**—A servitude is a limitation on the right of ownership. It consists in a charge imposed on one real estate for the benefit of another belonging to a different proprietor.

The land burdened with a servitude is called the servient property; while that to which the servitude is due is called the dominant.

When a servitude is established in favour of land, it is called rural; when in favour of a building, it is called urban. It matters little, moreover, whether these different servitudes are exercised in the city or in the country; for example, the passage which I have a right to use over my neighbour's land, to bring water from the river, is a rural servitude, while the window which I am forbidden to insert in the wall contiguous to my neighbour's dwelling is an urban servitude. Servitudes take their name from the dominant property, independently of the nature of the servient.

Servitudes are established in three different ways:

1. They arise from the natural situation of property;
2. They are established by law;
3. They arise from the mere will of the proprietor who, in dividing his property, burdens one part of it in favour of the other.

129. **Servitudes Arising from the Situation of Property.**—These servitudes certainly owe their existence to the law; but they derive their special character from the nature of the property, the lay of the land. Thus, the owner of land on a lower level is obliged to receive the

waters which naturally flow on to his land from a neighbouring property on a higher level. He must not construct a dam to prevent their flow.

A person whose land is crossed by or borders on a running stream, not forming part of the public domain, may make use of it, and even alter its course, but he must allow it to flow on, and not cause prejudice to those farther on who have the right of using it.

130. **Servitudes Established by Law.** — Servitudes established by law have for their object public utility or that of individuals. Some of these servitudes are governed by particular regulations, which vary according to the needs of each locality. Thus, municipal laws very often deal with them.

It is by virtue of a servitude established by law that proprietors of lands bordering on navigable and floatable rivers and streams are obliged to leave to passers the foot-road or tow-path.

Under this head are also classed provisions relating to common walls and ditches. Thus, a proprietor who has built a wall on the limit of his property is always obliged, when his neighbour so requires, and on being idemnified, to render such wall common, i. e., to transfer half of its width.

It is forbidden to place privy pits or to make deposits of corrosive substances next a common wall.

Trees cannot be planted along the line of separation of two properties. They must be removed and placed at a suitable distance; if it happens that the branches or roots cross the line which it is forbidden to pass, they must be curtailed.

One neighbour cannot, without the consent of the other, make any window or opening in a common wall, even with fixed glass, and fastened with plaster so as not to open.

One neighbour cannot have direct views or prospect windows, or galleries, balconies or other like projections, over the land of the other; they must be at a distance of six feet from such land. Nor can he have side openings or oblique views, unless they are at a distance of two feet.

Roofs must be constructed in such a manner that the rain and snow from off them may fall on the land of the proprietor, without his having a right to make it fall on the land of his neighbour.

A proprietor whose land is enclosed on all sides by that of others, and who has no communication with the public road, may claim a way upon that of his neighbours for the use of his property, subject to an indemnity proportionate to the damage he may cause. But he must for that purpose choose the shortest way, and that which brings him most directly to the public road. Nevertheless, if the land become so enclosed only by virtue of a subdivision of the land made by the original proprietor, the latter may determine on what part of such property the servitude shall be created.

131. **Servitudes Established by Act of Man.**—Everybody who divides his property may burden one part in favour of the other. A servitude is therefore created in this instance by the deed constituting it, and requires a title to exist. A person establishing a servitude is presumed to grant everything necessary for its exercise. Thus,

the right of drawing water from the well of another carries with it the right of way. He to whom the servitude is due may make all works necessary for the preservation of his right.

132. **Extinction of Servitudes.**—A servitude ceases when the things subject thereto are in such a condition that it can no longer be exercised. It revives, even after the time for prescription (see 158, Prescr.), if the things be in such a manner that it may be used again.

Servitudes are extinguished by non-user during thirty years.

CHAPTER XIII.

OF OBLIGATIONS.

133. **Obligations.**—An obligation obliges us either to give something, or to do or not to do some act.

The person who is obliged is called the debtor, and the person to whom he is bound is called the creditor.

Obligations arise from the law, or from the will of the person who is obliged.

They arise from :

1. Contracts (see 134, Cont.) ;
2. Quasi-contracts (see 141, Quasi-Cont.) ;
3. Offences (see 142, Off. Qu.-Off.) ;
4. Quasi-Offences (see 142, Off. Qu.-Off.) ;
5. The operation of law solely.

134. **Contracts.**—A contract is an agreement between two or more persons, by which one or each of them obliges himself towards another. A contract therefore originates in the will of the parties.

There are four requisities to the validity of a contract:

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

135. **Legal Capacity to Contract.**—All persons are capable of contracting, except those whose incapacity is expressly declared by law.

Those declared by law to be incapable of contracting are:

1. Minors, except in certain cases;
2. Interdicted persons;
3. Married women, when not authorized by their husbands, except in certain cases provided for by law;
4. Insane persons, and others unable to give a valid consent.

136. **Of Consent in Matters of Contract.**—The consent must be free. It need not necessarily be express; it may be only implied. But if the consent of one of the parties has been vitiated, if it was due to error, fraud, violence, or fear, the contract may be set aside in a court of law. In certain cases (as that of minors) it may also be annulled for lesion.

Error is a cause of nullity only when it affects a material part of the contract, or relates to something which was a principal consideration for making it.

Fraud is any device employed to deceive a person. Fraud is a cause of nullity in contracts, when it has been practiced by one party or with his knowledge, and when the other party would not have contracted had it not been employed.

Violence is a cause of nullity when it produces a reasonable and present fear of serious injury, whether to the party himself or to his near kindred. It is not necessary that the violence be employed by one of the contracting parties. It is sufficient for it to exist, to lead to the presumption that the consent was forcibly extorted. In these matters regard is had to the age and sex of the person, and to other circumstances.

Lesion, or the prejudice sustained by one who has made an unprofitable transaction, is a cause of nullity in contracts only in favour of minors who contract outside their legal capacity, without the assistance of their tutors.

A minor may, nevertheless, on coming of age, ratify a contract by which he suffers prejudice.

137. **Object of Contracts.**—A contract must have for its object a thing which is determinate at least as to its kind ; something to be done or not to be done, provided it be not contrary to law or good morals.

138. **Cause or Consideration of Contracts.**—A contract without a consideration, or with an

unlawful consideration, contrary to good morals or public order, has no effect; but it is not necessary that the consideration be expressed.

139. **Form of Contracts.**—A contract may be made either orally or in writing, and either in private writing or by a notarial act. In the latter case it is called authentic. The advantage derived from adopting the authentic form is the character of certainty it obtains; because an authentic act makes absolute proof of its contents between the parties who executed it, their heirs and representatives.

Certain contracts involving important interests are valid only when they are embodied in notarial form, such as contracts of marriage, gifts, etc.

140. **Effect of Contracts.**—A contract is in effect the law of the parties in regard to what is stipulated in it. It must be executed by them to its full extent, according to custom and equity. They cannot bind third parties by their contract, except their heirs and legal representatives.

Creditors may exercise the rights of their debtor arising from a contract, except such rights as are exclusively personal to him, whenever the debtor, to their prejudice, refuses or neglects to do so.

Creditors may also have acts done by their debtor in fraud of their rights set aside; but suits for such purpose must be brought by them before the expiry of a year from the date when they obtained knowledge of such acts.

141. **Quasi-Contracts.** — A quasi-contract is an act by which one or more persons are bound to one another, without any contract existing between them. Examples will show what is meant. If a payment be made to anybody in error, he to whom such payment has been incorrectly made is obliged to restore it. Again, if in a matter of urgency, I attend to a friend's business, the latter is obliged towards me, as towards a mandatary or agent (see 188, Mand.), to repay me such expenses as I have lawfully incurred in the belief that I was doing him a service.

Persons incapable of contracting may, moreover, be bound by quasi-contracts.

142. **Offences and Quasi-Offences.**—"An "offence (1) is a voluntary and unlawful act by "which one person by his act or omission wrong-"fully causes damage to another."

"A quasi-offence is the voluntary and illicit act "of a person who, not through malice, but through "imprudence or negligence, causes damage to "another."

Every person capable of discerning right from wrong is responsible for the damage caused by his acts, and by those of persons under his control and by things under his care. Thus:

1. The father, or after his decease, the mother, is responsible for the damage caused by their minor children;

2. Tutors are responsible for their pupils;

(1) Mourlon.

3. Curators or others having the legal custody of insane persons, for the damage done by the latter;

4. Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care.

Nevertheless, if the persons subject to such responsibility are able to prove absence of fault on their part, and that they were unable to prevent the act complained of, they are freed from liability.

But it is otherwise with masters and employers. The latter are in every case responsible for damages caused by their servants and workmen in the performance of the work for which they are employed.

The owner of an animal is responsible for the damage caused by it.

If a person injured by the commission of an offence or a quasi-offence dies in consequence without having obtained satisfaction, his right to sue the party who is to blame passes to his consort, and to his father and mother and children, who must bring suit within a year after his death.

143. **Obligations Resulting from the Law solely.**—These obligations arise independently of the will of the person obliged. An instance is found in the obligation on the part of a child to provide for his parents when they are in need.

144. **Inexecution of Obligations.**—Persons who do not fulfil their obligations may be proceeded against in a court of law, and compelled to do so, if that be possible, without prejudice to the damages for which they may also be liable.

Damages generally consist of the amount of the loss suffered by the creditor, and of the gain of which he has been deprived. This must evidently be construed in a reasonable sense, as ordinarily understood.

The execution of a judgment may be directed against both the moveables and the immoveables of the person condemned. In other words, when the person obliged does not fulfil his obligation, his property may be seized and sold, and its proceeds are then applied in payment of his debt, because the property of a debtor is the pledge (*gage*) of his creditors.

Sales by order of justice are effected by public bidding, and may be made of all property, except such as the law declares unseizable. (See 177, Exemp. from Seiz.)

CHAPTER XIV.

GUARANTEES FOR THE PERFORMANCE OF OBLIGATIONS.

145. **Guarantees for the Performance of Obligations.**—Generally, when a person contracts an obligation, and especially when the matter is of importance, the person towards whom the obligation is contracted requires a guarantee to insure the performance of the obligation. This guarantee may take the form of suretyship (see 146, Suretyship), hypothec (see 147, Hypothec), pledge or pawn (see 148, Pledge or Pawn).

And the law itself, in certain cases, protects the creditor by allowing him a privilege on the property of his debtor.

146. **Suretyship.**— Suretyship is the act by which a person engages to fulfil the obligation of another in case of its non-fulfilment.

The person who contracts this obligation is called a surety. The surety is not bound to fulfil the obligation of the debtor unless the latter fails to do so; and the property of the debtor must be first discussed or realized upon by suit.

But a surety may bind himself jointly and severally with the principal debtor, and by the same deed as the latter. The creditor may then require the performance of the obligation by either indifferently. Nevertheless, a surety who has paid, may claim indemnity from the person whom he guaranteed, because he is subrogated to the creditor in the rights of the latter against the debtor. (See 153, Payment).

147. **Hypothecs.**—A hypothec is a right possessed by a creditor over an immoveable belonging to his debtor, by virtue of which he may cause it to be sold judicially, and obtain payment from the proceeds.

Hypothec may be legal, i. e., it may be established by law, such as the hypothec possessed by the minor on the property of his tutor for the balance due upon the tutorship account, and the hypothec of the married woman on her husband's property for the reimbursement of what he owes her.

Hypothec is judicial when it results from a judgment.

Hypothec is also conventional. In the latter case, saving certain exceptions, it can be established only by an act made in authentic form.

A hypothec does not deprive the person who gives it of his right of ownership in the thing hypothecated. He may even alienate the thing, subject, nevertheless, to the hypothec affecting it.

The same immoveable may be affected with several hypothecs, such as a first hypothec, a second hypothec, etc.

A hypothecary creditor can enforce his right against third parties only when he has made it public by registration. Registration must be made in the office of the registration division where the immoveable is situated. Hypothecary creditors rank among themselves according to the date of such registration.

148. **Pledge or Pawn.**—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, as security for his debt.

The pledging of moveable property is called pawning.

The thing may be given either by the debtor or by a third party in his behalf; it may even be placed in the possession of persons other than the creditor, but in no case can it remain in the debtor's possession.

The thing pledged continues to belong to its owner, and unless it is specially stipulated, the

creditor cannot appropriate it. It remains in his hands simply as a deposit.

Should the debtor fail in his obligation, the creditor may have the thing given in pledge seized and sold by legal proceedings, and is entitled to be paid by privilege (see 149, Priv.), out of its price.

149. **Privilege.**—Privilege, as its name indicates, is a preference allowed to certain persons for the recovery of their claims out of the property of their debtors. Privileged creditors are paid by preference even over hypothecary creditors.

A privilege sometimes covers all the debtor's property, or may attach to his moveables, his immoveables, or a particular thing.

