TREASURES OF THE LAW OFFICE

Digest of Canadian Mercantile Laws

YOUR OWN LAWYER

AND CONVEYANCER

OR

TREASURES OF THE LAW OFFICE.

A DIGEST

OF THE

BUSINESS LAWS OF CANADA AND NEWFOUNDLAND

The Technical Points and Main Features of both the Common and Statute Laws

TOGETHER WITH THE VARIOUS

LEGAL AND BUSINESS DOCUMENTS IN GENERAL USE,

FORMING A WORK OF

READY-REFERENCE FOR MAGISTRATES, CONVEYANCERS, PROFESSIONAL AND BUSINESS MEN, LANDOWNERS, CONTRACTORS, ETC.

Lawyers will also find it convenient as a condensed and well-classified collection of most vital legal points for the various Provinces

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FOURTH EDITION TWENTY-FIFTH THOUSAND
REVISED AND ENLARGED

Compiled and Published by

W. H. ANGER, B.A.

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PREFACE

THE subject treated in this volume is one to which no class of persons in Canada can be indifferent, for no man can properly discharge the duties he owes to the public, or to himself, or to his family, without in some degree possessing a definite knowledge of the laws by which all are bound and the obligations resting upon each as an individual.

There is no good reason why every intelligent business and professional man should not understand particularly the laws of contract, agreement, guaranty, negotiable paper, chattel mortgages, mortgages, landlord and tenant, Statute of Limitations, wills, etc., as fully and clearly as any judge or lawyer in the land, for they belong to business life just as much as does the knowledge of the qualities and values of goods and commodies.

This "Digest of Business Laws" is not intended to make lawyers out of laymen, nor even to take the place of a lawyer in cases where a lawyer is needed, but it is intended to furnish its readers with such a detailed, systematic compilation of those business laws with which every person in community comes in daily contact that will enable them to act intelligently and promptly in the conduct of their business and avoid making those needless mistakes which so often involve loss and lead to ruinous litigation. It is doubtless the only purely law book published in Canada that is written from the standpoint of the layman, giving the information that laymen need, detailed and direct, free from technical language and the mediæval phraseology employed in the Statutes.

The success that has attended the publication and sale of the three previous large editions of this work is sufficient evidence that it is meeting the general and increasing demand on the part of business and professional men for a more accurate and critical knowledge of those laws that confront them in everyday life. The man who thinks it his duty or a virtue to remain ignorant of his legal rights and obligations, so that lawyers and court officials may thrive at his expense, is not addressed in these pages, but all others are invited to enter within and examine for themselves the contents of this, the fourth and enlarged edition of this work, which has been prepared with great care.

TORONTO, May, 1903. W. H. A.

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Introductory.

1 In this volume constitutional and international law will not be dealt with, neither will municipal nor school laws be touched, but the single aim has been to present in condensed form a reliable digest of the mercantile laws of Canada and Newfoundland.

2 Legislative Bodies. In Great Britain, the Imperial Parliament, including the House of Commons and House of Lords. In Canada, the Dominion Parliament, including the House of Commons and Senate, and the Legislative Assembly of each of the Provinces. In the United States, Congress and Senate, and the various State Legislatures.

But besides these great legislative bodies, in each country there are various other minor corporations possessing extensive legislative powers. Every city, town, county, township, and incorporated village has power to pass by-laws which have the full force of statute law within their jurisdiction.

Incorporated companies, lodges, and various associations working under Government charter, also have power to pass by-laws, and adopt constitutions or measures that bind their members in all things pertaining to the association as firmly as they would be by the national laws.

Therefore members of such associations must not forget that they are required in all matters pertaining to them to comply with their regulations, and in case of any supposed wrong they must first exhaust the machinery which those regulations provide for the redress of grievances before taking the case to court for suit.

3 Divisions of Law. (1) Common Law; (2) Statute Law.

Besides these two grand divisions of the law there are various other divisions used because of the different objects to which the law applies, as follows: Civil Law, Criminal Law, Mercantile Law, Marine Law, Constitutional Law, and International Law.

4 The Common Law is what is called the unwritten law. It had its origin in the early days of Britain. The various races from which have sprung the British people brought with them, when they invaded and settled in the country, their respective customs and rules of action which, after the various Provinces became united under one government, caused considerable confusion for a time, until a uniform body of law was established for the whole kingdom, and thus called the *common law.* Owing to the fact that but few of the early inhabitants were able to read or write, the laws were for a long time simply preserved in memory,

hence called the *unwritten law*. The term *unwritten* does not now apply in the same sense that it did then, because every principle of the *common law* has long since found its way into print through the thousands of volumes of reports giving the rulings and decisions of the various courts, thus furnishing precedents for guidance in all future cases equal to any written law as to uniformity and definiteness.

5 Statute Law is sometimes called the written law, in contradistinction to the *unwritten* or common law. It is a law that has been formally written out and introduced into Parliament as a Bill, which being passed, becomes a law of the land under the name of Statute Law.

6 Uniformity of Laws. The laws in Great Britain, Canada, the United States and Newfoundland are very similar, owing to the fact that all the States of the Union, except Louisiana, and all the Provinces in the Dominion, except Quebec, adopted the old common law of England, thus making it the fundamental law of the English-speaking world; and it prevails in all cases where it has not been abrogated or modified by Statute Law.

Louisiana and Quebec adopted the old French law; therefore people having dealings in Quebec must keep that fact in view. For instance a promissory note outlaws in Quebec in five years from maturity or last payment, whereas in all the other Provinces it is six years.

CHAPTER I.

CONTRACTS.

7 Definition of Contract. "A contract is an agreement between two or more persons upon *sufficient consideration* to do or not to do some particular thing." Contracts are the basis of all business transactions. A man buys a carriage, it is a contract; he hires a man, leases a farm, borrows money on a note, each one is a contract. A railroad or steamboat company agrees to carry 500 tons of coal, it is a contract. You write a letter asking a person to come and clerk for you at $30 per month, he accepts and comes, it is a contract. So contracts include all business transactions, whether great or small.

8 Three Classes of Contract. (1) Simple; (2) Under Seal; (3) Of Record.

1. Simple Contracts include promissory notes, drafts, cheques, buying and selling, erecting buildings, hiring, and all the manifold transactions taking place each day in community, except those agreements under seal, as deeds, mortgages and bonds.

2. Contracts Under Seal must of necessity be in writing. They do not require a *consideration* to make them valid. The seal indicates greater deliberation and solemnity in executing such contracts, and a

person is presumed to enter into them with a full knowledge of their contents, hence debarred from afterward pleading "insufficient consideration."

3. Contracts of Record are the entries in the rolls of a court of its proceedings.

9 Oral Contracts are those made by spoken words, and are usually called verbal. They are binding for the sale of personal property up to a certain amount, which is fixed by statute in each of the Provinces (see Section 29), but are not binding for the sale of real estate. They are also good for a lease of property for three years, but in regard to other things they are limited in time to one year.

10 Written Contracts may be printed or written, or partly printed and partly written. They may be formal, using the legal phraseology containing the details of the whole contract, what was to be done, when, where and how to be done, and the consideration. Or they may be informal, merely contained in letters that have passed between the parties.

11 Written Contracts and Verbal Agreements. As a usual thing a written agreement cannot be affected by a contemporaneous oral agreement. If the written instrument purports to embody the whole contract the court would not be inclined to receive other evidence to show that the intention of the parties was different. But if the writing does not give evidence of containing the whole agreement, or shows evident omissions, then in that case evidence would be received to prove a contemporaneous verbal agreement. It would then be for the court or jury to say whether such other matters were a part of the agreement or not.

12 Express Contracts are those where the agreement is distinctly stated and the things to be done or not to be done definitely declared. Example: A farmer purchases a self-binder for $130, to be delivered on or before the 5th day of June, and to be paid for on the 5th day of October. Here the terms are all expressed.

13 Implied Contracts are those where the terms are not definitely stated, but are presumed to be understood. Example: A customer leaves his order with a grocer to have delivered at his residence five dozen of eggs and $2 worth of sugar. Nothing is said about the price of eggs or the number of pounds of sugar sold for a dollar, or anything about payment, but the parties themselves and the law presumes a tacit understanding as to the prices and the time of payment.

They are as binding as express contracts are, but may sometimes be more difficult to prove.

14 Executed Contracts are those which are completed at the moment the agreement is made. Example: A person enters a carriage shop, buys a carriage and pays for it; the contract is finished.

15 Executory Contracts are those which are not completed at the time the agreement is made. Example: A person leaves his order for a carriage which is to be completed in two months, when it is to be

paid for in full. The contract is not completed until the carriage is finished and the money paid. The larger part of contracts are of this class.