150. **Ranking of Creditors.**—When real estate is sold, either by order of the court or in virtue of an assignment made by a debtor in favour of his creditors, the proceeds are employed in the following manner:

1. Privileged creditors are paid in full what is due them;

2. Hypothecary creditors are next paid, according to the date of the registration of their claims;

3. The other creditors, called chirographic or unsecured, are next paid.

Privileged creditors, and after them hypothecary creditors, in their order, are paid in full the entire amount of their claims, until the proceeds are exhausted. Chirographic claims rank rateably, i. e., at so many cents on the dollar, according to circumstances.

151. **Order of Privileged Claims on Moveables**:

1. Law costs and all expenses incurred in the common interest;
2. Tithes;
3. The claim of the vendor;
4. The claims of the creditors who have a right of pledge or of retention;
5. Funeral expenses, including the mourning of the widow;
6. The expenses of the last illness, including those of physicians, apothecaries, and nurses. In cases of chronic illness, the privilege exists only for the last six months;
7. Municipal taxes;
8. The claim of the lessor;
9. Servants' wages, and those of employees of railway companies employed in manual labour, and sums due for supplies of provisions.

Privileges on moveables may exist on all of them, or on some only; thus, tithes are payable out of crops only.

On Immoveables:

1. Law costs and expenses incurred in the common interest;
2. Funeral expenses, when the proceeds of the moveables have proved insufficient to pay them;
3. Expenses of the last illness, in the same case;
4. The expenses of tilling and sowing;
5. Assessments and rates;
6. Seignioral dues;
7. The claim of the labourer, workman, architect and builder;

8. The claim of the vendor;

9. Wages of servants and of employees of railway companies, engaged in manual labour, when the proceeds of the moveables are insufficient to pay them.

Among creditors, privileges on immoveables have no effect, in general, until they have been made public by registration. Nevertheless, the privileges above mentioned under the numbers 1, 4, 5, 6 and 9 are not subject to registration. Registration of the privilege of the workman, the labourer and the builder, is not required, so long as they are engaged at the work; but their rights should be made public by registration when the work is finished.

CHAPTER XV.

EXTINCTION OF OBLIGATIONS.

152. **Extinction of Obligations.**—An obligation becomes extinct:

1. By payment;
2. By novation;
3. By release;
4. By compensation;
5. By confusion;
6. By its performance becoming impossible;
7. By judgment of nullity or rescission;
8. By the effect of the resolutive condition;

9. By prescription;

10. By the expiration of the time limited by law or by the parties for its duration;

11. By the death of the creditor or debtor in certain cases;

12. And, finally, by special causes applicable to particular contracts.

153. **Payment.**—By payment is meant not only the delivery of a sum of money in satisfaction of an obligation, but the performance of anything to which the parties are respectively obliged.

Payment must be made in the place agreed upon; if there is no such agreement, at the domicile (see 44, Dom.) of the creditor; in the case of a certain specific thing, payment is ordinarily made at the place where the thing was when the obligation was contracted.

Payment must be made to the creditor himself, if he is a capable person, or to a person authorized by him or by law to receive it.

A payment made in good faith to a person in possession of titles of debt is valid.

A creditor cannot be compelled to receive any thing other than the thing due to him, even though the thing offered be of greater value.

A thing offered in payment must be of merchantable quality, i. e., of good quality; it is not necessary that it be of the best quality.

When payment is made in money, the creditor is entitled to require (but in practice this is not usually done), that it be made in gold or in Dominion notes, which are the only legal currency in the country. The debtor is nevertheless authorized

to offer silver, when the debt does not exceed $10. The necessity of making payment in specie or currency is really felt only in times of financial crises.

The expenses of payment are borne by the debtor.

Payment may be validly made by a third party, unless the creditor objects and has an interest in requiring it to be made by the debtor himself.

He who pays the debt of another may be subrogated in the rights of the principal creditor, as to the debt and the securities accompanying it. Such subrogation takes place by the operation of law in certain cases specially provided for.

If it happens that the creditor refuse to receive what his debtor owes him, the latter may, after making a tender, deposit the amount with the court. If he is afterwards sued by his creditor, he has only to plead such tender, and to prove, by the fact of the deposit being made, that he was always ready to pay the debt.

154. **Novation.**—Novation is the change of one debt into another. In other words, by means of novation the former debt disappears with its accessories, guarantees and other securities, to give way to a new obligation.

Novation may take place by a change of debtor or by a change of creditor; it may also occur when a new debt is substituted for the former debt, the parties remaining the same.

Although novation may at first sight be confounded with payment made by a third party, and accompanied with subrogation, novation has

certain features which render it very different. In novation, the debt changes its nature, is extinguished with its accessories, and guarantees of all kinds; it is replaced by a new debt, without any effectual payment having been made. In payment with subrogation, the obligation is performed in its entirety by a third person, who is subrogated in the rights of the creditor, and retains as such all recourses which the latter could exercise against the debtor, whose indebtedness remains the same.

155. **Of Release.**—Release is an act of liberality by the creditor in favour of the debtor, in whose favour he releases the obligation, without payment being made by one to the other.

Evidently such liberality, amounting to an actual gift, can only be made by persons capable of alienating their property.

When a release is granted to a principal debtor, it discharges all the sureties; but if it is only granted to a surety, he who by such a liberality thus reduces his securities, nevertheless preserves his recourse against the principal debtor.

A release may be made expressly or tacitly, as for instance, by the surrender of a title of debt.

156. **Of Confusion.**—An obligation is extinguished by confusion when the qualities of creditor and debtor are united inone person, as for instance, when one person becomes the heir of another who is indebted to him. Nevertheless, it cannot be said that confusion is strictly a mode of extinguishing obligations, because in certain cases the debt revives when the confusion ceases.

157. **Impossibility of Performance.**—Performance of an obligation by a debtor is considered impossible whenever he is prevented by irresistible force and independently of his own volition. But he must prove the fortuitous event on which he relies.

If the thing, on the contrary, has perished by the fault of the debtor, he is liable in damages.

158. **Prescription.**—Prescription is a mode of extinguishing obligations, after a certain lapse of time, during which no payment has been made. It commences to run from the time when the debt is exigible.

Prescription is also a mode of acquiring without a title the ownership of a thing, after a certain period of effective possession.

There are several kinds of prescription:—

1. The prescription by thirty years, which is the longest. All things, rights and actions, the prescription of which is not otherwise regulated by law, are prescribed by thirty years;

2. The prescription by ten years. This renders a person proprietor who acquires an immoveable in good faith under a translatory title, and who has possession of it, although in reality it belongs to another.

After ten years, architects and contractors are discharged from the warranty to which they are bound as to work they have done or directed.

The action to set aside a contract for error, fraud, violence or fear, and that to rectify tutors' or curators' accounts, are also prescribed by ten years.

3. The prescription by five years. This covers generally the prescription of natural or civil fruits, crops, rents, etc. It applies to accounts for professional services, accounts for supplies, bills of exchange, promissory notes, and commercial matters generally.

4. The prescription by three years. This takes place in favour of the actual possessor of a corporeal moveable, who acquired it in good faith, as proprietor, even when the thing was originally lost or stolen. If the thing is revendicated, before prescription is completed, i.e., before three years, the proprietor, to be again entitled to possession, must indemnify him in whose hands he finds it (see 123, Things Lost);

5. The prescription by two years. The following are governed by this prescription; wages of workmen not reputed domestics, whoare hired f or one year or more; sums due schoolmasters and teachers for tuition, and board and lodging furnished by them: and, in general, damages resulting from offences and quasi-offences;

6. Prescription by one year. By this last prescription the following rights are extinguished: actions for slander, or verbal defamation, and for libel, or written defamation, reckoning from the day that it came to the knowledge of the person aggrieved; actions for bodily injuries, for wages of domestic or farm servants, and for wages of employees who are hired by the week or month or for less than a year, and for hotel and boarding-house charges.

It may be remarked here that the continuation of the services, work, sales or supplies, does not

prevent prescription taking place for what is due, if there have been no acknowledgment or other cause of interruption.

As a general rule, all things which are considered articles of commerce may be prescribed, with certain exceptions.

Prescription runs against all persons, unless they be within some exception stated by law, or unless it is impossible for them to act or be represented, as for instance, in the case of imprisonment.

Prescription does not run between husband and wife. Nor does prescription run against a wife during marriage, in regard to rights which she can exercise only on its dissolution, such as dowers and rights of survivorship.

The prescription by thirty years, that by ten years in favour of third persons who have acquired in good faith, and that in matters of rescission of contracts for lesion, error, fraud or violence, do not run against minors and insane persons whether the latter have curators or not; but other prescriptions run against them.

159. **Interruption of Prescription.**—Prescription is interrupted when the possessor is deprived during more than one year of the enjoyment of the thing, whether by the former proprietor or even by a third party.

Interruption of prescription may be effected by any person interested, by an action at law and by other legal means.

CHAPTER XVI.

PROOF OF OBLIGATIONS.

160. **Proof of Obligations.**—The party who claims the performance of an obligation must prove it. The proof of obligations may be made by writings, by testimony or witnesses, by presumptions and by the admission of the party.

These kinds of proof have not all the same value. The proof produced must be the best of which the case in its nature is susceptible. Nevertheless, secondary proof may be tendered when it appears that the best proof cannot be produced.

161. **Proof by Writings.**—Written proof is generally required in proving obligations in civil matters whenever the amount exceeds fifty dollars.

Writings have not all the same value. A distinction must be made between authentic acts (see 162, Auth. Writ.) and mere private writings (see 163, Priv. Writ.).

162. **Authentic Writings.** — Writings are authentic when they are made or attested by a public officer in the ordinary course of his duties, such as notarial acts. As a general rule, authentic acts make proof of their contents, and can be set aside only by means of a proceeding called improbation.

163. **Private Writings.**—Private writings, as a general rule, make proof of their contents only when they have been proved. Nevertheless, when

the person against whom they are set up has himself drawn them up or signed them, he cannot evade the proof they make against him except by disavowing them, i.e., by proving he is not their author. And, until proof is made to the contrary, such writings make proof against him, his heirs and representatives. Nevertheless, when the heirs declare that they are not acquainted with the writing of the deceased, the document can no longer be set up against them, unless it is proved as in ordinary cases.

Family registers and papers do not make proof in favour of him by whom they are written; but they make proof against him in all cases in which they formally declare a payment received, or again whenever a person acknowledges himself to be indebted to another, by declaring in express terms that the memorandum which he makes is intended to cover a defect in title, in favour of a creditor.

What is written by a creditor on the back of a title, which has always remained in his possession, makes proof against him whenever it tends to establish the discharge of the debtor.

Private writings have no longer the same value when they are set up against third parties. Proof must be made of them as in ordinary cases. The writing being proved, its existence does not acquire even a certain date as against them, except from the day when it is duly established, as, for instance, when the writing has been registered, or if its substance has been set forth in an authentic act, because then it is evident that, at such date at least, the writing was in existence.

Nevertheless, in commercial matters, as soon as the writing is proved, it is considered to have made proof of its date, unless the contrary is shown.

164. **Proof by Testimony.**—Proof by testimony is that which is made by the express statement of a witness. A person may be a witness in his own behalf. The evidence of one witness may be sufficient to prove an obligation. Proof by testimony is allowed in the following cases:—

1. Of all facts concerning commercial matters;
2. When the amount does not exceed fifty dollars;
3. In cases of necessary deposits, or deposits made by travellers in an inn, or in other cases of a like nature;
4. In cases of offences and quasi-offences, and in other cases where the party could not procure proof in writing;
5. When the proof in writing has been lost or is in possession of the opposite party, or of a third party who refuses to give it up;
6. When there is a commencement of proof in writing.

All persons, without distinction of age or sex, are competent to give evidence except:—

1. Persons devoid of intelligence owing to insufficient age, insanity or other causes;
2. Persons insensible to the religious obligation of an oath;
3. Persons whom the law considers infamous, i.e., who have been condemned to certain penalties.
4. Finally, in general, husband and wife, whether for or against each other.

165. **Proof of Presumptions.**—Proof by presumption is that which is derived from a fact, which does not furnish complete proof of the other fact which is to be proved, but which renders such other fact exceedingly probable.

Presumptions are of two kinds:—

1. Those established by law;

2. Those which are left to the appreciation of the court, or the direction of the judge, and which the latter deduces from matters appearing in the course of a trial.

Legal presumptions are those which are specially attached by law to certain facts. They exempt those in whose favour they exist, from making any other proof, e.g., the receipt in my possession, proving the payment of my rent for the month of May, establishes a presumption that I have paid my landlord all the rent up to that time. Nevertheless, such a presumption is not absolute, and may be overthrown by contrary proof.

But there are presumptions known as *juris et de jure*, which cannot be contradicted. Thus, a judgment rendered by a court of last resort cannot be attacked, because the law attaches a presumption of correctness to such a judgment, and declares that it shall not be called in question.

166. **Admissions.**—An admission is a declaration by which a party acknowledges the truth of the facts alleged by his opponent.

Since proof by testimony is permitted, admissions made by a party in favour of his opponent should all the more be accepted, when there is any likelihood that such admissions contain the truth.