16 Illegal Contracts are utterly void from the beginning and cannot be enforced. They have no legal effect except in so far as a party to them may incur a penalty. An illegal contract is where the thing to be performed, or not to be performed, is forbidden by law, as for instance: To smuggle goods into the country, or buying a lottery ticket. In all such cases, if either party has performed his part of the contract he cannot compel the other to perform his, and if either party has paid money he cannot recover it back, as the contract is regarded as wholly vicious and no court would attempt to enforce it.

But illegality does not always appear "on the face" of a contract, and in such cases it must be established by evidence, and in such cases also, if money had been paid by the innocent party, it could be recovered back.

In a contract containing two or more promises that are entirely distinct, so that one could be performed without the others, and it turned out that one was illegal, the illegal promise would fall, but the others could be enforced.

17 Void Contracts are those which from their beginning have no legal effect, except in so far as a party to them may incur a penalty. They do not bind either party. Examples:

(1) A contract made on Sunday; (2) contracts against public policy; (3) contracts in restraint of trade; (4) contracts in restraint of marriage; (5) contracts to obstruct the course of justice; (6) to lead an immoral life; (7) contracts with alien enemies in time of war; (8) all illegal contracts.

The ground upon which actions could be entered to recover back money paid by one of the parties to the other on contract that was null and void, but not illegal, would be "failure of consideration." It would be the same where the purchaser did not receive the goods or property bought.

18 Those Against Public Policy. The policy of every community or state is to advance the public good, hence whatever contracts are opposed to the general good are said to injuriously affect public policy, and are, therefore, void. Among such may be mentioned:

19 Contracts in Restraint of Trade; as where a merchant would sell out his business and agree not to engage in business again of any kind, it would be void, because lawful trade is considered for the public good. He could, however, bind himself not to engage in business again in a particular locality, or in a certain line of business, as it would be only a partial restraint of trade. Partial restraint, however, if the nature of the case makes it questionable, can only be determined by the court after reviewing all the circumstances in that particular case.

The agreement that thus binds a merchant not to engage in a certain line of business again, or in a particular locality, should contain a fixed sum as damages for a breach of the contract, otherwise it would be left for the jury to find the damages.

All combines as among manufacturers or coal dealers, etc., by which prices are forced up are illegal. Organized strikes by which the action of others is to be coerced are also illegal.

20 In Restraint of Marriage. Marriage is held to be in the public good, hence any contract which wholly restrains marriage is void. The *condition* in a bequest in a will to a child that he or she does not marry is void, but, nevertheless, the bequest is valid. A partial restraint of marriage, where it is reasonable, may be valid, as where a bequest is left to a child on condition that marriage should not be effected until the age of twenty-one, or say twenty-five years, it would be valid because it would merely fix a date when there would be less danger of contracting an ill-advised marriage. But if the time fixed should be, say fifty years of age, it would be void, because that would be unreasonable.

A husband's bequest to his wife on the condition that she does not marry again, though selfish, is legal because she has once been married, hence it is not in restraint of marriage.

21 A Marriage Broker. A contract to pay an agent for contracting a desirable marriage is void; and even the money paid upon such a contract may be recovered back, if the broker is worth it.

22 Contracts to Obstruct the Course of Justice are void. An agreement of a public official to do something contrary to his duty cannot be enforced, and money promised him to use extra exertions in the discharge of his duty in a particular course cannot be recovered.

23 Immoral Contracts are void. A contract to lead an immoral life is void. But after an immoral course has been begun and a note or other obligation has been given as compensation for damages, the obligation can be enforced. Contracts to publish, sell or forward obscene literature are void. Contracts made on Sunday are void, because that day has been set apart as a day of rest and business pursuits prohibited. All bets, wagers, gambling, lotteries, raffles, buying on margin, and promises to pay for votes are void. Contracts to defraud the Government by smuggling, or to give an incorrect invoice, are void, and money promised for such service cannot be collected. If money is paid in any of these cases it cannot be recovered back.

24 Voidable Contracts are those which take their full and proper legal effect unless they are set aside by some one entitled to do so. They bind both parties unless set aside. The party defrauded may void the contract if he chooses, or he may affirm it and compel the other party to perform it. (For example, see following Section.)

25 Fraudulent Contracts are voidable—not void. A definition cannot be given that would cover all the forms of fraud, but the following will make sufficiently clear what would constitute fraud: A statement of facts that the party making the statement knows to be false. A concealment of facts that are known to one and not readily discernible by the other, and yet such as should be revealed. The misrepresentation must *actually deceive* in order to make a case of fraud. To sustain an action of deceit there must be proof of fraud—

fraud that actually deceives—and nothing short of that will suffice. Fraud is proved when it is known that a false representation has been made, either (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. A mere expression of an opinion which turns out to be unfounded will not invalidate a contract. There is a difference between a man saying that an article is worth so much, and saying he paid so much for it.

Example of mis-statement of fact: A person selling a horse to another and representing him to be gentle in harness and true to draw, when as a matter of fact he was not. This would be fraud. Fraud may be practised by one party upon another to induce him to make a contract; or by two or more persons to defraud a third party.

As stated above, a fraudulent contract is voidable but not void. The party who has been defrauded may void the contract if he wishes, or he may affirm it and compel the other party to perform it. If he wishes to void it, two things are necessary: (1) He must not accept any benefit derived from it, or continue to act under it after he has discovered the fraud. (2) He must give prompt notice of the fraud after he has discovered it. The dishonest party cannot dis-affirm the contract, but in all cases is bound to carry it out if the other party demands it. If both parties practise fraud, neither one can enforce the contract against the other. A promissory note obtained through fraud cannot be collected by the party who obtained it, but upon coming into hands of a third party, before maturity, for value, and who did not know of the fraud, would be valid and good against the maker. But a forged note could not be collected.

26 Fraud by Insolvent Persons. An insolvent person representing himself as solvent in order to obtain goods on credit, is guilty of a fraudulent act. The seller discovering it, may cancel the contract, or recover the goods if they have been shipped. An insolvent person need not disclose that fact to a creditor from whom he is purchasing goods unless he is questioned as to his financial standing.

27 Fraud by Underbidders. Underbidders at auction sales, employed secretly to run up prices higher than the real value of the articles, are fraudulent towards third parties. A purchaser whose bid has been forced up by such fictitious bidding immediately preceding his last bid, may void his purchase. If underbidders are employed, and that fact publicly announced before the sale, it is not fraudulent. The owner may also fix a price below which the goods will not be sold, or he may reserve one bid for himself.

28 Selling Property Obtained by Fraud. A person obtaining goods, or a promissory note, or any other property through fraud, and transferring them to an innocent third party for value, gives them a good title.

29 Statute of Frauds and Perjuries. This famous Statute was passed in the twenty-ninth year of the reign of Charles II. of England, and still exists there, in this country, in Newfoundland and in the

United States, with but slight change. It was designed to prevent the frequent commission of frauds and perjuries in regard to the enforcing of old claims, and various kinds of promises to answer for the debts of others, and provided that certain contracts had to be in writing to be binding. The following are the requirements of the Statute which come within the scope of this work as they have been varied by our statutes:

1. That leases of land for more than three years must be in writing and under seal.

2. Contracts for the sale of lands, or for any interest in lands, must be in writing.

3. Every agreement that by its terms is not to be performed within one year must be in writing.

4. Every special promise to answer for the debt, default or miscarriage of another, must be in writing.

5. Every agreement, promise or undertaking made upon considerations of marriage, except mutual promises to marry (engagement), must be in writing.

6. Contracts made for the sale of personal property, of $40 and upwards, must be in writing, unless part or all of the goods have been delivered, or a part of the purchase price paid. In Quebec, British Columbia, Manitoba, North-West Territories and Newfoundland the sum is $50, and in Prince Edward Island $30.

Each of these divisions will be treated in appropriate chapters.

30 False Pretence. This is not merely a false promise, nor an exaggeration of the quality of anything. It is a representation that the person making it knows to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon it.

There are four essentials to constitute *false pretence:*

1. There must be a false statement.

2. The offender must know at the time of making the statement that it is false.

3. The goods or money in question must be parted with in consequence of such false statement.

4. The false statement must be made with the intent to *defraud.*

The penalty for obtaining goods or money by false pretence is three years' imprisonment.

31 Theft or False Pretence. The clearest distinction that can be given between theft or larceny and false pretence is this: In theft the owner of the property has no intention of parting with it to the person taking it; but in the case of false pretence the owner of the goods does intend to part with them, but his consent to part with them is secured by the false representations made to him. (See following Section.)

32 Embezzlement. The distinction between larceny or theft and embezzlement is this: In larceny the money must be either actually or constructively in the possession of the master or employer, and the clerk or employee either takes it from the drawer or safe, and appropriates it to his own use, or takes money that was given him to use for the master and keeps it himself.