The law distinguishes between two kinds of admissions: judicial and extra judicial.

A *judicial* admission is that which is made by a party or by his mandatary (e.g., his advocate), whether in presence of a judge when answering questions put to him by the latter, or contained in a proceeding adopted in a suit. A judicial admission makes complete proof against the party making it, and cannot in general be divided, but must be accepted or rejected as a whole.

An *extra-judicial* admission is that which is made elsewhere than before a court, in the ordinary course of life, as, for instance, in a conversation. Such an admission must be proved according to the ordinary rules of proof.

CHAPTER XVII.

OF SALE.

167. **Of Sale.**—Sale is a contract by which one party, called the buyer, acquires from another, called the seller, the ownership of a thing, in consideration of a price in money, which the buyer obliges himself to pay to the seller.

This contract is perfected by the consent alone of the parties, even though the thing sold be not then delivered.

The sale of a thing includes its accessories, e. g., the sale of a debt involves a transfer in favour of

the buyer, of the hypothec and other securities attached to it.

When a certain specific thing is sold, the buyer immediately becomes the owner; the fruits produced by it belong to him from the time of the sale.

If the things sold are not specific, and the sale is by weight, number or measure, the buyer does not obtain the ownership until they have been weighed, counted or measured.

A promise of sale, followed by delivery, is equivalent to a sale.

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

1. Delivery;

2. Warranty of the thing sold. (See 169, Warr.)

Delivery is the transfer of the thing sold into the possession of the buyer. It is effected by handing over the thing, or by removing all hindrances which prevent the buyer from taking possession. The delivery of incorporeal things is effected by delivering the titles, by the delivery of the deed of sale, and by the use which the buyer makes of such things with the consent of the seller.

All costs of delivery must be borne by the seller. The latter is, nevertheless, not bound to deliver the thing without payment being made, unless a delay is granted. Notwithstanding such delay, if the buyer becomes insolvent after the sale, the seller is freed from his obligation of delivery, unless the buyer gives security.

169. **Of Warranty.**—The seller must procure for the buyer peaceable possession and enjoyment of the thing sold. The warranty to which the seller is bound towards the buyer has two objects; first, the eviction of the whole or any part of the thing; and second, the latent defects of the thing.

Whenever, therefore, the buyer is evicted from the thing by a hypothecary creditor whose right is preferable to his, he may have the contract of sale set aside, and the seller must restore the price to him.

Warranty exists even for latent defects which were unknown to the seller, and which would probably have hindered the buyer from completing the bargain if he had known of them. Nevertheless, if the defects were apparent, the contrary would be the case, because the buyer who had a chance to estimate them would be held to have made allowance for them in the contract.

The seller may contract himself out of the obligation of warranty, and agree with the buyer that the latter shall take the thing at his own risk and peril.

Such an agreement does not free the seller, nevertheless, from warranty for eviction caused by his own acts. In other words, he is always responsible for obstacles to the buyer's enjoyment when they are due to him. Suppose, for example, that a person sells a house which he has himself hypothecated; if the immoveable is sold without warranty, the buyer will even then have an action against the seller to set aside the contract, if he is disturbed in his possession, and even though he may have bought at his risk and peril.

It could not be otherwise in such a case, because the law does not sanction theft or fraud. When the eviction is only partial, the buyer may generally, at his option, either have the contract set aside, or claim an indemnity.

170. **Obligations of the Buyer.**— The principal obligation of the buyer is to pay the price agreed upon, at the time and place of delivery, unless a delay has been granted him.

He must bear all expenses of removal, costs of the sale and other accessory charges.

171. **Capacity to Buy or Sell.**—In general, all persons are entitled to buy and sell. But this right can, as we have already seen, be exercised by certain persons only upon conforming to certain rules, as in the case of minors, interdicted persons and married women.

The contract of sale is prohibited between certain persons because of the relations existing between them. Thus, the following persons cannot become purchasers, either by themselves or through persons interposed :

1. Husband and wife, of property belonging to either ;

2. Tutors and curators, of the property of those over whom they are appointed, except in sales by judicial authority ;

3. Mandataries or agents, of the property with the sale of which they are intrusted ;

4. Administrators or trustees, of property in their charge, whether of public bodies or of private individuals ;

5. Public Officers, of national property, the sale of which is made through their ministry ;

6. Judges, advocates, attorneys, clerks, sheriffs, bailiffs and other officers connected with courts of justice, of litigious rights which fall under the jurisdiction of the court in which they exercise their functions.

172. **Effects of Sale as Regards Third Parties.**—A sale, although perfect between the parties, may, however, not be so in regard to third persons.

Sales of moveables are valid as against third persons only when they are perfected by delivery ; therefore, the sale of a watch, for instance, made to a second purchaser, who takes possession of it, is valid as against a previous purchaser who has never had possession of it.

Sales of immoveables, and all others which must be made public by registration, or the accomplishment of other formalities, are valid as to third persons, only from the time such conditions have been fulfilled.

The sale of a debt, accompanied by delivery, although perfect between the parties, ordinarily has no effect as against third parties, until the act of sale has been served on the debtor, and a copy has been delivered to him of the act which binds him towards the new creditor. Nevertheless, the buyer is not obliged to serve the act of sale on the debtor in cases: of bills of exchange (see 240, Bills of Ex.) ; notes (see 246, Notes), cheques (see 247, Cheques) or of bankers' drafts, payable to order or bearer, and other documents of the same nature.

173. **Cancellation of the Sale.**—The cancellation of a sale may be effected by the mere operation of law, or be pronounced by a court of justice.

In matters relating to moveables, the cancellation takes place by the operation of law, and without the seller being obliged to sue for it, whenever the buyer does not, at the time of the sale, pay the price agreed upon, unless a delay is granted him.

But the sale cannot be set aside by the mere operation of law, in case of non-payment, when the buyer has taken possession of the thing.

The seller of an immoveable cannot ask that the sale be set aside because the buyer has not paid the price. He has only an action against the buyer to obtain payment of what is due him. But he may, by express agreement, reserve the right to recover the immoveable in the possession of any person into whose hands it passes.

The contract of sale may be set aside by the exercise of the right of redemption. (See 174, Right of Red.). It may also be exercised in case of eviction, i.e., when a third person deprives the buyer of the enjoyment of the thing.

174. **Right of Redemption.**—A sale with the right of redemption is one by which one party, generally under pressure of want, consents to divest himself of a thing, but reserves the right of redeeming it later, into whatever hands it may pass. If the party takes back the thing, the sale is considered never to have existed; if he forfeits it, the sale is deemed to have been perfect from the day the thing was delivered.

Contracts made in the interval are all subject to this condition.

The right of redemption cannot be stipulated for a term exceeding ten years. If it be stipulated for a longer period, it is reduced to ten years.

The delay runs even against incapable persons.

When a seller exercises his right of redemption, he must reimburse to the buyer the purchase price, the costs of maintenance of the thing, and the amount by which it has increased in value owing to improvements made to it.

175. **Licitation.**—If a thing, either moveable or immoveable, held in common by several proprietors, cannot be divided conveniently and without loss, or a partition cannot be effected voluntarily, a public sale is made of it to the highest bidder (see 176, Sales by Auction), and is called a sale by licitation.

The sale of certain property can take place only by licitation, as in the case of the property of minors.

176. **Sales by Auction.**—Sale by auction is a sale made publicly, to the highest bidder. Such sales are either forced or voluntary.

Voluntary sales are generally made by licensed auctioneers, except in certain cases specified by the Code. When a thing is adjudicated to a person on his bid, and his name is entered in the auctioneer's book, the sale is complete, and the buyer becomes owner of the thing put up to auction, subject to the conditions of sale announced by the auctioneer.

177. **Exemptions from Seizure.** — Certain property is declared unseizable by law. It cannot be sold in a forced sale. The enunciation of such property would take considerable space, and we will confine ourselves to citing a few examples. Thus, the following are unseizable : ordinary clothing and linen, belonging to the debtor and his family, and things which are the primary necessaries of life, such as stoves, cooking utensils, beds, washstands, crockery, etc., provided the total value of such effects does not exceed fifty dollars.

Certain things are declared unseizable as a general rule, but they may be seized for their purchase price or when they have been given in pawn ; such as the following : tools and implements necessary for the exercise of a trade or profession, or for working a farm, such as ploughs, plough horses or oxen, fishing boats and tackle, sewing machines, etc. ; books relating to a person's profession or trade when such books do not exceed two hundred dollars in value ; and immoveables declared unseizable by a donor, or testator, or by law, and sums of money or other objects bequeathed on condition of being exempt from seizure ; alimentary allowances and pensions, except for alimentary debts ; and ordinarily, the salary of public officers for a certain proportion, etc.

CHAPTER XVIII.

OF LEASE.

178. **Lease.**—Lease is a contract by which one person, called the lessor, binds himself to give to another, called the lessee, the enjoyment of a thing, or to render work and service to another in consideration of a payment.

179. **Capacity to Enter into Contracts of Lease of Things.**—The contract of lease may be entered into by any person capable of contracting. Incapable persons who have the administration of their property may also do so, but they are forbidden to execute leases of immoveables for a term exceeding ten years.

180. **Rights and Obligations of Lessors of Things.**—The lessor of things is obliged:

1. To deliver to the lessee the thing leased;

2. To maintain the thing in a fit condition for the use for which it has been leased;

3. To procure peaceable enjoyment of the thing during the continuance of the lease.

It follows that the lessor, during the continuance of the lease, must make all repairs to the thing leased which are necessary to secure its enjoyment to the lessee. But he is responsible only for the greater repairs, such as those to roofs, external walls, etc. Minor repairs remain at the tenant's charge. Nevertheless, the lessor may be held even for minor repairs, when they are caused by decay.

The lessor has, in order to secure the payment of his rent and the performance of the other obligations resulting from his lease, a privilege on the moveable effects which are found on the property leased, i. e., he may cause the following to be seized and sold for his benefit: the furniture of his tenant, in cases of lease of houses; agricultural implements, in cases of lease of farms; the tools in a workshop, etc. The right includes also the effects of the undertenant, in so far as he is indebted to the lessee for his rent. It extends also to moveable effects belonging to third persons, which are found on the property, with the consent, express or implied, of their owners. But the privilege of the lessor ceases from the time he is notified that such effects do not belong to his lessee. Things which are only accidentally found among the moveables subject to the privilege of the lessor may be removed and withdrawn from seizure, such as articles left in a workshop to be repaired, and clothing or jewelry placed on deposit.

181. **Rights and Obligations of the Lessee.**—The principal obligations of the lessee are:

1. To use the thing leased as a prudent administrator, for the purposes only for which it is designed, and according to the terms of, and for the purpose stated by the lease;

2. To pay the rent of the thing leased; and so as to secure his obligation in that respect, to furnish the premises with sufficient moveables.

Since the lessee must keep things in good order, he is responsible, unless the contrary is proved, for all damages happening to the thing leased. Thus,

the lessee of a house is responsible for any fire which breaks out in the premises, unless, evidently, he proves that the fire occurred independently of him, and without negligence on his part or on that of persons for whom he is responsible.

The tenant must make minor reparations, necessary for the maintenance of the thing leased. Among these are the following :

1. To hearths, chimney-backs and grates;
2. To interior walls and ceilings
3. To floors;
4. To window-glass, unless it is broken by hail or other inevitable accident, for which the tenant cannot be held;
5. To doors, windows, shutters, blinds, partitions, hinges, locks, hasps and other fastenings. Nevertheless, the lessee, as we have already said, is not liable even for these minor repairs if they have become necessary through age or irresistible force.

Unless a statement of the condition of the premises was drawn up when they were leased, the lessee is held to have received them in good order, and he is obliged to restore them in the same condition.

He may retain improvements he has made upon the thing leased, provided they can be removed without causing any deterioration, or that everything can be handed back in good condition. Nevertheless, the lessee may be compelled by the lessor to abandon to him, on receiving payment, all repairs incorporated with iron, nails, or cement, so as to form a whole with the thing leased.

The lessee has always a right to transfer his lease, unless there is an express stipulation to the contrary. He then has, in regard to the payment of rent by the undertenant, the ordinary rights which the lessor has over moveables.

The lessee is obliged, while the lease lasts, and whatever inconvenience may be caused to him, to suffer urgent repairs to be made by the lessor. Nevertheless, if such repairs take more than forty days, the proprietor must allow the rent to be reduced in a fair proportion.

CHAPTER XIX.

OF LEASE.—(*Continued*).

182. **Lease or Hire of Work.**—Lease or hire of work is governed by the laws applying to contracts, and also by municipal regulations varying according to circumstances in different municipalities.

The principal kinds of work which may be leased or hired are:

1. The personal services of workmen, servants and others;

2. The work of carriers, by land and water, who undertake the conveyance of persons or things;

3. That of builders and others, who undertake works by estimate or contract.

A feature common to all lease or hire of work is the following: the contract of personal service

can be made for a limited time only, or for a determinate undertaking. Thus, it cannot be in perpetuity, because a person cannot alienate his liberty.

183. **Carriers and Transportation Companies.**—Carriers who undertake to convey persons are obliged to receive and carry all who apply for passage, unless there is a reasonable and sufficient cause of refusal. The same rule applies to the carriage of goods.

Carriers are responsible for the loss of things intrusted to them, and any damage which may be caused thereto, unless they can prove that such loss or damage was caused by a fortuitous event or irresistible force, or arose from a defect in the thing itself. Nevertheless, they are not liable for large sums of money, or of bills or other securities, or for gold, silver, or precious stones or other articles of an extraordinary value, contained in any package received for transportation, unless it is declared to them that the package contains such money or other object of value. This rule does not apply to the personal baggage of travellers, or to the contents of trunks, when the money or other effects are only of a moderate value, and suitable to the circumstances of the traveller.

When a traveller does not convey an object to its proper destination, a distinction must be made as to whether or not there was fault on his part. A carrier is evidently responsible for all delays in delivery, when they are due to his negligence. But he is not liable for those caused by irresistible force or other similar reasons; for example, if he

is prevented from reaching his destination by a tempest, because nobody is held to impossibilities.

A carrier, for the purpose of obtaining payment, has a right to retain the things intrusted to him.

If the delivery is accompanied by payment, the lessee is presumed to be satisfied, and to have received the things in good order. He consequently loses all further recourse against the carrier, founded on alleged defective service, unless it was impossible for him, on receiving the goods, to ascertain their condition.

Railway and shipping companies generally escape from the obligations imposed on carriers by the Code; this is due to the fact that, by their charters they most frequently obtain the privilege of making special regulations as to the carriage of passengers and their baggage, which travellers who accept their services must respect and to which they are bound to submit.

And carriers, whatever may be the case with regard to other persons, may stipulate that they will not incur any liability in regard to the carriage of goods or other things. But such agreement would only result in liberating them from the presumption by which they are liable for goods intrusted to them, and would not hinder them from being condemned whenever there is proof that the damage was caused by their fault or negligence; for one person is never allowed to inflict damage on another.

184. **Of Builders, Contractors and Architects.**—Builders and other contractors may lease their services purely and simply, or they may at

the same time bind themselves to furnish the materials necessary for an undertaking, according to a contract and specifications.

The specifications are a detailed statement of the work to be performed, and of the materials to be used, with mention of the prices and of the cost of the work, etc. They instruct the parties as to the extent of the obligations which they are about to contract.

The contract, in this sense, contains the agreement between the parties.

If the builder, contractor, etc., leases his services and at the same time binds himself to supply the materials, he is bound to deliver the whole in good order. He must bear alone any loss which occurs to the thing before delivery. If, on the contrary, he leases only his services, and materials are supplied to him by the lessee, the workman is no longer liable, except for the good quality of his work. He would not be allowed, it is true, to spoil with impunity the material intrusted to him; but otherwise he is not bound to bear the losses which the deterioration of the material involves.

Architects and builders are responsible within ten years after the completion of the work, for the stability of buildings constructed by them, or for which they have made plans.

An owner may always cancel, at his own option, a contract for the construction of a building or other works, although the works have been begun and not finished, on paying the value of the works which have been executed, and indemnifying the builder, contractor, etc.

185. **Termination of the Contract of Lease.** —The contract of lease is terminated at the expiry of the time agreed upon, or when it becomes impossible for the lessor, owing to irresistible force, to continue to procure for the lessee peaceable enjoyment of the thing leased, or to furnish the services promised. Lease is also terminated by the ordinary causes for the extinction of obligations.

Certain contracts of lease expire at the time fixed by special laws. It may thus be said that, in general, leases of houses end on the first of May, and leases of farms on the first of October. Very frequently local laws regulate the notices to be given to lessors and lessees, to put an end to the lease.

When a lessee remains in possession of an immoveable after his lease has expired, the lease is renewed by tacit renewal, and holds good for another term : a month, a year, etc., accordingly as the rent is payable by the month, year, etc.

186. **Emphyteutic Leases** —An emphyteutic lease is a contract by virtue of which a proprietor who becomes emphyteutic lessor, transfers to another, called the emphyteutic lessee, the enjoyment of an immoveable, in consideration of a yearly payment, and on condition that the lessee makes improvements or on such other terms as the parties may agree upon. A lease of this kind differs from an ordinary lease, firstly as to its duration. It cannot be made for less than nine years, or for more than ninety-nine. While it is in force, the emphyteutic lessor is obliged to take

back his immoveable, and discharge the emphyteutic lessee from the payment agreed upon, whenever the latter wishes to abandon his enjoyment, unless there is an agreement to the contrary. This lease confers on the person in whose favour it is made, the rights and burdens of a proprietor, except the power to make a final alienation of the immoveable.

The emphyteutic lessee may transfer his lease to a third party, without the intervention of the emphyteutic lessor, for the term of the enjoyment to which he is entitled. The creditors of the latter may even seize the immoveable covered by the emphyteutic lease.

187. **Leases of Rural Properties.** — The lease of rural properties may take different forms, for example:

1. The ordinary lease of a farm;
2. The lease of a farm on shares;
3. The lease of cattle on shares.

The ordinary lease of a farm is that by which a lessor leases a farm to a lessee or farmer, in consideration of a rental payable in money.

In farming on shares, the lessee leases a property, and agreed to share the produce with the lessor. This contract also resembles a partnership.

A lease of cattle on shares is another contract partaking of the nature of lease and of partnership, and by it one person 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.

CHAPTER XX.

MANDATE AND LOAN.

188. **Of Mandate.**—Mandate is a contract by which one person, called the mandator or principal, commits a lawful business to the management of another, called the mandatory or agent, who, by his acceptance, obliges himself to perform it.

A mandate is either special, for a particular business, or general, for all the affairs of the mandator. Nevertheless, a mandate expressed in general terms includes only acts of administration; and the mandatary must be specially authorized to do important acts, such as those relating to the alienation of the property under his charge.

A mandate may be given in express terms or by implication.

Mandate is gratuitous in its nature, but there is nothing to prevent a remuneration being granted to a mandatary for his services.

The mandator is free to revoke the mandate at any time.

The exercise of certain professions is partly of the nature of mandate; thus, advocates and notaries, when representing their clients, act in virtue of a tacit mandate.

Brokers, factors and all persons conducting business for others are mandataries.

189. **Of the Capacity of a Mandatary.**—A mandate may be committed to any reasonable person. Emancipated minors and married women can act as such. But incapable persons can of

course bind themselves only in accordance with the rules relating to their status.

190. **Extent of the Powers of the Mandatary.**—The mandatary can bind the mandator to third persons, whenever he acts within the limits of the mandate. He also binds the mandator even when he exceeds his powers, if his acts are subsequently ratified by the mandator himself.

In certain specified cases, the extent of the powers of the mandatary is determined, not by the above rules, but by special laws, according to commercial usage. Thus, a factor who conducts commercial operations in a foreign country does not usually bind his principal towards third parties; but he contracts in his own name and binds himself personally.

191. **Obligations and Rights of the Mandatary.**—The mandatary must employ in the management of another's business, the care of a prudent administrator. Nevertheless, if he receives no remuneration for the services he renders, the degree of vigilance exacted from him is not so great as when he is salaried. The mandatary, when he is not salaried, may renounce the mandate, but he cannot thereby cause loss to the mandator. Consequently, the mandatary must notify the mandator of his resignation within a reasonable delay. If he receives payment for his services, he is responsible for the nonperformance of his contract in accordance with the general rules relating to the inexecution of obligations.

The mandatary is bound to render an account of his management to the mandator, and to return to him all he has received on his behalf, even when he has received something which was not due.

A mandatary has a privilege and a right of preference for the payment of such advances and other charges to which he is entitled, upon the things in his possession, and the price of their sale or investment, to the extent of what is due him.

192. **Of Loan.**—Loan is a contract by which one person, called the lender, agrees to give to another, called the borrower, the enjoyment of a thing during a certain time, either by gratuitous title or in consideration of receiving interest.

There are two kinds of loan :

1. Loan for use, or Commodatum (see 193, Com.) ;

2. Loan of things which are consumed by use (see 194, Loan for Cons.).

193. **Commodatum.**—Commodatum or loan for use is essentially gratuitous. This contract arises from friendly relations existing between the parties. It nevertheless creates duties and obligations between them. Thus, a lender cannot, without incurring grave responsibilities, lend a thing whose defects would prove prejudicial to the borrower.

He is likewise forbidden to trouble the latter in his enjoyment for the term stated in the contract ; nevertheless, if the lender suffer personal loss in his business by being deprived of the thing, the judge may allow him to take it back.

The borrower must carefully see to the keeping of the thing lent, but if the latter deteriorate without any fault on his part, by the mere effect of the use for which it is designed, the borrower is not responsible for such loss.

The borrower must make use of the thing solely in accordance with the intention expressed by the lender; he must see to its preservation, and pay all costs consequent upon his enjoyment. In cases of urgent necessity, he must even assume extraordinary repairs, saving his right to be afterwards reimbursed.

The principal obligation of the borrower is to return the thing in good condition at the prescribed time; and when such time is not fixed, after the thing has been used for the purpose for which it was obtained.

194. **Loan for Consumption.** — When anybody borrows a thing which is consumed by the use made of it, he must evidently obtain its ownership, in order to make such use of it, on condition of returning a like thing on the conclusion of the loan.

Nor can the lender in this case lead the borrower into error by allowing him to take possession, without warning, of a thing having defects capable of causing loss or injury.

If the thing loaned for consumption is a sum of money, it bears interest.

The rate of interest is either legal or conventional. In the former case it is fixed at five per cent.; in the latter, it varies according to the will of the parties. But certain corporations are forbidden to

demand for their loans a rate of interest in excess of that fixed by their charters. Thus, banks cannot lend at more than seven per cent.

CHAPTER XXI.

VARIOUS CONTRACTS.

195. **Of Deposit.**—Deposit is a contract by which a person, called a depositary, becomes custodian of a moveable or of an immoveable which is intrusted to him.

There are two kinds of deposit: simple deposit (see 196, Simple Deposit), and sequestration (see 198, Sequestration).

196. **Simple Deposit.**—Simple deposit is gratuitous; any remuneration would change its nature.

Moveable property only can be the object of it. In the first place, evidently, it can be made only between persons capable of contracting, for it involves obligations on both sides; but if a deposit made by an incapable person is accepted by one who is capable, the latter is validly bound towards the former.

Necessary deposit is that which takes place under an unforeseen and pressing necessity, arising from accident or irresistible force, as in case of fire, shipwreck, pillage or other calamity. The deposit made by travellers of their effects in an inn, boarding-house, etc., and like deposits by

persons ordinarily lodging there, are also considered necessary deposits.

197. **Rights and Obligations of Depositary and Depositor.**—The depositary is bound to watch carefully over the thing intrusted to his keeping, and to restore it when required to do so. He has no right to use it without the permission of the depositor, and, consequently, he is prohibited from collecting its fruits. Moreover, he must restore the thing in the state in which he received it, or whatever remains of it, when it has deteriorated otherwise than through his own acts.

Particular laws govern the liability of persons keeping hotels, boarding houses or other places of public entertainment. These persons are ordinarily bound to indemnify their guests for thefts of their property, or damages caused to it, either by domestics or other employees, or by strangers coming and going in the house. But they are not liable for valuables, unless the latter are expressly given into their custody, and are capable of being deposited in a box or other receptacle which may be fastened and sealed. Hotelkeepers and others, however, are not responsible for robberies committed by armed force, or for damages resulting from irresistible force. Nor are they responsible if it is proved that the loss or damage was caused by a stranger, or happened by the negligence or carelessness of the claimant.

The depositor is bound to refund to the depositary all expenses incurred for the preservation of the thing, and to indemnify him for all losses which the deposit may have occasioned to him.

The depositary has a right to retain things placed on deposit until he has been reimbursed what is due him. He may sell them and thus obtain payment out of their proceeds.

198. **Sequestration.** — Sequestration is distinguished from simple deposit in that it may be accompanied with a remuneration which the depositary receives as an indemnity.

Sequestration is of two kinds: conventional and judicial.

It is conventional when it has for its object a thing which is the subject of litigation, and which is voluntarily deposited with a third person, by the parties claiming its ownership, who agree that it shall be handed over to the one to whom it is awarded by the court.

Sequestration is judicial when it is made by an order of the court; and it is of little account whether the thing is a subject of litigation or not. Thus, the judge may order the sequestration of property affected with a usufruct, when the usufructuary (see 126, Ob. of the Usufr) is unable to give the security required.

199. **Rents.**—Rents are revenues which must be paid to a person either gratuitously, or in return for the final alienation of a capital sum. Such rents are either constituted rents or life rents.

A constituted rent is either perpetual or for a stated term; it is generally established by a contract, by which one party undertakes to pay to another the yearly interest on a certain amount, in return for the capital which he receives, to be retained permanently by him.