Embezzlement would be the taking of money that had not yet come into the possession of the employer. For instance, a debtor pays him money for the employer and he keeps it himself; therefore, whenever money is received by the employee and is not accounted for, or its receipt denied, it is embezzlement. If he accounted for it, although he kept it, and set up any kind of a preposterous right to its possession, it would not be embezzlement.

33 Breach of Trust is a term used in connection with a person who is appointed a trustee of any property for the use and benefit of some other person, or a public or charitable purpose, and who fraudulently appropriates it to some other use. Persons guilty of this offence are liable to seven years' imprisonment.

Also any public officer who in the discharge of his duties commits a fraud or breach of trust affecting the public is liable to five years' imprisonment.

34 Agreement. There can be no contract formed without an agreement either expressed or implied. As contracts are the basis of all business transactions every man who would guard his interests should thoroughly understand what constitutes a binding contract, and what violates it. In the definition of a contract it was stated that "a contract was an agreement," etc., hence what is an agreement? An agreement is a *mutual assent*—something to which two or more persons give their assent. The two minds meet. A contract therefore is composed of two elements: A proposition, and an acceptance of the terms without any change or modification. Example: Brown offers Jones a Crown Jewel stove for $25, and Jones says, "I will accept your offer," or words to that effect. This constitutes a contract. It may be done orally, or by letter, or by a formal document under seal.

35 A Proposition and Acceptance. A proposition is the beginning of every contract. One person makes an offer of some kind to another. If the other accepts the offer in the same sense as made, then there is a contract. But if in accepting he makes any change in the terms, there is no contract. Example: One man offers to sell a horse to another for $100, cash. The other party says he will buy the horse but will only give $85. This is not assenting to the proposition, but is in effect a new proposition. The parties failed to *agree*. Any other change in the terms would have the same effect, as for instance, the second party would say to the first that he would accept the offer but could not pay for three months. There is no assent here—no mutual agreement, hence no contract.

The assent or acceptance must be the simple acceptance of the proposition without any change whatever of the terms.

36 Time for Acceptance. An oral proposition which does not include any provision as to time ceases when the parties separate. If a time is fixed for acceptance, it must be given within that time. An acceptance may be given by an act as well as by words, as in case of all implied contracts. Example: The wife or children purchasing necessaries at a store, the assent of the father is *implied* and binds him, unless notice to the contrary has been given.

37 Assent Obtained Through Fraud is not binding on the party who was defrauded. Such a contract may be rescinded by the innocent party, but he must do so immediately after he discovers the fraud. He must also refuse to exercise ownership over the subject-matter of the contract or accept any profits arising from it.

38 Assent Obtained Through Force is not binding. If assent is obtained through threat of bodily harm, imprisonment, or any similar illegal pressure, it is void, because under *duress*. But a threat to dismiss from employment unless a certain proposition were agreed to by an employee would not be *duress*, and a contract signed under that kind of pressure or force would be legal.

Any person who with the intent to extort any property or money from another person by threats to accuse such person of a capital or infamous crime (that is blackmail) is liable to 14 years' imprisonment; or to induce him to make, execute, accept, endorse or alter any paper or parchment, in order that it may afterwards be used as a valuable security, incurs the same penalty.

39 Assent Through a Mutual Mistake does not bind either party, because there was no actual assent given. Example: Counterfeit money innocently passed by one person to another in payment of a debt and received as payment by the other party would be no payment, because of the mutual mistake. It would need to be returned promptly, however, after the discovery. There is but small latitude allowed in law for mistakes.

40 Proposition by Mail. When a proposition is made by letter the contract is closed when the letter of acceptance is placed in the post-office. A proposition that does not prescribe any time for acceptance continues valid until revoked, or until a reasonable time has elapsed before acceptance. An acceptance given by telegraph closes the contract when the message is delivered to the company.

41 Withdrawal of Proposition. A proposition may be withdrawn any time before the acceptance has been given. In case a proposition made by letter is to be withdrawn, the letter of withdrawal must be received by the other party before the letter of acceptance is placed in the post-office, otherwise it is too late. Withdrawal may be made by telegraph or by telephone, but the latter would not be safe unless there were a witness.

42 Sufficient Consideration. This is a law term which laymen who have not had much legal experience are liable to misunderstand.

It does not mean taking sufficient time to think or consider, but as a legal term it means the *reason* or *inducement* upon which the parties to a contract give their assent and agree to be bound. In every binding contract there must of necessity be a *legal consideration*, and what the law denominates a "sufficient consideration." It need not be a monetary consideration, but may be something given, or done, or promised to be given or done, by the person making the promise. For this *consideration* the person to whom the promise is given either gives something, or does something, or promises to give or to do something, in the future.

There are various kinds of *consideration*, and as this is one of the most important features of a contract, several will here be enumerated:

43 Good Consideration is one based upon natural love and affection that exists between near relatives. Example: A father may deed to his child a portion of his land, and it would be valid. He could not recover it afterwards even if he desired to do so. A "promise" to give a deed some time in the future would not be binding.

A father who is insolvent could not through natural love and affection convey to his son a portion of his property to save it from his creditors. A creditor affected by such a conveyance may bring an action to set aside the conveyance, and the property be sold to satisfy the claim.

A deed thus given at such a time, with natural love and affection for a consideration, would be set aside on the same principle that a chattel mortgage would be that was given on the eve of bankruptcy.

44 Valuable Consideration may be either a benefit to the person making the promise, or a loss to the person to whom the promise is made. It may be something of value given or promised to be given to the person making the promise, or an inconvenience to a person to whom the promise is made. Any of these would constitute a sufficient consideration. Examples: (1) A benefit to the promissor—A tailor promises to make a suit of clothes for a person for $20, or for one month's labor. (2) Inconvenience to the promisee—A person might lose a gold watch and tell another person he would give it to him if he could find it. The loss of time and inconvenience experienced in hunting for it would be sufficient consideration to make the promise binding.

45 Mutual Promises are a valid consideration if made at the same time. At a different hour, even on the same day, they would not be binding. Example: Smith promises to dig a well for Jones, and Jones promises to give Smith a certain carriage when the well is dug. One promise is a consideration for the other promise, and the contract is valid.

46 A Conditional Promise is a sufficient consideration for a direct promise, but the conditional promise is not binding unless the consideration is complied with. Example: A horse is purchased for $125 on the condition that he proves true in harness; both parties are bound if the condition is met, but if the condition fails the purchaser is free to rescind the contract, that is, if the horse does not prove to be true in harness.

47 Gratuitous Promises, that is, promises without a consideration, are not binding, because there is no equivalent given. Contracts without a consideration are void. If there is no consideration there is no reason for the contract, hence mere promises cannot be enforced. Honor would require the fulfilment of a promise, but the law does not, for there has been no equivalent rendered. Exceptions: Instruments under seal and negotiable paper (which see).

48 Consideration as to Contracts Under Seal. Contracts under seal are valid without a consideration. The placing of a seal on a contract makes it final. The seal itself is said to be a consideration.

49 Consideration in Regard to Negotiable Paper is *presumed.* Promissory notes, acceptances and cheques in the hands of an innocent holder for value are valid, even if they were issued without a consideration. With such paper consideration is presumed, and a third party buying them before maturity will collect them. The party to whom they were given without value could not collect them; neither could third parties if they purchased them after maturity. Accommodation notes and acceptances are the most noted examples of this kind.

50 Insufficient Consideration. An agreement upon no consideration, or insufficient consideration, cannot be legally enforced. Insufficient consideration, as a legal term, does not mean too little cash or value. A person making a contract is left to judge for himself whether he receives a sufficient value or not. If a person sells a horse for $20 that is worth $50, or agrees to do a piece of work for $15 that is worth $45, he must stand by his bargain. The law will not interfere.

Insufficient consideration can only be used as a plea in cases where there is fraud, where the party has been deceived and the insufficiency is caused by the fraud, or in cases like the following: A farmer promises his hired men an addition to their wages in consideration of their making extra exertions to get in the mown hay before a threatening storm; or a vessel captain promises his sailors an addition to their fixed wages if they will make extraordinary efforts during a storm. In either case the promise is gratuitous and not enforcible, the employees being bound to so act in their respective services. A promise to pay another's debt already incurred, in like manner, is gratuitous, and cannot be enforced.

51 Illegal Consideration is where the act to be performed is forbidden by law, as smuggling goods into the country, buying a lottery ticket, publishing or selling immoral literature. In all such cases the party making the promise is not bound to keep it. (See 16 and 17.)

52 Impossible Consideration is an agreement to perform something which, from its very nature, is impossible. Example: A man might agree as the consideration of some contract, to walk from Buffalo to Montreal in six hours, but he would not be held by law, as it would be impossible of fulfilment. A man might, however, agree to build a certain house in three days and be utterly unable to accomplish it; still he would be held for damages, because it would be possible to have men and material enough at hand to peform it.

53 Failure of Consideration voids the Contract. Example: A person agrees to give $300 for a certain interest in a patent to manufacture gas and afterwards the patent is found to be void. The contract cannot be enforced, and, if a note were given, it cannot be collected.

Partial failure of consideration does not void the contract, and the other party may obtain damages only for the part that failed.

54 Minors, called in the law books Infants, are, in Canada, all persons, male or female, under twenty-one years of age. In a few of the States of the United States females are of age at eighteen years, but not so in Canada. The law in Canada is very fair and just in regard to minors as to their personal liability for debts, and also as to their parents or guardians, and business men should clearly understand it.

55 Minors may Contract for Necessaries. Whatever things are necessary for him in his station and condition in life he may contract for, if he is not living with his parents or guardians, who are able and willing to support him. Minors not at home, and supporting themselves and collecting their own wages, do not bind their parents, even for necessaries. A minor purchasing anything held to be a necessary for him in his station in life, and refusing to pay for it, the merchant from whom he purchased the article can sue and recover from him as though he were of age. If, however, the parents should sometimes pay part of the minor's bills for necessaries, they also become liable for the whole of them. Minors not at home and supporting themselves, may sue and recover for wages earned by themselves, no matter how young they are. They are also liable for any damage done or wrong committed by them; also for any criminal offence. Wages of minors may be garnisheed in payment for necessaries.

56 Necessaries for Minors are usually reckoned board, clothing, education and medical attendance, unless unnecessary talent is called. A suit of tweed clothing for a son of a mechanic, or any person in a similar station in life, would be regarded as a necessary, but a fur overcoat or a gold watch would not be. A fur coat or a gold watch might be held a necessary for the son of a judge or bank manager.

57 Luxuries for Minors would be anything beyond what the law classes as necessaries. For any such article bought on account the merchant cannot compel the minor to pay; if, however, the original goods are in his possession, the merchant has the power to replevy and take them back, but he cannot take them himself by force.

58 A Minor's Note, given even for necessaries, cannot be collected. If a merchant should chance to take such a note for necessaries, he could not sue on the note, but he could hold the note until maturity and then sue on the open account, and present the note as evidence of the debt. He could not sue until the note matured, as that would be the date of payment. If there were an indorser or joint maker, he could enforce payment against such party.

59 A Minor as Agent. A minor may act as agent for another person in any capacity, and bind his principal in contracts made on his

behalf. But a minor cannot appoint another person as agent to represent him, because the other party could not bind the minor in a contract, any more than the minor could bind himself.

60 A Minor May Ratify His Contract. When a minor comes of age he may ratify his contract made before age, and thus make it valid and binding. The ratification must be in writing to bind him.

61 Repudiating His Contract. A minor having made a contract, not being for necessaries, which is yet to be executed, has a reasonable time after attaining his majority in which to declare it void. He may also rescind a contract that has been executed, but in such a case he must restore to the other party the *consideration*, if it be within his power to do so. If it be impossible to restore the consideration, as in the case of buying live stock that had died, or other goods that had been destroyed by fire, he may still rescind the contract and recover the full purchase price. Although a minor cannot bind himself in a contract, still he can hold the other party to his agreement who makes a contract with him. The same is true in regard to an idiot or an insane person.

62 Parents Liable for Minors. While the minor is living at home and supported by his parents or guardians, they are liable for necessaries purchased by the minor, unless notice has been given to the contrary. They cannot be held liable for luxuries. They are also liable in case the minor is not living at home, but is supporting himself and collecting his own wages, if they should pay part of his bills or accounts. They then render themselves liable for all of them. They may aid him if they wish by giving money direct to him but must not pay any of the debts he contracts if they do not wish to become liable for all of them.

63 Idiots. Persons having so little intellect as to be unable to perform the ordinary affairs of life cannot bind themselves in a contract. An idiot is a person who never had sufficient reason or intellect to understand the nature and effect of a contract.

64 Lunatics. Persons who have lost their reason are manifestly incompetent to contract. But unless the insanity is of such a nature as to be patent to everybody, it must be established by legal proceedings to be relieved from a contract they may have entered into. To be adjudged insane it is necessary to be so adjudged by a Committee on Lunacy. A person who makes a contract with a lunatic is bound by it as though he were dealing with a person competent to contract. No person but the lunatic or his legal representatives can void a contract that he has made. Contracts for necessaries for him the law holds binding.

In some cases of insanity, persons have intervals during which they are perfectly sane. These are called "lucid intervals," and contracts made during such periods are binding.

65 Drunken Persons. A person merely strongly under the influence of liquor is not legally, although he may be mentally, incompetent to contract. To be relieved from liability on a contract he may have entered into, he must be wholly intoxicated, so as to be unable to use his reason. Drunkenness will not relieve from criminal prosecution.

66 Indians. Our Indians are wards of the Crown, and thus protected from fraud and deception by being placed in a similar position to minors, and rendered incapable of binding themselves in a contract. A person who makes a contract with them is bound, but the Indian is not bound, not even for necessaries.

67 Alien Enemies. According to International Law, all commerce between nations at war is suppressed and contracts rendered illegal and void.

68 Requisites of a Contract. From what has been given, the requisites of a valid contract may be summed up as follows: (1) It must be possible. (2) It must be legal. (3) It must be made by persons who are competent to contract. (4) It must be assented to by each and all the parties. (5) It requires a consideration, except for those under seal. (6) It must be without fraud. (7) Some require to be in writing, and some under seal.

69 Drawing of Contracts. It is true economy to have all important contracts drawn by a careful lawyer, or other experienced person, but there are many minor matters that should be submitted to writing that may be done by any intelligent layman. And in all cases a man should know himself when he reads over the written instrument whether it is right or not, and whether it contains the whole agreement or not, even though he employs the knowledge and skill and experience of a solicitor or commissioner to do the actual work. In drawing up a contract it would be well to observe the following:

Be very specific in naming all the terms and conditions of the agreement. State accurately the names in full, residence and occupations of the parties to the contract, and the different promises each one is to perform. If a person has several Christian names, include them all. A person who has no trade or profession is usually called a "gentleman." In giving the residence of the parties the smallest municipality must be mentioned first, as a township, or village, or town, or city, then the county and lastly the Province.

The person agreeing to do work or to sell an article is usually called "the party of the first part," and the party paying the money the "party of the second part," but there is really no difference which comes first.

70 Signing of Contracts. The instrument should be signed in the presence of a disinterested witness. If the instrument has already been signed it will be sufficient for a person to *acknowledge* his signature in the presence of the witness. Some require to be under seal.

In all documents to be registered, as deeds, mortgages and bills of sale, it is necessary for the witness to verify his witnessing and signature by an affidavit, which is written on or attached to the document.

71 A Seal should be placed on all important contracts. Even a church subscription is better to have a seal attached. It makes it good for twenty years.

Anything stuck on after the name will answer for a seal as well as a regular seal bought for the purpose. When any device is printed or

written after the name or the usual letters "L.S.," the seals may be put on any time afterwards. Properly the seals should be touched by the person signing his name and acknowledged to be his seal. In acknowledging the seal, whether it is put on before or after signature, words something like the following may be used: "I acknowledge this to be my hand and seal." Some persons after signing their name will with pen and ink put their initials on the seal, thus practically identifying it.

All corporate bodies and joint stock companies are required by law to have a corporate seal, which the officers must attach to or impress on all contracts signed by them in order that they may be binding on the corporation or company. Promissory notes and bills do not require a seal.

All instruments under seal are good for twenty years, except a mortgage on real estate. (See Section 243.)

72 Signature by Mark. A person who cannot sign his own name must *request* some other party to do it for him. The following will illustrate the usual form.

Witness: CHARLES SUMMERS. W. $\overset{his}{\underset{mark}{\times}}$ WINTERS.

A person signing his name this way may take hold of the pen while his name is being written, or he may not; he may make his own cross or he may not just as he wishes. There must, however, be a witness to the signature.

73 Signature by One Who Cannot Read. When a person who cannot read is executing an instrument, it is required that it be read over and explained to him in the presence of the witness so that he may fully understand what he is doing. The witness in signing such an instrument should mention the fact in some such words as the following: "Signed, sealed and delivered, after first having been read over and explained, in the presence of CHARLES SUMMERS."