A life rent is established either upon the life of the person who receives it, or upon the life of a third party.

In any case, whether the rent be constituted or for life, it cannot be upon more than three lives in succession, nor can it extend beyond ninety-nine years, which is deemed their equivalent.

A life rent may be stipulated to be unseizable only when it is established gratuitously, i. e., by gift or by will.

A constituted rent is redeemable at the option of the debtor, if it is perpetual. The debtor may always free himself from the payment of the rent by giving to the creditor to whom it is due, a sum which is paid once and for all. He is liberated by such a payment of capital, from all obligations towards the creditor of the rent. But the creditor of the rent can never claim such repayment except:

1. If the debtor does not furnish or continue the securities which he is obliged to give for the execution of the contract;

2. If the debtor becomes insolvent or bankrupt.

In life rents, on the contrary, mere failure to pay arrears is not sufficient cause for demanding the repayment of the capital alienated; it only affords ground for a suit to compel the execution of the obligation. The debtor of the life rent cannot, on his side, free himself by the redemption of the obligation contracted by him. Notwithstanding this, if an immoveable which has been hypothecated to secure payment of a life rent is sold by judicial proceedings, or for other unavoidable reasons, the creditor of the life rent may collect its

price. But the purchaser of such an immoveable may bind himself to continue the payments of the rent, provided he gives security and guarantees the execution of his obligation.

200. **Alimentary Allowances.**—An alimentary allowance is that which is granted to a person gratuitously, to provide for his support.

It has this special feature worthy of remark, that it is unseizable, and that the creditors of him who is entitled to its enjoyment cannot seize it, unless their claims are founded on a debt contracted for purposes of maintenance, for which the allowance was instituted.

201. **Transaction.**—Transaction is a contract by which the parties terminate a lawsuit already begun, or prevent future litigation by means of concessions or reservations made by one or both of them.

Such a settlement can only be made between persons capable of contracting obligations in respect to the object of the controversy, for it may involve the abandonment by one of them of rights actually in existence.

Transaction has the authority of a judgment in last resort as regards the parties to it. And consequently the same question cannot again be raised by either, as the foundation of a new lawsuit.

202. **Gaming Contracts and Bets.**—He who gains a wager or bet has no action to recover the amount; the law does not allow any effect to such a debt. But if the amount has been paid over, he

who obtains it validly holds it and is regarded as its owner; his opponent cannot claim its repayment. It is to be remarked that these rules apply to games of chance and not to those instituted for the purpose of developing physical prowess or other useful attainments, engagements in regard to which have the same effect as an actual contract.

CHAPTER XXII.

PARTNERSHIP.

203. **Of Partnership.**—The contract of partnership is that which exists between persons who join together for the purpose of conducting any business to a successful termination.

It is essential to this contract that it be for the common profit of the partners, and that each of them contribute to it, property, credit, skill or industry.

Provided the parties do not derogate from the fundamental principles of this contract, viz., common interest and joint contribution, they may, by the deed establishing the partnership, make special agreements as to the management of the partnership property, their shares in the profits, their respective contributions, and their several liability for the debts. For instance, a person who only contributes his industry may well be freed from responsibility for the debts. But an agreement exempting one of the partners from participation

in losses is good only as between the partners, and is null as against third parties. In like manner, third persons always have a recourse against all the partners, without any distinction being made among them, for the recovery of their claims, whatever may have been the private agreements among such partners. For this reason partnership must be considered from two standpoints: the rights and obligations of the partners as among themselves, and as regards third persons (see 205, Rights and Obl. of Part.).

Partnerships, according to their nature, are of two kinds, civil or commercial (see 204, Commercial Partnerships).

Partnership may be of all the property or of all the gains of the partners; it is then called a universal partnership. It may relate only to certain determinate objects, and it is then called a particular partnership. A partnership established for a specified undertaking, or for the exercise of a trade or profession, is also a particular partnership.

204. **Commercial Partnerships.**—Commercial partnerships are those which are contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general or limited to a special branch or adventure. All other partnerships are civil partnerships.

Commercial partnerships are governed by special laws. They are of four kinds:

1. General partnerships;
2. Anonymous partnerships;
3. Limited partnerships;
4. Joint Stock Companies.

General partnerships are those known under a firm name or style, consisting ordinarily of the names of the partners, or of one or more of them.

The distinguishing characteristic of such a partnership is that each of its members may bind all the others when he acts in the name of the partnership, and that all are liable for obligations so contracted towards third parties dealing with them in good faith, whatever be the private arrangements between the partners, because the members of such a partnership may certainly, at its inception, derogate from these rules and agree, for example, that only one of the partners shall have the management of the partnership business, etc.

An *anonymous partnership* resembles a general partnership, except that it is not known under a firm name.

A *limited partnership* is composed of two classes of persons, general or managing partners, and limited partners.

Limited partners are those who simply contribute to the partnership certain sums of money from which they are to derive profits. They are thus investors in a business, but they are absolutely deprived of any power to carry on the partnership business, either as regards their co-partners or as regards third parties; in return for which they can be held for the debts of the partnership only to the extent of the amount contributed by them. General partners are those to whom the administration and direction of the affairs of the partnership are intrusted. It is not necessary that a general partner should contribute to a limited partnership any capital other than his industry and skill.

A limited partnership can be organized only by all the members signing a certificate, which must be registered, so as to inform the public of the nature of the partnership. If the partners fail to observe these formalities, the partnership is considered simply as a general one, and its members are subject to the same obligations as in that case.

Joint Stock Companies are formed either under the authority of a royal charter, or of an act of the legislature; and are known by a collective name generally derived from the nature of the business which they intend to carry on.

Members of such companies may obtain by their act of incorporation the power of associating other shareholders with themselves, up to a certain amount, and the shares of such persons are essentially transferable. The administration of the property of such companies is vested in directors. Such companies are ordinarily governed by special regulations contained in the acts constituting them.

205. **Rights and Obligations of the Partners.**—The first obligation of a partner is to contribute to the partnership whatever he has promised, and not to engage in any trade or undertaking which would deprive the partnership of the skill, industry or capital which he is bound to furnish, When there is no special agreement that certain managers or other administrators shall exclusively have the right to carry on the business each partner may act in the name of the partnership, and validly bind his co-partners; because a mandate for such purpose is held to have been given reciprocally by all.

The partners are responsible for partnership debts, both to the extent of their contributions and in their private property, except in the case of certain commercial partnerships, where they are liable only for the amount contributed.

Nevertheless, when partners are sued for the recovery of partnership debts out of their private property, the persons claiming against them can rank on the private property of the partner only after the private creditors of the latter have been paid. This seems to be the result of the just preference which is allowed to partnership creditors over private creditors upon partnership property.

Members of a partnership, whatever be their obligations to third persons, must, moreover, respect their agreements between themselves, and they are subject to the obligations resulting from contracts in general. A member of a partnership can associate a private partner with him in his own share. But the latter in no case forms part of the partnership properly so called, and cannot in any way impede the business of the latter, or take part in it.

CHAPTER XXIII.

Of Successions.

206. **What is Succession?**—To succeed a person is to replace him, continue his personality, and be seized of the property, claims and debts of the deceased.

When a person dies, his succession opens, and his property passes to his heirs. An heir may be either chosen beforehand by the deceased, or designated as such by the law. In the former case, there must be a will or testament (see 216, Wills); in the latter, there is an abintestate succession.

207. **Abintestate Succession.**—An abintestate succession is that resulting from the common law; and takes place solely by the operation of law, whenever a decedent leaves no will.

This kind of succession is divided into legitimate and irregular.

A succession is termed legitimate when the property of the deceased passes to his relatives. It is irregular when it devolves upon the surviving consort or the Crown.

208. **Order of Heirship:—**

REGULAR SUCCESSION.

1. Children.

In default thereof:

2. Father, Mother, Brothers, Sisters, Nephews, Nieces.

In default thereof:

3. Paternal Grandfather, Paternal Grandmother, Maternal Grandfather, Maternal Grandmother.

In default thereof:

4. Paternal Collaterals, Maternal Collaterals.

IRREGULAR SUCCESSION.

In default thereof:

5. The Consort.

In default thereof:

6. The Crown.

When the deceased leaves children, the latter take the entire succession of their father and mother, and divide it equally among them. In this class, representation takes place to an unlimited extent, i. e., grandchildren always take the place of their deceased parents. Children inherit by heads, and grandchildren by roots. The members of the same root then divide up equally the share coming to them.

If the deceased has no descendants, his property is divided into two parts, of which one goes to collaterals, such as brothers and sisters, nephews and nieces, and the other devolves to his ascendants in the first degree. If one of these parts does not accrue in one of the lines, it goes to the other. Brothers and sisters take equal shares. Nephews and nieces inherit by roots, when they take concurrently with brothers and sisters of the deceased. But when there are no living brothers or sisters, the nephews and nieces inherit by heads, and take the succession in their own right.

The father and mother also divide equally the share devolving on them in the succession; if one of them is dead, his or her share goes to the other. Ascendants succeed, to the exclusion of all others, to property given by them to their children and grandchildren who die without issue, when such property exists in kind in the succession. When it has been alienated, the parents take the purchase price, if it be due.

When brothers and sisters, and nephews and nieces who inherit are the offspring of different marriages, the property allotted to them is shared as follows: the succession is divided into two

parts, of which one goes to consanguineal children (brothers and sisters on the father's side), and the other to uterine children (brothers and sisters on the mother's side). Full brothers and sisters or nephews and nieces share on both sides.

When the deceased leaves no descendants, brothers or sisters, or nephews and nieces, within heritable degrees, nor ascendants in the first degree, the other ascendants of the deceased, viz., his grandfathers and grandmothers, are called to his succession, to the exclusion of all collaterals. The succession is then divided in two, one part for the paternal, and one for the maternal, line. The ascendants most closely related to the deceased in each line take equally, to the exclusion of other ascendants, because representation does not take place among ascendants. If there are no ascendants in one line, the share returns to the collateral heirs of the same line, whether paternal or maternal.

If there are no ascendants, the collaterals then succeed to the deceased. Here, again, the succession is divided into two parts, between the paternal and the maternal lines. The nearest relatives in each, coming in their own right, succeed and share equally. If there are no relatives in one line, the whole succession goes to the other.

Collaterals succeed within the twelth degree inclusively; and the count is made according to the civil law rule (see 63, Rel.). Representation does not take place among collaterals.

When there are no relatives within the twelfth degree, the succession becomes irregular, the surviving consort succeeds, and in default, the succession goes to the Crown.

209. **Requisites of Heirship.**—In order to take by succession, a person must be civilly in existence at the moment the succession or the substitution opens (see 231, Subst.); and not be declared by law unworthy of succeeding. The following persons are excluded from inheriting:

1. Persons who are convicted of having attempted the life of the deceased;

2. Persons who have brought against him a capital charge, which has been declared unfounded;

3. Persons of full age who have not disclosed to the authorities the name of the murderer of the deceased, when it was within their knowledge; nevertheless, an ascendant, descendant, brother or sister, uncle or aunt, nephew or niece of the criminal, or persons connected with him by affinity in the same degrees, are not bound to denounce him, nor is his consort.

210. **Opening of Successions.**—A succession opens in favour of the heirs at the moment of the decease of the person and at his domicile. If the heir is legitimate, he enters by law into possession of the estate accruing to him. If the succession is irregular, i.e., if the consort or the sovereign succeeds, the heir must have himself judicially put in possession before exercising his rights as such.

It is clear that a person cannot be compelled to be an heir against his will. He is always free to accept or renounce a succession.

211. **Acceptance of Successions.**—The acceptance of a succession takes place tacitly or expressly.

Tacit acceptance is inferred from acts of an heir who acts in that quality. Nevertheless, he may, without being held thereby to have accepted, do administrative or conservatory acts, urgently necessary for the succession.

An express acceptance is effected either by an authentic act in notarial form, or in any other positive manner. Incapable persons, such as minors, married women, etc., can accept a succession only with the concurrence of the persons on whom they are dependent.

A pure and simple acceptance of a succession causes all the property of the deceased to pass into the estate of the heir, subject to all the charges and obligations incurred by the deceased. The heir is, in fact, the continuation of the latter's personality, and he becomes liable, in his private property, for the debts included in his inheritance. But the law, by means of benefit of inventory (see 212, Ben. of Inv.) greatly mitigates this unlimited liability of the heir for the debts of the deceased.

212. **Of Benefit of Inventory.**— Benefit of inventory is a privilege allowed by law to an heir, by which he may, on inheriting, preserve his own estate intact and distinct from that of the deceased and limit his responsibility for the debts of the latter to the amount of the property received by him from the succession. To enjoy this privilege, the heir must observe certain formalities. Thus, to be entitled to it, he must make application therefor by petition to the court of the place where the succession opens, and the judgment granting his application must be registered. The benefi-

ciary heir must make an inventory of the property of the succession, following the prescribed rules. Any voluntary omission by him, of a single object belonging to the succession, deprives him of his right to the privilege, and is considered as an arbitrary act on his part, equivalent to an unconditional acceptance. This provision is enacted in the interest of the creditors of the deceased. The beneficiary heir must give public notice to such creditors to file their claims. This notice is ordinarily given through the newspapers. The beneficiary heir recovers, concurrently with the creditors, payment of all sums due by the deceased.