74 Erasures and Corrections. If any such should become necessary to make it should be done before the document is executed. In making the corrections do not use a knife or rubber, but simply draw a line through the words with pen and ink so that the original words may be clearly seen. Then write the correct words between the lines, using a caret to show where they should be read in. The witness should put his initials on the margain opposite every such correction or interlineation as evidence that they were made before the execution of the document.

75 Various Sheets. When a document is written on more than one sheet they should be fastened together and paged before being signed. Some who are extraordinarily formal will use a ribbon and put a seal over the tie of the ribbon. The witness sometimes places his initials on each sheet and mentions the number of sheets with his signature.

76 Various Documents. When an agreement is composed of two or more separate documents they are usually marked with the letters of the alphabet as, A, B, C, etc., and referred to as "schedule A," "schedule B," etc. Example: Contracts for the erection of large structures are usually accompanied by plans and specifications marked A, B, etc., which are attached to and form a part of the agreement.

17 Interpretation of Contracts. Although it is supposed that parties entering into a contract fully understand its terms, and will use language in expressing them that will explicitly give their meaning, yet it often happens that such is not the case; hence certain rules have been adopted to interpret them when ambiguity occurs. The following are those of chief importance:

1. THE INTENTION of the parties at the time the contract was made is considered, rather than the literal meaning of the words.

2. CUSTOM AND USAGE of that particular business and place will be regarded where the wording of the contract is doubtful.

3. THE TECHNICAL words and phrases used will be given the meaning in which they are employed in that particular business.

4. VARIATIONS BETWEEN WRITING AND PRINTING. When one part of a contract is written and another printed, if they disagree the written portion will be accepted. The same is true with a note or cheque.

5. LIBERAL CONSTRUCTION. Where the wording of a contract is ambiguous, it is a rule of the courts to construe it liberally, so as to give effect to the common sense of the agreement, even sometimes rejecting objectionable clauses and supplying omissions. But where the Statutes fix a definite meaning to words, they will invariably be construed in that sense.

6. CONSTRUCTION AS TO TIME. When no time is mentioned in the contract for its execution, the presumption is that it must be done at once, or in a reasonable time, and the courts will so construe it, according to the nature of the work to be done.

7. CONSTRUCTION AS TO PLACE. The law of the place where the contract is made governs its validity, and if it is to be performed there also, it will govern its interpretation. If it is to be performed in another Province or country, it must be in accordance with the laws of that Province or country, otherwise it is void.

18 Completion of Contracts. The element of time is an important feature of all contracts. A contractor not completing his contract within the time specified is liable for whatever damages actually occur.

In cases where no time is fixed for the completion of a contract it must be performed within a "reasonable time," according to the circumstances, which, if not mutually agreed upon, would be for the court or judge to determine.

19 Cancelling Contracts. In cases where a person has been induced through fraud, or falsehood, or misrepresentation of any kind, to enter into a contract to purchase land or any kind of personal property, he can repudiate the contract or bargain, and if he has paid money he can recover it. But he must act as soon as he discovers the fraud and restore or offer to restore the property in the same condition it was in when he received it. The fraud or misrepresentation must be of a material nature and actually deceive.

A purchaser who would rescind a contract must be in a position to restore the property. If he treats the property as his own (more than to care for it) after discovering the fraud, he cannot afterwards return it

and recover his money. If a portion of the goods were used before the discovery of the fraud it would be for the court to determine the value of the portion used. There is no chance for a person to rescind a contract merely because he changes his mind. (See Section 41 for withdrawal of a proposition.)

80 Breach of Contract is a failure to do what was required, or the doing of what was forbidden. It is necessary to have a clear idea of what constitutes a binding contract in the particular case being considered in order to know definitely whether there has been a violation or breach of contract. Study this whole chapter well.

81 Damages for Breach of Contract. Remedies are the means which the law provides for the enforcement of the rights created by the contract, and are divided into two classes—civil and criminal. The criminal are for the punishment of crime and the protection of society, and are dealt with by the Government; the civil belong to the individual and enable him to enforce his personal rights and obtain compensation for his private wrongs. His remedy is by suit for damages. There are different classes of damages: (1) Compensation for the actual loss sustained. (2) Nominal, where the failure to perform the contract is not regarded as intentional but merely through inability to do so. (3) Liquidated, where the amount is previously agreed upon in case damages should be awarded. (4) Speculative, where the profits that would have resulted from the performance of the contract can be estimated, they may be recovered. (5) Exemplary, where for a malicious violation of a contract a sum in excess of the actual loss is awarded as a punishment.

82 Injunction. Where a person is doing something he contracted not to do, or is infringing upon the rights of another, an order may be obtained from the court restraining him from further action until the case has been legally adjudged. This order is called an injunction.

An injunction cannot be obtained from the Division Court in Ontario or the Small Debts Courts in any of the Provinces, but only from the judges of the higher courts.

The cost varies. If the party desiring an injunction will go to the judge direct and make application for himself, becoming personally responsible under a bond for whatever damages may arise out of it and the matter stops with the service of the injunction it need not cost over $5.00. But if he employs a solicitor or barrister to make application for an order of injunction and who thus becomes responsible for damages that may arise, it will cost from $20 to $50, and possibly $75 if the injunction is resisted and the case has to be fought out.

83 Place of Suit. In case of trial for breach of contract the place where the contract is made is where the suit will be tried. Contracts made by letter have for their place where the letter of acceptance was signed, hence there the suit should be. The place of contract in regard to real estate is where the real estate is situated. A note not made payable at any definite place would be sued where it was dated, but if payable at some other place, then that would be place of suit.

Goods ordered or sold from store or warehouse and taken by purchaser or shipped from there, would have that place for place of suit.

But goods delivered by a traveller to the retail dealer, the place of suit would be there.

But Section 85 of the Division Court Act of Ontario says: "The action may be entered and tried in the court nearest to the residence of the defendant, irrespective of the place where the cause of action arose," and the same permissive power is given the courts in all the Provinces.

Therefore suit may be entered either where the cause of action arose or in the division in which the defendant resides or does business. If tried where the cause of action arose the judgment may still be executed where the defendant resides or has property.

84 Contract to Build a House.

To more fully illustrate the opening, closing, signature, witnessing and general wording of a contract the following agreement for building a house is given:

ARTICLES OF AGREEMENT made and entered into on this 24th day of March, A.D. 1903, between James Henderson, of Toronto, merchant, and Charles Summers, of St. Catharines, builder, it is agreed in manner and form following, viz.:

The said Charles Summers, for the consideration hereinafter mentioned, doth for himself, his heirs, executors and administrators promise and agree to and with the said James Henderson, his heirs, executors, administrators and assigns, that he, the said Charles Summers, shall and will, within the space of four months next after the date hereof, in good and workman-like manner, and according to the best of his skill and art, at Lot 6, Denison Avenue, in the city of Toronto, well and substantially erect, build, set up, and finish one house or messuage according to the plan or draft and specifications hereunto annexed of the dimensions following, viz. (state the dimensions), and to compose the same with such stone, brick, timber, and other materials as the said James Henderson or his assigns shall provide and find for the same. In consideration whereof the said James Henderson doth for himself, his executors and administrators promise and agree to and with the said Charles Summers, his heirs, executors, administrators and assigns, well and truly to pay, or cause to be paid unto the said Charles Summers or his assigns, the sum of three thousand dollars in lawful money of Canada in manner following, that is to say, the sum of one thousand dollars when the stone and brick work are completed, and the remainder, two thousand dollars, thirty days after the work shall be completely finished, and also, that he the said James Henderson, his heirs, executors administrators or assigns shall and will from time to time, as the same shall be required at his and their own proper expense, find and provide all the stone, brick, tile, timber, and other materials necessary for making and building the said house. And for the performance of all and every one of the articles and agreements above mentioned, the said James Henderson and Charles Summers do hereby bind themselves, their executors, administrators and assigns each to the other in the penal sum of five hundred dollars firmly by these Presents.

In witness whereof the said parties to these Presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of F. E. MISENER.

JAMES HENDERSON. (L.S.)
CHARLES SUMMERS. (L.S.)

CHAPTER II.

GUARDING AGAINST FRAUD.

85 The itinerant swindler is always operating somewhere, in some line. Every class in the community has this enemy to watch against.

The following suggestions may be of service:

1. Never give money or a note, except it be to a well-known firm, until the article purchased is in your possession and found to be according to agreement.

2. An article or a machine having been ordered, which, upon arrival at the freight or express office, is found to be not according to agreement, should not be received. Of course, if the article is according to contract, it must be received if delivered at the place and time agreed upon; but if not according to contract the article should be refused, and payment therefor cannot be enforced.

3. Always take a copy of every agreement that is made in writing, or any order given for machinery, goods, etc. The agent should sign the company's name, together with his own, to the copy you retain, which should also be marked "copy" by him. Never neglect to do this.

4. In dealing with an agent, or any other person, where a written contract, agreement, or note is made, be assured of this, that nothing but the *written document* will be considered in court. No matter what else the other party promises in addition by word of mouth or even in writing, if on a separate paper or not referred to specially in the written contract as a part of the contract, it is utterly worthless.

86 Swindling Note. The form of swindling note shown on this page which is made by simply cutting off the right hand end of what was supposedto be simply an agreement to sell six harrows, to be

$175.00. TORONTO, *February 28th, 1903.*

Six months after date I promise to pay Jas. Brown, or bearer, when I sell six harrows the sum of ONE HUNDRED AND SEVENTY-FIVE DOLLARS *when collected, to be payable at Toronto, with interest at eight per cent. per annum if not paid when due.*

Wm. J. Simmons
Agent for Jas. Brown.

Witness: S. S. Smith.

paid for after they were sold, is an old one. After the end is removed and the witness' name at the bottom is cut off, it is a regular note which could be sold to any person who knew nothing of the swindle, and by being thus transferred to an innocent holder for value, it would be collected. The swindle does not always take this form, but sometimes the note would be in the middle of a sheet, and by cutting away the top, bottom and sides, a regular form of note would be left. This illustration, however, is enough to put thoughtful persons on their guard against all similar forms of trickery.

In dealing with the agent of a strange firm, never sign any lengthy document purporting to be an order or agreement, as such documents have been a fruitful source of fraud.

If an occasion should occur when it would seem desirable to enter into an agreement requiring such an instrument, it should not be signed except in the presence of a witness. Even then, instead of signing their printed forms, it would be safer to write out the agreement on plain paper.

87 Note Preventing Fraud. The form of note shown on this page is the best protection against the frauds and swindles that have caught even the shrewdest of men that can be devised. In

purchasing a machine or any line of goods from a strange firm without opportunity for a sufficient test, write out such a note as this on plain paper instead of using their blanks. This note is valid and can be collected as well as any other form provided there is no fraud, but if there is fraud in connection with the transaction, it could not be collected. It is made non-negotiable, so that the payee cannot transfer it to an innocent holder for value to be collected. It can be transferred by assignment, but in that case the purchaser does not get any better title to it than had the original holder, hence the maker is safe. The words "and not otherwise or elsewhere" are not absolutely necessary, but (like the words "value received") it is better to use them, as they are evidence that there was a decided intention that the note should not be transferred, and that it should not be payable at any other place than the one specified.

CHAPTER III.

GUARANTY AND SURETYSHIP.

88 Guaranty or Suretyship is a promise of one person to another to answer for the debt, default or miscarriage of a third party. According to the Statute of Frauds (Section 29) all such promises must be in writing in order to be binding. An oral guarantee is worthless in such cases.

The utmost care must be observed in regard to this feature of our laws. In many cases nothing but a simple recommendation is intended by the person making it, while a regular guarantee is understood by the other party.

These promises usually fall under one or other of two forms: What may be called an absolute promise, and a conditional promise. By a particular wording of the promise it is only a conditional promise to pay in case the other party fails to do so, and then it must be in *writing* in order to be binding. This is a case of answering for the debt or default of the debtor and made by mere word of mouth is worthless. But by a slight change in the wording it becomes an absolute promise to pay the debt himself, in which case the guarantor actually takes the place of the debtor. In case of a debt just being created as, for instance, buying goods at a store, this promise is binding if only *oral*, and the merchant has a right to and should charge the guarantor direct for the goods instead of the person receiving them.

The following illustrations will make the distinction clear:

89 Example of Binding Promise. A person goes with his hired man to a store and says to the merchant, "Give this man goods (to a certain amount) and I will see it paid," or "I will be responsible." This is virtually telling the merchant to charge the goods to him direct, and consequently is not "answering for the debt of another," but is an

absolute promise to pay it himself. Such a guarantee does not need to be in writing to be binding. It is the same as saying, "Charge the goods to me," or "I will pay for them." It is his debt, although for the benefit of his servant. Such a promise made by word of mouth is binding for any amount under $40 in Ontario, New Brunswick, and Nova Scotia, and under $50 in Manitoba, North-West Territories, British Columbia, Quebec, Newfoundland and England, and under $30 in Prince Edward Island.

In this case the merchant should charge the goods to the person who gave the order, the guarantor, although it is expected that the person receiving the goods will pay for them. But if he does not do so the merchant looks to the guarantor only, because he is the principal debtor and not a mere surety. His oral or verbal authority to charge the goods to him is sufficient to bind him. (See following Section.)

90 Promise that does not Bind. An example of what may be called a "conditional promise": Supposing he were to say to the merchant "Give this man goods up to (naming the amount), and if he does not pay you by such a time (naming a date) I will myself," or "send the bill to me." This would be worthless spoken by word of mouth, for it is answering for the debt of another, and utterly void unless put in writing. Even if there were witnesses it would still be worthless. It leaves the debt on the other party, the guarantor only agreeing to pay in case the debtor fails to do so. Every form of wording that may be used where this is the case is utterly useless, unless put in writing.

Suppose again that Smith owes Brown, and Brown tells Jones that if he will become responsible for the debt he will let it stand, and Jones replies, "all right, give him time, and if he does not pay you I will," the promise would not be binding unless put in writing.

91 Letters of Recommendation. Great care should be taken in the wording of a letter of recommendation where financial obligations are to be created or business relations formed, if nothing but a simple recommendation is intended. All such phrases as "He is good for them," or naming a certain amount and saying, "He would be safe to that extent," etc., would constitute a guarantee. The liability may be evaded by modifying such expressions by, "I would regard him as safe" for such an amount, or "I think you would be entirely safe in giving him credit" for such an amount, or "I would trust him," or "I think you could trust him," or "he has always paid me," etc. With any such modifying phrase very much may be said to the credit of a worthy person without being held as a surety. Such words spoken by word of mouth would not incur any liability except it could be shown there was an element of fraud in them, that they were intended to deceive. It is not safe, however, to use them even orally without the modifying terms here mentioned being employed.

92 Consideration for Guarantee. Guarantee is a contract, and like other contracts requires a *consideration* to support it, but not necessarily a financial one (see Sec. 42). When a written guarantee is given it is better to express the *consideration*, although not legally necessary.

It may be merely nominal as $1.00, or the actual *consideration* amounting to the full value may be expressed. (See the three following sections.)

93 Guarantee of Debt Already Incurred.

In consideration of One Dollar, the receipt of which is hereby acknowledged, I guarantee that the debt of One Hundred and Twenty-five Dollars now owing to James Forsyth by Henry Johnson shall be paid at maturity.

London, Jan. 29th, 1903.

WILLIAM JENNINGS.

This guarantee might be addressed to James Forsyth merely in the form of a letter, and closed with "Yours respectfully," etc., and be just as binding.

94 Guaranteeing Future Purchases. This is what would be called a "continuing guarantee."

TORONTO, April 30th, 1903.

In consideration of One Dollar, I hereby guarantee the payment of all goods purchased by John Dillon from Alfred Freeman during the remainder of the year 1903, said purchases not to exceed One Hundred and Fifty Dollars.

WALTER JONES.

95 Guaranteeing a Horse.

BERLIN, April 30th, 1903.

In consideration of Seventy-five Dollars for a bay horse, I hereby guarantee him to be only four years old, sound, quiet in harness and true to draw.

JAMES SMITH.

96 Guaranteeing Negotiable Paper. Where bills are subject to protest the expense may be saved and protest rendered unnecessary by the indorsee writing a form of guarantee on the back over his signature, as:

For value received, I hereby guarantee the payment of the within note.

JAMES SMITH.

In this case the guarantor, James Smith, is liable as soon as the note matures, if it is not then paid. Another form:

For value received, I hereby guarantee payment of the within note, and waive protest and notice of protest.

JAMES SMITH.

Sometimes they write: *In consideration of one dollar I hereby guarantee*, etc.

Another form:

For value received, I hereby guarantee the collection of the within note.

JAMES SMITH.

In this last case James Smith is not liable until an attempt to collect by legal process has failed.

97 Guarantee Insurance. There are companies that guarantee the honesty and fidelity of persons engaged in responsible positions as clerks, bookkeepers or managers in any moneyed institution or corporation.

A company receiving a clerk under such guarantee must not change his employment from that for which his fidelity was guaranteed, as that would be a breach of the contract and release the guarantor.

98 Creditor's Obligations to Guarantor, if employee betrays his trust or the debtor makes default in payment:

1. To give the guarantor notice of default within reasonable time after it is known.

2. To give the guarantor, as soon as he has made good the default, all his rights against the debtor, and if any property of the debtor or other collateral security is in his hands, to turn it over to the guarantor.