The beneficiary heir is, indeed, constituted administrator of the succession; and he cannot arbitrarily dispose of the property composing it until as he has paid in full all the debts of the deceased. He must render an account of his management to the creditors.

The law allows the heir three months from the opening of the succession to make an inventory, and forty days in addition to deliberate and decide whether to accept or renounce the succession. The delay may, notwithstanding, be extended so long as the heir has not renounced his rights, or performed any act of unconditional heirship.

213. **Rights and Obligations of Heirship**—The principal obligation of the heir is to pay the debts of the deceased. If several persons inherit together, they are bound to pay the debts of the deceased in proportion to their shares. No person is obliged to remain in undivided ownership, and the partition of a succession may always be demand-

ed. Thus, when two persons receive a house, they may always demand its partition. When all the heirs are of age, the partition may be made voluntarily; the law always tends to preserve the property of a succession in kind. But if the parties cannot agree, or if there are minors among them, the partition is affected judicially. When a partition is made in kind, the party is presumed to have possessed the part allotted to him from the time the succession opened. Heirs must warrant one another against any eviction proceeding from a cause previous to the partition, relating to the lots assigned to each of them (see 169, Warr.). In order to preserve equality among them, heirs who accept a succession must return to it all gifts and other advantages received by them gratuitously, whether directly or indirectly, from the deceased before his death.

Nevertheless, if such advantages conferred on heirs were stipulated to be exempt from return, they may retain them. When the things given no longer exist in kind, return must be made by giving their equivalent or by taking less.

A return is made in favour of heirs exclusively; consequently, creditors of the deceased, or of the heirs, are not entitled to demand it.

It must be noted that costs of food, maintenance, education, apprenticeship, marriage and wedding presents, are not subject to return.

214. **Renunciation to Successions.**—An heir is always free to renounce a succession devolving on him; but renunciation is not presumed, and must be made in an express manner, either by a notarial act, or by a judicial declaration. So long

as a renunciation has not been made, the heir continues to have an option to accept, which he may exercise at any time.

An heir who renounces is not represented; thus, children cannot take a share refused by their father. The share so refused accrues to the coheirs. If all renounce, the property passes to the next degree.

215. **Rights of Creditors on the Property of a Succession**—The creditors of the deceased, according to the rank of their claims, must be paid out of the property of the succession. When the heir has accepted purely and simply, their claims are exigible even from the private property of the latter; if the heir has obtained benefit of inventory they can claim only to the extent of the property of the deceased. The creditors of a succession may obtain a separation of property so as to prevent the heir from confusing the property of the deceased with his private estate. They may adopt this proceeding to protect their claims in case the heir is insolvent, and be paid out of the property of the succession by preference over the private creditors of the heir.

The creditors of the heir may on their side protect themselves by invoking benefit of inventory, up to the amount of their claims. They may even, if the heir renounces the succession to the detriment of their rights, have such renunciation set aside to the same extent.

But who should fulfil the obligations of the deceased when a succession remains vacant, or, in other words, when nobody claims it?

If an heir is always free to accept a succession which he has not renounced, the rights of third parties cannot, nevertheless, remain in suspense indefinitely. Therefore, after a certain delay, the creditors are entitled to demand that the succession be declared vacant, and that a curator be appointed to the property of the deceased. They may then file their claims with the curator, in order to be paid. If an heir afterwards claims the ownership of a vacant succession, he cannot prejudice the rights legitimately acquired by third parties.

CHAPTER XXIV.

OF WILLS.

216. **Of Wills.**—A will is an act intended to take effect at the death of the testator, by which he disposes of the property belonging to him at the time of his decease. A person who disposes of his property by will chooses an heir, who takes the title of legatee.

All persons of full age, including married women, have the right to make a will. The alienation of this right is prohibited, and it lasts up to the time of the decease. Therefore, a subsequent will can always revoke a prior one. And again, a gift of future property, or in contemplation of death, cannot be validly made, unless, by way of exception, in a contract of marriage (see 229, Gifts by Cont. of Mar.); for a promise of such a nature

would virtually be a disposal of future property, and a restriction of the liberty of willing.

The order of succession is not necessarily set aside by a will, but it is modified in so far as there are express clauses to that effect; and, consequently, property not disposed of by the testator goes to the natural heirs, as well as lapsed legacies.

The law recognizes three kinds of wills:

1. The authentic will (see 217, Auth. Will);

2. The will made in the form derived from the law of England (see 218. Wills made in Form derived from Laws of Eng.);

3. The holograph will (see 219, Hol. Wills).

An authentic will makes proof of its contents in the same way as all other acts of that nature. It is otherwise with the other two forms, the existence of which may be more easily contested. Nevertheless, holograph wills and those made in the form derived from the law of England must be presented for probate, by any interested party, to the court or prothonotary of the district where the deceased had his domicile, or, if he had no domicile, of that district in the Province of Quebec where he died. If he dwelt outside the Province at the time of his decease, but was formerly domiciled and left property therein, probate of the will may be granted in the district where such property is situated, if the will is valid under our law. Thereafter, such wills make proof of their contents in the same way as authentic wills, until they are set aside upon contestation.

217. **Authentic Wills.**—An authentic will is one made before a notary and two witnesses, or before two notaries only.

The testator, in their presence and with them, signs the will or declares that he cannot do so, after it is read to him, in the presence of the persons above mentioned.

The witnesses must be of full age and of the male sex. Legacies cannot be made, in such a will, to notaries or witnesses attesting it, or to their consorts or relatives in the first degree. But a testamentary executor is not prevented from acting as a notary or witness to such a will, provided he is not benefited. Notaries are forbidden to receive wills made by their relatives or connections by affinity in the direct line, or to the degree of brother, sister, uncle and nephew. These restrictions do not exist in the case of witnesses; notaries cannot take, as witnesses to such acts, their clerks or servants.

218. **Wills in the Form Derived from the Law of England.**—Wills made in the form derived from the law of England must be drawn up in writing; it matters not by whom, provided the act be signed at the end with the signature or mark of the testator; the testator may even authorize a person to sign in his place. He must acknowledge the signature to his will in the presence of two witnesses together, who attest and sign the instrument immediately. Such witnesses may be women. As in the case of the authentic will, every provision conferring advantages on their consort or relative to the first degree is null and con-

sidered as not written, but does not affect the existence of the will.

A testamentary executor may be a witness if he is not benefited.

219. **Holograph Wills.**—A holograph will is one wholly written and signed by the testator, and is subject to no particular form. A will which is null in one form may be valid as made in another form, if it contains all the requisites of the latter.

220. **Capacity to Give and Receive by Will.** — All persons of full age and sound understanding, without distinction as to sex, may make a will; and only the following persons do not possess this power, viz.:

1. Minors (see 93, Min.), even with the assistance of their tutors;

2. Persons interdicted (see 109, Int.), for imbecility, insanity, or madness.

A will made by a person interdicted for prodigality, subsequently to such interdiction, may be upheld or set aside according to circumstances.

The capacity to make a will is determined according to the time the will was made, without regard to causes of incapacity supervening afterwards.

All persons possessing civil capacity are capable of receiving by will, provided they be in existence or be conceived at the time the succession opens, i. e., the death of the testator. When the effect of a legacy remains in suspense, after the decease, either owing to a condition, or in the case of legacies to children not yet born and of substitutions (see 231, Subs.), such capacity is determined according to the time when the right opened.

Corporations and persons in mortmain can receive by will according to the extent of their powers to hold property.

221. **Legacies.**—Legacies are universal, by universal title, and by particular title.

Universal legacies confer on the legatee the universality of the property of the deceased. They may be made in favour of several persons jointly, and, in such cases, the shares of any who renounce accrue to the others.

Legacies by universal title confer on the legatee an aliquot part of his succession, as for instance, a third, a fourth, or a universality of the property, such as all the moveables belonging to the deceased.

Legacies by particular title are those of special determinate objects, and do not include a universality of property.

222. **Rights and Obligations of Legatees.**—Universal legatees and legatees by universal title have, according to their share in the succession, the same rights and obligations as the heir properly so called. As in the case of the latter, their property is confounded with that of the deceased, and they are responsible for his debts, including particular legacies, in their personal property. As in the case of heirs (see 213, Rights and Ob. of Heirs), they enjoy benefit of inventory, and have the same delays to accept or renounce the succession; and creditors may exercise against hem all actions which they would have had against the heir properly so-called.

A legatee by particular title, to whom the deceased has bequeathed a specified thing, must not be assimilated to an heir. He rather resembles a creditor of the succession (see 215, Rights of Crs. on Prop. of a Succ.). Like the latter, he has a claim against the universal legatee and the legatee by universal title, to obtain payment of his legacy and he has a right to a separation of property. Nevertheless, the creditors of the testator are in all cases preferred to particular legatees.

The legatee of a particular thing takes it from the succession; and the other legatees by particular title are then paid concurrently.

If a particular legacy is subject to a hypothec, or a usufruct, or a servitude, or to any other obligation, these charges are borne by the particular legatee, unless the testator has exempted him from so going and imposed such obligation on the universal legatees or legatees by universal title. When the extent of the obligations attached to a legacy are uncertain, a particular legatee may obtain benefit of inventory.

A legatee may receive a thing on condition that he apply it for a benevolent purpose in accordance with the intention expressed by the testator, and in such a case he is called a fiduciary legatee, and is subject to the obligations of an administrator. He must manage the property intrusted to him as a prudent administrator, and render an account of his management.

It is lawful for the testator to make special provisions respecting the rights and obligations of legatees among themselves. But, whatever they

be, such particular provisions are valid only as among the legateees, and in no way diminish the rights and securities given by the Code to third parties, over the property of the succession.

The right of the legatee to the thing bequeathed to him remains open for him as in the case of the heir, so long as he has not renounced it. This right is transmissible to his heirs and legal representatives, just as rights of succession which arise by law only.

223. **Testamentary Executors.**—A testator may name one or more testamentary executors to administer his property after his death, and to carry out his last wishes. He may prescribe the method of replacing them in such manner as he deems proper.

The duties of an executor consist in managing the estate of the deceased as a prudent administrator. He must obtain probate of the will, or see to its registration. He attends to the obsequies of the deceased, and must cause an inventory to be made of the property of the succession. His responsibility is almost the same as that of tutors, curators and other administrators. He pays the debts and discharges the particular legacies, with the consent of the heirs or the authorization of the court. The executor must render an account of his management to the heirs.

All persons of full age, without distinction as to sex, are qualified to act as testamentary executors. Nevertheless, married women cannot accept the position unless authorized. Emancipated minors can also act whenever the object of the testa-

mentary execution is trifling in comparison with their means.

An executor may refuse the position offered to him, but if he accepts it, he cannot afterwards refuse to act unless he is judicially authorized for that purpose.

Unless the testator so exacts, an executor is not bound to make oath, or to give security. He acts out of mere goodwill, and without recompense. Nevertheless, nothing prevents a testator from attaching a salary to the office of executor, or from modifying his responsibility in any way.

He may even be exempted from rendering an account.

When several executors are named jointly, they act together. Renunciation by one of them does not involve the retirement of the others. Therefore, if one or more refuse, he who accepts may do all acts which would otherwise have been done by all together. It very often happens that one of the heirs is also chosen as testamentary executor; the two qualities are not incompatible.

224. **Revocation of Wills.**—A will may always be revoked.

A subsequent will revokes one made previously to its date, so far as the provisions of the second will are not compatible with those of the first. A will may also be revoked expressly, by the declaration made by the testator in notarial form or otherwise. A change of will on the testator's part may also be inferred from his acts, as when he destroys, tears or erases a holograph will, or one made in the form derived from the law of England.

A suit for the revocation of a will or legacy may also be maintained because of the legatee having participated in the death of the testator, or because of a grave insult to his memory, as in cases of legitimate succession (see 209, Req. of Heirship).

CHAPTER XXV.

GIFTS OR DONATIONS.

225. **Gifts or Donations Inter Vivos.**—A gift or donation is a contract by which a person divests himself gratuitously of his property, in favour of another, whose acceptance is requisite to make the contract perfect.

The effect of a gift *inter vivos* is to deprive the donor of his property immediately, in favour of the donee; consequently, only property owned at the time can be given. All gifts of future property are null, except those made by contract by marriage (see 229, Gifts by Cont. of Marr.).

A donation is perfect by the mere consent of the parties, without actual delivery being necessary. Nevertheless, it must be accepted during the lifetime of the donor, and while he is still capable of giving.

Acts of gift *inter vivos* must be notarial, except in certain localities. The acceptance must be made in the same form. Nevertheless, a gift of moveables, accompanied with delivery, may be made and accepted in private writing, or by oral agreement.