The guarantor, after making good the default, takes the place of the creditor, and may recover from the debtor not only the original debt, but also all expenses and costs incurred.

99 Discharge of Guarantor or Surety.

1. If the guarantee is given for a certain specified time, then at the expiration of that time the guarantor is released.

2. If the guarantor gives notice that he will not be surety after a certain date, he is then relieved from any default after that time. Of course this would not apply on a negotiable instrument not yet due, or any contract the time for which to be executed had not yet expired.

3. Any alteration of the agreement without his knowledge or consent will discharge the surety. The erasure or interlineation of any words that have the effect of changing the liability creates a new and different agreement from the one which the surety had guaranteed. Such alterations can only be legally made by the surety giving his consent in writing.

4. An extension of time given by the creditor to the debtor by *valid agreement* releases the surety unless he gives his consent. A mere *promise* to extend the time would not release the surety, because the promise would not be legally binding, and if the surety refused to allow the extension the creditor could still sue the debtor, or accept payment from the surety and invest him with all his rights and remedies against the debtor.

In order to be a discharge to the surety, the agreement with the debtor must be one that *binds* the creditors to an extension of time for payment, so that they are prevented from proceeding against the debtor themselves during that time, and which consequently prevents the surety from exercising his right of paying the creditors and suing the debtor upon the claim.

5. Fraud, either in respect to the contract itself, or some fraud or deception practised by the creditor himself or by the debtor with the creditor's consent, by which the surety was induced to guarantee the debt, releases the surety from his obligation.

100 Rights Among Sureties. When several sureties unite in a guaranty, each one is required to contribute equally to the satisfaction of the claim should the debtor make default. If one were found to be insolvent the others would be bound to bear the burden equally. In case one paid all, he could recover from his co-sureties their equitable share of the loss.

This equitable distribution of the liability holds unless there is an agreement among the sureties that changes it. If the last surety (as with indorsers on a note) was to add to his signature, "surety for the above names," or words of similar import, he would not become a co-surety, but would merely be liable in case the others fail.

The respective liabilities among indorsers on a promissory note are noticed in that chapter, which see.

CHAPTER IV.

PAYMENTS.

101 Payments. The *consideration* in every contract is money unless otherwise provided or specified.

102 Payment in Money. Unless otherwise stated every debt is payable in money. If in gold, it must be in gold; if at a certain place, it must be there; if to be sent by letter or by express, it must be that way. If the directions are complied with fully, even if the other party should fail to receive the money the debt is paid nevertheless. Of course the party must be able to prove that he actually sent the money.

103 Payment in Property. When the agreement is such, any debt or contract may be paid in goods, or other property, or in service. If such articles are not tendered at the time and place agreed upon, the debt becomes payable in money. Or if any property other than the kind agreed upon is tendered, it may be refused and the debt collected in money.

But before any action is taken to collect the price in money a demand must be made for their delivery within a certain time (a reasonable time), and if they are not then delivered suit may be entered for the price of the property. The one party cannot compel the other to deliver the goods, but he may recover the price in money as here stated, and in addition he may recover damages for breach of contract if damages actually occur.

104 Payment by Notes. A promissory note or acceptance being merely a *promise* to pay is not an absolute payment, and if they are not paid at maturity the debt stands the same as before. The case is different, however, if the note of a third party is given in payment for goods or on a debt. For instance, Jones gives Smith a note he held against Brown in payment for goods or on a debt. This note pays the

debt. Of course, if Jones indorsed the note so as to make himself liable when he transferred it, then Smith can proceed against him as surety on the note, but not for the original debt.

105 Counterfeit Money and Forged Paper. Counterfeit money, a forged note or cheque given and received in good faith does not discharge a debt. The person receiving it must return it to the party who paid it to him within reasonable time. The debt still remains and may be collected as though no such payment had been made.

106 To Whom Payable. Payments should always be made to the person mentioned in the contract, unless it be a negotiable instrument, then to the *holder* only, and never to an agent unless he has the note to deliver over. If nothing is said, then it must be to the creditor himself, or his legal representative, such as an agent or attorney. Care must be exercised when making payment to his representative that said party is authorized to receive the money.

107 Place of Payment. The manner and place of payment are often definitely stipulated, as in the following: "Payable only at A's office in gold to 'A' personally, and not otherwise or elsewhere." If a place of payment is stipulated it must be at that place. If no place is mentioned then it is the debtor's duty to find the residence or place of business of the creditor, and pay it there to him personally or to his legal representative or agent.

108 Presumption of Payment. A note, acceptance, due bill or receipt in the hands of a debtor is presumptive evidence that the debt is paid, and will so hold unless there is other positive evidence to the contrary. If there has been a great lapse of time without any demand being made the presumption is that the debt has been paid, hence the Statute of Limitations.

109 Application of Payment. The person making the payment has the right to make the application. Where a debtor owes more than one debt to the same creditor, and they are all due, the debtor has the right to say on which debt the payment shall be applied. If the debtor does not say on which debt it should be placed, then the creditor may apply it as he may desire. When neither the debtor nor creditor makes the application, but credit is merely given for the receipt of so much money, in case the business matters were settled in court, the court would apply the payment on the debt that is considered the most burdensome to the debtor. If the debts were a book account, an indorsed note, a chattel mortgage and a judgment, the court would apply it on the judgment. If the debt were a book account only, the coutr would apply the payment on the earliest items.

110 Compromise. A large debt may be paid by a very much smaller sum where there is an agreement to that effect. A disputed claim may be paid by any sum where there is an agreement to accept such sum in satisfaction for the claim. The agreement should be in writing, or have a witness. "Accord" and "satisfaction" are terms used in settlement of disputed claims by compromise.

111 Composition Deed. In case of an insolvent person where the creditors accept a certain rate on the dollar and give him a discharge, the release is called a Composition Deed.

112 Arbitration and Award. In case of any dispute where parties agree to leave the settlement to arbitration, they are obliged to accept the award as final, providing the arbitrators keep within the limits prescribed for them.

113 Legal Tender of Payment. A legal tender is the attempted performance of a contract, whether it is to do something or to pay something. If payable in goods, then goods of that kind and quality must be offered at the exact place and on the time called for in the contract. If payable in money, it must be in the lawful money of the country, if that is demanded. A creditor cannot be forced to accept a cheque as payment. If payment is not accepted when a legal tender is made interest stops at that date, and no law costs or other expenses can thereafter be required of the person making the tender.

114 Refusing Part Payment. The refusal to accept part payment on a note or debt does not affect the debt in any way. The refusal to accept payment tendered in full does not cancel the debt, but it stops all interest and expense thereafter.

115 Merging Securities. The higher security merges the lower. Where one person would be owing another on a book account or note and then gives a mortgage for the same debt, the mortgage, being under seal, is a higher security, and thus the book account or note is merged into the mortgage, hence would be no longer binding. If there were an indorser on the note he would be relieved. If it is desired that the mortgage should not merge the note, it must be stated in the mortgage that it is given as *collateral security:* then the note would still be binding.

A note or bond on which judgment has been obtained is no longer binding as a note or bond against the maker.

Where parties have entered into a *simple* contract, either written or oral, and then afterwards enter into the same contract by an instrument under seal, the simple contract is no longer binding, but is merged into the higher.

Where a mortgage would be given as collateral security for a note, the payment of either one discharges both.

If a note contains a statement on its face that it was given as collateral security it is not a promissory note.

Where collateral security is given with a note the right to such security goes with the note and may still be held even after the note may be outlawed.

116 Legal Tender Money. In Canada our Canadian and British copper coins are legal tender for the payment of a debt up to twenty-five cents; silver for $10.00; Dominion notes, British and United States gold for any amount.

CHAPTER V.

NEGOTIABLE PAPER.

117 Negotiable Paper includes those instruments in use in a community which pass freely from one person to another by simple delivery or by indorsement. The word which gives them this negotiability is *bearer* or *order*. Those which are transferable by simple delivery are written payable to a certain person, firm or corporation, or *bearer;* and those which are transferable by indorsement are written payable to a certain person, firm or corporation, or *order*, and require to have the payee's name written across the back to be transferred.

The instruments classed under Negotiable Paper are promissory notes, acceptances, bank notes and cheques, but besides these are also the following, which are negotiable by indorsement: Certificates of Deposit, Warehouse Receipts, Bills of Lading and Coupon Bonds.

118 Promissory Notes. A promissory note is an *unconditional* written promise to pay a certain sum of *money* at a specified time or on the happening of a certain event. Notice carefully the *three* points in this definition:

1. There must be no *condition* expressed. If there be a condition expressed its character as a promissory note is destroyed and it becomes nothing but a written agreement, binding on both parties, but not negotiable.