A donation is not always pure and simple. It may be made subject to conditions which make it fortuitous and uncertain. Nevertheless, a donation which is stated to be revocable at the mere will of the donor is null.

A proprietor may transfer only a dismemberment of the right of ownership. For example, he may retain the usufruct of his property, and alienate the naked ownership only.

A donation is universal, by universal title or by particular title, according to circumstances.

A donation may be revoked for ingratitude, by the donor or his heirs, within a year from the offence, or from the time they obtained knowledge of it:

1. If the donee has attempted the life of the donor;

2. If he has been guilty towards him of ill-usage, crimes or grievous injuries;

3. If he refuse him maintenance, regard being had to the nature of the gift and the circumstances of the parties.

226. **Capacity to Give and Receive.**—The capacity to give and to receive must exist simultaneously, both on the part of the donor and of the donee, at the time of the making and of the acceptance of the gift, except in the case of gifts by contract of marriage in favour of the children to be born of the proposed union, and in cases of substitution.

All persons exercising their rights are capable of receiving a gift. Tutors and curators may accept for their pupils. Married women require the authorization of their husbands to accept.

Any person of full age and sound understanding may dispose of his property by donation. A married woman cannot, however, unless with her husband's authorization. A minor has no capacity to make a gift, except by contract of marriage, in favour of his future consort.

An emancipated minor may make gifts of trifling importance, in comparison with his fortune.

Tutors, curators, or other administrators, are prohibited from disposing gratuitously of property entrusted to them, except things of small value, in the interest of their pupils or charges.

Certain persons, while enjoying in a general way the power to make or receive gifts, are, nevertheless, deprived of that right in certain cases. Thus, consorts cannot confer benefits on each other during marriage ; a minor, or any person under the authority of another, cannot make gifts to his tutor or curator before the latter has rendered him an account of his management. Nevertheless, if the tutor is an ascendant, this restriction no longer exists.

Gifts *inter vivos* made by a donor in favour of any person with whom the donor has lived in concubinage, or to incestuous or adulterine children, are limited to alimony.

227. **Rights and Obligations of the Donee.** —The gratuitous nature of gifts does not prevent certain obligations from attaching to the donee.

In this respect we must distinguish universal gifts and gifts by universal title from those which are only by particular title. In the two former cases the donee becomes responsible as a legatee

would be for the debts due by the donor when the gift was made. He enjoys benefit of inventory, and can even free himself from the debts by rendering an account and surrendering all property received by him.

The obligation to pay the debts of the donor can be restricted or enlarged by the act of gift.

The donee by particular title does not incur responsibility for the debts; but the thing is of course given to him without warranty, whence it follows that he may be lawfully evicted from it by a third person who acquires it and whose right is prior to his.

Nevertheless, the donor must act in good faith; and if the thing given is burdened with incumbrances owing to his acts, he must repay to the donee the amount of any such debt which the latter pays.

228. **Rights of Creditors.**—The creditors of the donor may obtain the annulment of a gift made in fraud of their rights, if at the time of such gift, their debtor was insolvent. Insolvency is always presumed, when the gift is made within a certain period, fixed by law, before the insolvency of the donor. The creditors of the donor may also protect themselves against the insolvency of the person to whom the gift is made, by provoking a separation of property, as in cases of succession. (See 215, Rights of Crs. on Prop. of a Succ.)

The creditors of the donee, in their turn, are protected by benefit of inventory, which they may obtain when the donee neglects to do so (see 215, Rights of Crs. on Prop. of a Succ.)

229. **Gifts by Contract of Marriage.**—In gifts by contract of marriage, a distinction must be made between gifts of present property and gifts made in contemplation of death.

The former are governed by the rules applying to gifts in general, with a few slight modifications. Thus, advantages may thereby be conferred on persons not yet in existence, such as children to be born.

Gifts in contemplation of death are only allowed, as we have seen, in contracts of marriage, They may be made by any relative or stranger in favour of the future consorts or the children to be born to them. Donations in contemplation of death can also be made by an ascendant to the brothers and sisters of the future consort, provided some advantage is conferred at the same time on the latter, by the contract.

A gift in contemplation of death does not result at once in divesting the donor of his property, but it may be assimilated to a promise of succession. When the time comes for the donee to take, i.e., at the decease of the donor, he may make option between acceptance and rejection, accordingly as the gift in contemplation of death is a benefit or a burden, contenting himself with such property as he may acquire as present property. His position resembles that of the heir to the extent that he may obtain benefit of inventory and has the same rights as arise at the opening of a succession.

In donations in contemplation of death, if the donee dies before his right is open, his children represent him and take in his place.

A donor who transfers future property does not divest himself, as we have said, for the present. He continues, on the contrary, to enjoy it, and may even alienate or otherwise dispose of it, provided always that he does not do so gratuitously. This is the only limitation on the exercise of his right as proprietor.

Gifts by contract of marriage are conditional upon the solemnization of the marriage.

The acceptance of these gifts is inferred from the signature of the parties to the contract. Third persons to whom gifts have been made, but who have not signed the contract, may accept before or after the marriage, according to the ordinary rules.

230. **Registration of Gifts.**—As a general rule, all gifts *inter vivos*, whether of moveables or of immoveables, must be registered. Nevertheless, a gift of moveables is not subject to registration when the donee takes possession of them at once and possesses them publicly.

Gifts of immoveables must be registered in the registry office of the place where they are situated; and gifts of moveables, at the registry office of the domicile of the donor at the time of the gift.

This registration is required in the interest of the heirs and creditors of the donor, and of all other interested parties, and they may, with certain rare exceptions, set up the omission of this formality, for the purpose of annulling the gift. The donor, and the donee, and his heirs, are not entitled to set up the failure to register.

231. **Substitutions.**—In ordinary language, a substitution is a provision made by a gift *inter*

vivos or by will, by virtue of which one person, called the institute, receives property for his own enjoyment, on condition that he afterwards hands it over to another, called the substitute. A substitution cannot extend beyond two degrees from the first, i.e., from the institute (1).

A substitution is distinguished from a donation *inter vivos* or by will:

1. In regard to the capacity of those in whose favour it is made;

2. In regard to the right of enjoyment of the thing substituted;

3. Finally, it gives rise to obligations on the part of the institute, intended to safeguard the rights of the substitutes.

A person who establishes a substitution may revoke it, so long as it has not been accepted by the substitute. But in such a case the property accepted by the institute does not return to him who disposed of it gratuitously; such property accrues finally to the institute, who is considered to have received it purely and simply.

232. **Rights and Obligations of the Institute.**—An institute who takes by gift *inter vivos*, or by will, is subject, so far as his capacity is concerned, to the ordinary law governing gifts and wills.

It is the same with regard to the formalities attending his acceptance or renunciation. The substitute may rely upon such acceptance later

(1) This kind of substitution is called, in law, a fiduciary substitution, to distinguish it from the vulgar substitution. The vulgar substitution is that by which a person is called to a gift or legacy in the second place and in the event only of its being refused by another person, to whom it is first offered.

on. On the other hand, the rejection of a substitution by the institute causes it to lapse, even so far as the substitutes are concerned.

The institute may enjoy the thing substituted as proprietor, but on condition that he take only the revenues, and return the substituted property intact. If the property consists of moveables, they must, unless there is a stipulation to the contrary, be sold and capitalized, and the institute receives only the revenues from them.

In certain exceptional cases, a final alienation of the substituted property may be permitted by the court, if it is proved that it is required in the common interest of the institute and substitute. The purchase money arising therefrom must then be employed, in conformity with the order of the judge, either in paying the debts of the substitution, or in purchasing new property.

The institute must bear the charges consequent upon the possession of the property, as a usufructuary does (see *126*, Ob. of the Usufr.) Thus, he must pay for minor repairs and interest on other repairs, while advancing the disbursements necessary for the proper maintenance of the thing. If he wastes the property or endangers the rights of the substitutes, the latter may be allowed to enter into possession by way of sequestration, i.e., by having an administrator appointed to the property in question.

233. **Rights and Obligations of the Substitute.**—It is not necessary that the substitute be in existence at the time of the act creating a substitution in his favour, but he must be born or con-

ceived, when his right opens, at the death of the institute, or at the other time fixed for that purpose.

During the enjoyment of the institute, the substitutes born and not yet born are represented by a curator, appointed to the substitution, and who acts for them whenever their interests are at stake, as at the time of the inventory or of the partition of the property. His appointment is obtained by the institute himself, or, in default of his so doing, by any person interested, as in the case of appointments of tutors to minors.

234. **Registration of Substitutions.**—The registration of substitutions is strictly required, on pain of nullity, in all cases, without exception, and even as against substitutes not born.

A substitution affecting immoveables must be registered in the office of the division in which they are situated ; and besides, if it is contained in a donation in contemplation of death or in a will, it must be registered in the registry office of the domicile of the donor or testator. If it affects moveable property, it must be registered in the registry office of the domicile of the donor at the time of the donation, or of the testator at the time of his decease.

The following persons are bound to see that the registration of substitutions is effected:

1. The institute, who accepts the gift or legacy ;

2. The substitute, who is himself charged with handing over the property to another person ;

3. Tutors and curators to institutes or substitutes, and the curator to the substitution ;

4. The husband, for his wife, who is obliged to hand over the property to another.

CHAPTER XXVI.

OF REGISTRATION.

235. **Of Registration.**—Registration is the entry in the public registers of real rights affecting immoveables and of all titles of debt subject to this formality. The publicity so given to acquired rights, is established in the interest of third parties, to protect them when they act in good faith.

Registration is effected on the demand of any person interested. It may be made at full length or by memorial. In the former case, the act is simply transcribed into the register; in the latter a memorial or summary of the act is made and filed with the registrar, for entry in the register.

Acts are entered in the registers one after another, without blanks being left between them.

Registration, to be effective, must be special, i.e., all the property affected with charges must be specially described; a general description is of no effect. Thus, in the case of the registration of the dower of a married woman, a description must be made of all the immoveables possessed by the husband and subject to the dower at the time of the marriage. If the dower afterwards extends to new property, the right over such immoveables is of effect only from the date when a declaration is

registered for such purpose, giving the date of the marriage, the names of the consorts, a description of the immoveable, the nature of the dower, and how the immoveable has become subject to it. The same rules apply to the legal hypothec of minors on the property of their tutors.

When the right is extinct, the law strictly requires that the registration be cancelled, on penalty of damages against the party bound to do so. This obligation ordinarily falls upon the creditors.

236. **Effects of the Failure to Register.**— In order that a registration be really effective, all obligations subject thereto must be entered in the registers, on pain of nullity as against third parties.

The effects of the failure to register are not mitigated even as against incapable persons, married women, minors, etc.

Undoubtedly, the husband and the tutor must, on behalf of the wife and the pupil respectively, and as their first duty, register the rights of persons under their authority; and they are personally liable for the fulfilment of their obligation in this respect. But the failure attributable to them in that regard will none the less have effect as against the incapable persons, whose rights suffer the ordinary consequences caused by failure to register. Therefore, it is of the utmost importance that everybody should understand the absolute necessity of registration for the preservation of certain rights.

It may be remarked that registration does not interrupt prescription (see 158, Prescr.

237. **Registry Offices.**—A registry office is established at the chief place of each county, and in each registration division constituted by law. This office is under the direction of a registrar. It is open every day, Sundays and holidays excepted, from nine o'clock in the morning to four o'clock in the afternoon. The registrars may be consulted free of charge, by any person wishing to make searches. Extracts from the books may be obtained by any interested person, upon paying the customary charges.

The registration of real rights affecting an immoveable must be made in the office of the place where the immoveable is situated.

Immoveables comprised within the district for which the office is established are divided into lots, and numbered consecutively on a plan called the cadastre or official plan, which is retained in the office. All charges affecting the property are indicated. Immoveables affected by such charges are carefully described, according to the plans of the cadastre. This precision of description is the only way by which the public can be furnished with exact information. All titles transferring property, and charges affecting it, must be sought at the registry office.

238. **Rights Subject to Registration.**—The following are subject to registration:

1. All acts transferring the ownership, in whole or in part, of an immoveable, including rights of usufruct, use and habitation, sale, will and succession;

2. All real rights on immoveables, such as servitudes, conventional or legal hypothecs, rights of redemption, rights of return in cases of non-payment for immoveables, dower, etc.;

3. The following must also be registered: Contracts of marriage, rights to life rents, privileges on immoveables, with rare exceptions, judgments declaring the nullity or forfeiture of such rights, renunciations of community, renunciations of successions, renunciations of dower, etc.

This enumeration of the rights subject to registration is very incomplete, but it is sufficient to show that anybody who possesses a right should ascertain, without in any case being afraid of showing too much diligence in that respect, whether it is of urgent importance to him to register so as to render his title effective.

CHAPTER XXVII.

OF CERTAIN COMMERCIAL LAWS.

239. **Negotiable Instruments.**—In order to promote the circulation of money, and to diminish in certain cases the risk and dangers attendant on its carriage, negotiable instruments, or commercial paper, have taken the place of money. Among the former are bills of exchange (see 240, Bills of Ex.), promissory notes (see 246, Prom. Notes), and cheques (see 247, Ch.).

240. **Bills of Exchange.**—A bill of exchange is an instrument in writing by which one person, called the drawer, requests another, called the drawee, to pay a sum of money to another, who is the payee.

This request is ordinarily due to the fact that the drawee is the debtor of the drawer. For example: A owes me $200. Now, I buy furniture from a dealer for $150, and the latter accepts in payment my bill of exchange, which I draw up in the following terms:

BILL ON DEMAND

$150.00

Quebec, May 20th, 1900

On demand, please pay to the order of **JONES & COMPANY,** *the sum of one hundred and fifty dollars, for value received, and charge to the account of*

To RICHARD ROE,
Montreal.

JOHN SMITH.

A bill of exchange may be made payable at a time which is not specified, and it is then said to be payable on demand. Such is the nature of the bill of exchange above given.

A bill may be made payable at a specified time, whether such time be formally stated in the bill, or its period be capable of being ascertained by the parties, as for instance:

SIGHT BILL

$300.00

Quebec, May 20th, 1900

At sight please pay, to the order of **JONES & COMPANY,** the sum of three hundred dollars, for value received, and charge to the account of

To RICHARD ROE,
Montreal.

JOHN SMITH.

Accepted, Payable at the Provincial Bank, Montreal, 1st June, 1900.
RICHARD ROE.

A bill of exchange payable at a specified time may be made for a fixed date or at a certain number of days after date, as, for instance: three months after date please pay, etc. A bill of exchange, payable at a time capable of being ascertained, is usually called a sight bill, or bill payable at a certain time after sight (see bill given above). The parties fix the due date by taking the date of acceptance of a sight bill (see 241, Acc. of Bills of Ex.) and adding three days to it, the last of which is the due date.

A bill of exchange drawn on a person who is abroad is made in several copies, to provide for the loss of the documents during their transport. Each copy is numbered first, second, etc. The payment of one of them renders that of the others unnecessary.

A bill drawn abroad is subject to our laws, in so far as concerns the formalities of its acceptance and payment, if the person paying is domiciled in the Province of Quebec.

241. **Acceptance of Bills of Exchange.**—All bills of exchange which are not payable on demand are ordinarily presented for acceptance. This is explained by the fact that the holder of a bill of exchange, the payment of which he cannot enforce immediately, but only after a certain delay, is interested in finding out at once the value of the debt transferred to him. Thus, I give you a bill of exchange, which is payable only in three months; in the meantime, is it not natural for you to ascertain, by requesting the drawee to accept, whether he will be willing to pay the bill at maturity?

The payee who wishes to have a bill of exchange accepted must present it for that purpose, within a reasonable delay, at the place stated in the bill; or, if there is no such place, at the domicile or office of the drawee, or at any place where the latter can be found.

The acceptance is made in writing on the bill itself. The simple signature of the drawee, without other words to that effect, is a sufficient acceptance.

The drawee has two days after the bill is presented to him, to deliberate whether he will accept or refuse it.

The acceptance of a bill of exchange payable at sight causes the due date to be fixed at the third day after acceptance; the three days are called days of grace (see 244, Pay. of Bills of Ex.).

242. **Dishonoured Bills of Exchange.**— Sometimes when a bill of exchange is presented to the drawee for acceptance or payment, it is refused or dishonoured by him, but the payee in such case preserves his right of collecting from the drawer the amount of the debt which he warranted to be due by drawing the bill. On the refusal of the drawee, the payee can therefore proceed against the drawer or the indorsers (see 243, Neg. of Bills of Ex. Ind.). But, to be entitled to do so, he must first protest the bill.

Protest is a notarial act, the purpose of which is to establish that the bill is dishonoured. It must be made the same day as the non-acceptance. Except in certain cases, the holder is bound to give notice of dishonour not later than the following day, to the drawer and indorsers.

The party notified must in turn give notice to such persons as he intends to hold responsible to himself.

A drawee who has refused to accept or to pay a bill can always retract such refusal.

When a bill is refused, payment of it may be required immediately from the drawer and indorsers, as though its due date had arrived. For instance: Paul, to whom I have sold a carriage, hands me in payment a bill of exchange on John, payable three months from date. I have every reason for ascertaining, as soon as possible, the value of my bill. I, therefore, present it to John within a reasonable delay. If he acknowledges it, and promises me to pay it, I am satisfied, and await its maturity. But if John refuses the bill, I then do diligence in protesting it, and immediately apply to the drawer and indorsers, who have warranted its payment, for the recovery of the amount of my claim.

243. **Negotiation of Bills of Exchange—Indorsement.**—A bill of exchange is negotiable; it becomes, in the hands of a holder, a valid title of debt, which he can dispose of and transfer, and the facility with which he can do so will depend on the solvency of the persons obliged to pay the bill.

It is usual to have the bill indorsed by a solvent person, known as an indorser, who is responsible jointly with the drawer for the payment of the obligation.

Such indorsement is made by the indorser placing his signature on the back of the bill.

An indorsement may also be made by a holder of the bill who wishes to discount it. Thus,

I am the holder of a bill of exchange due in three months; I need money immediately, and I wish to obtain a certain amount. I ask a broker for it, for example, and I transfer my bill of exchange to him, indorsing it. I then become responsible, in the same way as the drawee himself, for the payment of the bill.

A bill of exchange may be negotiated as long as it is in existence, unless there are restrictive conditions, such as, for instance, when it is made payable to a certain person only.

A bill of exchange which is negotiable by indorsement is generally made payable to order, i.e., to a specified person. Bills payable simply to bearer may be transferred by delivery, without any further formality—like money, in fact.

244. **Payment of Bills of Exchange.**—A bill of exchange must be presented for payment to the drawee himself, at the place indicated; or if there is no such place, at his domicile or place of business, or at any place where he can be found. The holder of a bill payable on demand must see that it is paid within a proper delay. When a bill of exchange is payable, not on demand, but at a fixed time or at sight, its maturity is ascertained as follows:

Three days, called days of grace, are added to the term of payment contained in the bill, or are reckoned from the date of acceptance, if the bill is payable at sight. The bill becomes due and is payable in the afternoon of the third day of grace. If the last day is non-juridical, payment is postponed to the following day.

The following days are non-juridical in the Dominion of Canada:

1. Sundays;
2. New Year's Day, or the next day, if it falls on a Sunday;
3. Good Friday;
4. Easter Monday;
5. Christmas Day, or the next day, if it falls on a Sunday;
6. The King's Birthday, or the next day, if it falls on a Sunday;
7. The first day of July, Dominion Day, or the next day if it falls on a Sunday;
8. The first of September, called "Labour Day;"
9. Any day fixed by proclamation as a public holiday.

In the Province of Quebec the following additional days are holidays:

1. Epiphany;
2. Ascension;
3. All Saints' Day;
4. Conception;
5. All days proclaimed as holidays by the Lieutenant-Governor.

When the term of payment of a bill of exchange is fixed, the time of payment is obtained by striking out the day from which the term of payment begins to run, and by including the day of payment.

245. **Liability of Parties to a Bill of Exchange.**—The acceptor, the drawer and the indorsers are the parties liable on a bill of ex-

change. They are jointly and severally bound to the holder to pay the debt saving their subsequent recourse against one another.

An indorser who pays the debt, has his recourse against the drawer and all persons who indorsed the bill before him.

246. **Promissory Notes.**—A promissory note is a written instrument by which one party, called the maker, obliges himself by his signature to pay a certain sum to another person, called the payee, unconditionally and in any event.

Notes, like bills of exchange, may be made payable on demand, or at a date either fixed or capable of being ascertained.

PROMISSORY NOTE

$300.00

Montreal, October 9th, 1900

Three months after date, I promise to pay to the order of **JOHN THOMPSON,** *at the office of the Provincial Bank of Canada, here, the sum of three hundred dollars, for value received.*

JAMES BROWN.

Evidently it is not necessary to present a promissory note for acceptance, because the person signing it is at the same time the same as he who promises to pay it. But the rules as to bills of exchange apply to it :

1. As to the presentment of the note for payment, and days of grace (see 244, Pay. of Bills of Ex.);

2. As to protest and the notice to be given when payment of the note is refused (see 242, Dis. Bills of Ex.);

3. As to the liability of the parties to a note (see 245, Liab. of Part. to B. of Ex.);

4. As to the negotiation of promissory notes (see 243, Neg. of Bills of Ex.-Ind.).

Bank notes issued by banks as paper money are governed by special provisions relating to their circulation, mode of payment, etc.

247. **Cheques.**—A cheque is a bill of exchange drawn on a bank. It is negotiable in the same way as instruments of that nature, but is governed by certain particular laws relating to banks. Thus, the bearer of a cheque may obtain payment of it immediately on presentment, without days of grace.

CHAPTER XXVIII.

OF INSURANCE.

248. **Of Insurance.**—Insurance is a contract by which one party, called the insurer, obliges

himself, in consideration of a premium, to indemnify another, called the insured, or his representatives, against the loss of any thing, or for the responsibility resulting from certain risks and perils to which the thing insured is exposed. The insurer may, again, undertake to pay a sum of money at the death of a certain party, to his heirs or any other persons specified for that purpose; even health may be an object of insurance. Finally, everything which is a matter of actual interest, may be the object of this contract.

The contract of insurance is formed by the mere consent of the parties; the policy, as the document drawn up by them is called, only evidences its existence. The policy contains declarations which constitute the law of the contracting parties. In it they make stipulations according to their wishes, provided they do not derogate from laws of public order.

249. **Capacity of the Insured.**—Insurance can only be effected by a person capable of contracting. Those who, although not capable, nevertheless have the administration of their property, may insure themselves.

250. **Rights and Obligations of the Insured.**—The first duty of the insured is to reply frankly to the questions put to him by the insurer, as to the nature and value of the thing or object of the contract. All statements tending to lead the insurer into error render the contract voidable. The insured must even disclose grave risks not known to the insurer, and which would neces-

sarily be taken into consideration before issuing a policy.

Nevertheless, the insured need not declare the defects of a thing when they are apparent, or when the insurer is held to have known them.

The principal obligation of the insured is to pay at stated periods, or in cash, according to circumstances, the premium promised by him. Any omission on his part in this respect deprives him of the right of drawing the insurance money, notwithstanding the payments previously made by him. Nevertheless, the insurer may agree that a limited delay shall not be considered a suspension of payment on the part of the insured.

In case of loss, or of the happening of any event covered by the insurance, the insured must, within a reasonable delay, give notice thereof to the insurer, and he must conform to the conditions contained in the policy, respecting notice and the preliminary proof of his claim. If it is impossible for the insured to give such notice and to furnish preliminary proof within the delay specified by the policy, he is entitled to a reasonable extension of the delay.

251. **Fire Insurance.**—This kind of insurance may be effected, either on a particular object, or on property not specially described up to a certain amount, as, for example, an insurance on the contents of a residence.

The amount of the insurance cannot exceed the real value of the thing; any contract made for a fictitious value must be reduced and brought within just limits. The insured cannot by his own act

increase the risks and perils of the thing, unless with the consent of the insurer. For example, the simple fact of placing in a house a heating apparatus which is objectionable on the ground of safety, would deprive the insured of the right to recover his insurance.

When a fire occurs, unless the amount is previously fixed by the policy, the insured must prove the amount of the loss suffered by him. He must make a valuation under oath of the things destroyed. This obligation may prove very embarassing when the loss is only partial. Thus, it is prudent to keep in a safe place a detailed list of the things intended to be covered by insurance.

The insurance becomes null and ceases to exist, when the insured disposes of the thing insured and loses the interest he had in it ; but the insurance continues to exist in favour of the heirs of the insured. Nevertheless, if the insurer consents, the insured may transfer his insurance to a third person, because nothing prevents insurance from so being negotiated.

The insurer is liable for all damages which are an immediate consequence of fire or combustion, including the means used to extinguish fire. But he is not responsible for losses caused solely by the excessive heat of a furnace, stove or other method of heating, when there has been no actual combustion or ignition of the thing insured.

252. **Life Insurance.**—Life insurance can be effected either on the life of the person who pays the premium, or on that of another, as in the case of life rents (see 199, Rents).

It may also be made payable at a certain time during life or be otherwise made subject to any event relating to the continuation or loss of life. In every case the insured must have an interest in the life upon which he effects insurance.

He has such an interest in the life:

1. Of himself;

2. Of any person on whom he depends wholly or in part for support;

3. Of his debtor;

4. Of any person whose decease may affect his rights.

A policy of life insurance is essentially transferable. It may be assigned, for instance, to a creditor, or be bequeathed by will or otherwise.

A policy on the life of a person who commits suicide or perishes in a duel or by the hand of justice, is null and of no effect.

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