2. It must be payable in *money*. If it is made payable in anything except money its negotiability is destroyed and it is called a chattel note. (See Sec. 148.)

3. It must be made payable at some *specified time* or on the happening of a certain *event*. If made payable so many days or months after the death of a certain person, or the arriving at age of a certain person, it would be as valid as if made payable after *date*, as they are usually drawn, because they are events certain to occur.

119 Parties to a Note. At the inception of a contract by promissory note the parties to the note are maker and payee. After its transfer other parties become interested, and the *holder* takes the place of the *payee*. If the original payee in transferring indorses it in the usual way he becomes surety for subsequent holders.

120 Innocent Holder for Value. An "innocent holder for value" is the same as "a holder in due course," and means one who took a note or acceptance which was complete and regular on the face of it, under the following conditions:

1. That he became the holder of it before it was overdue, and that if it had been previously dishonored he had no notice of such fact.

2. That he took it in good faith and for value, and that at that time he had no notice of any defect in the title of the person who negotiated it to him.

Any person thus becoming the holder of a note or acceptance for value on or before maturity, and who does not know of any fraud or illegality in connection with it, will collect it no matter how great the fraud by which it was obtained may have been, except in case of those marked "Given for patent right," or in case of forged paper. After a note has thus passed through the hands of an innocent holder for value, and been purged from its infirmity, it becomes immaterial whether any subsequent holder had notice or not of any prior defects or illegality. A person, however, becoming the holder of an *overdue* note or acceptance, or a non-negotiable note, takes it subject to all the equities and defects of title which affected it at its maturity, and henceforward no person who takes it acquires any better title than it had at that time.

121 Place of Payment. It is not necessary to the validity of a note to mention in it any place of payment; but it is desirable, for various reasons, that it should be done. The maker would then know where to find it at maturity.

If there is an indorser on the note, then it is better for the holder if it is made payable at a certain place, as he would have less difficulty in making the legal presentment required in order to hold the indorser. (To hold indorsers, see Sec. 185.) But where there is no indorser, or none that the maker cares to hold for payment, the case is different. Where no place of payment is mentioned in the note the holder is under no legal obligation to present the note for payment at maturity; it is the maker's duty to find his note and pay it, and if he does not do so, the note may be sued the next day, or be allowed to run on and draw interest. But if there is a place of payment specified in the note, then the holder must see that the note is presented there, or he would be in danger of losing subsequent interest and costs if he put it in suit.

122 Signatures to Notes. A person need not sign his own name to a note with his own hand, but it is sufficient if his signature is written thereon by some other person, by or under his authority. In case of a corporation it is sufficient if the corporate seal is attached to the instrument, but this is not likely to come into general practice on account of the ease by which forgery could take place. It is not necessary to attach the seal to a note or bill if the corporate name is used.

123 Ink or Pencil. A note or acceptance drawn with lead pencil would be valid; so would an indorsement in pencil be binding; but no person of ordinary prudence would use a pencil, as it can be too easily erased and changes made.

124 Value Received. These words are usually inserted in a promissory note, but they are not necessary to its validity. In regard to negotiable paper, value is *presumed*. (See Accommodation Note, Sec. 131.)

125 Alterations of Notes and Acceptances. When any note or acceptance is *materially* altered without the consent of all the parties liable on it, the bill is void, except as against the person who made, or who assented to the alterations, and also against subsequent indorsers. Also in this case if the alterations are not apparent and the bill has been

transferred before maturity to an innocent holder for value, such holder will enforce payment of it according to its original tenor as if it had not been altered.

The alterations that are held to be material, and that destroy the bill, are: Alteration of the date, the sum payable, the time of payment, and the place of payment; also, in case of a draft which has been accepted *generally*, the addition of a place of payment without the assent of the acceptor. In general, any interlineations made in a note or draft by the holder after it has been signed will relieve both the maker and indorsers.

126 Omissions or Wrong Date. Where a note or acceptance payable at a fixed period after date is issued undated, or where an acceptance payable at a fixed period after sight is issued without date of acceptance, any holder may insert therein the true date of issue or acceptance, and the instrument will be payable accordingly. If in this case, however, the holder in good faith but by mistake inserted a wrong date, and the bill subsequently comes into the hands of an innocent holder for value, it will be payable as though the date so inserted had been the true date.

127 Defects that do not Invalidate. A bill is not invalid by reason that it is not dated, or that it is dated by mistake on Sunday; that it does not specify that value has been given, or name the place where it was drawn or where it is payable. It might be dated either forward or backward. If through oversight no date were placed on a note or draft, the holder would have the right to insert the proper date, according to the intention of the parties at the time the instrument was made.

128 Days of Grace. In Canada (Newfoundland the same) three days of grace are allowed on all notes and acceptances, except those drawn payable *on demand*, which have no days of grace allowed.

129 Maturity. A note or acceptance is legally due on the third day of grace, and may be paid at any time during the business hours of that day. If payable at a bank, it must be paid during banking hours.

When the time is expressed in days, the actual number of days must be counted. In computing the time, the day upon which the note is dated is not included, but commences on the following day. If the time is expressed in months, it means calendar months, and not merely thirty days. For instance, a note dated April 10th, at three months, falls due July 10th, and the three days of grace added makes July 13th as its legal date of maturity.

130 Maturing on Sunday. A note or acceptance falling due on Sunday, or any legal holiday, is payable on the following day, unless that again were a holiday, in which case it would be the first business day after that. In New York, and some other States of the Union, a note or acceptance falling due on Sunday or a legal holiday, is payable the day before, but in Canada it is the day after.

131 Accommodation Paper. An accommodation note or acceptance is one where the person signing the note or accepting the draft does so without receiving any value therefor, but merely for the purpose of

lending his name to some other person. The accommodation party is liable on the instrument to any holder for value, whether such holder, when he took the note or acceptance, knew such party to be an accommodation party or not. They do not differ in form from other notes or acceptances, and no legal cautions are necessary. The person who assumes such an obligation should have substantial reasons for doing so, and cautions here would be out of place.

132 Payment of Notes. Payment of negotiable paper of any kind should never be made except to the actual holder of the paper who has it in his possession to deliver over, and who does deliver it over upon receipt of the payment. Serious losses are constantly occurring by a neglect of this plain business procedure. Payment even to the supposed holder who has not the note in his possession is not redeeming the note, but is simply placing that much money in his hands and trusting to his honor to apply it to the note. The note, however, may have been transferred and the true holder could collect it over again, or it may be in the bank and the party to whom payment was made may be on the eve of bankruptcy, hence the note would have to be paid over again. Paying money to an agent of a firm who has not the note to hand over, is simply trusting to the honesty of the agent. His receipt would be worthless as a set-off if the agent kept the money and the firm sued on the note.

133 Cancelling Signature. When a note is paid the name should never be torn off, as is usually done, but simply draw one or two lines through the signature of both maker and indorser, and file the note away as a voucher. There is the same necessity for preserving a redeemed note as there is for a receipt.

134 Surety is the person who agrees to pay in case the maker fails to do so. If he puts his name on the back of the note he is an indorser only, and the holder of the note must meet the requirements of the law in regard to presenting the note for payment (Sec. 182). But if he writes his name on the face, with that of the maker, he becomes one of the makers, and is, therefore, held for payment, whether the holder presents the note for payment or not.

135 A Minor's Note cannot be collected, either from him or his parents or guardians (see Sec. 58). If a minor, however, or any other person or corporation not competent to contract, issues a bill having an indorser or joint maker, the holder can enforce payment from such indorser or joint maker.

136 Note Obtained Through Fraud is void in the hands of the original holder, if the maker can prove the fact of fraud or misrepresentation, but if it has been transferred to another person before maturity, who gives full value for it and does not know of the fraud, then this third party will collect it. No difference what the fraud may have been or deception, or even if it had been stolen, this innocent holder for value has a good title and will collect it. After a note or acceptance has once been purged of its infirmity by passing into the hands of a holder in due course, it becomes immaterial whether any subsequent holder had notice

or not of the prior defects or illegality connected with it. If, however, it is transferred after maturity, then the purchaser does not, in that case, obtain any better title than the original owner possessed.

137 **A Forged Note** is void, and cannot be collected under any circumstances.

138 **Individual Note.** The ordinary form of the individual note is well understood, but where there is no place of payment mentioned in it considerable annoyance may be occasioned. (See following form).

$40.00. COLLINGWOOD, August 27th, 1903.

Sixty days after date I promise to pay to W. H. Henderson or order Forty Dollars, with interest at six per cent., for value received.

W. L. MONTAGUE.

With the above form of note, which is not supposed to have any indorser on it, there are only two parties to the paper, the maker and payee. At maturity, October 29th, the holder, W. H. Henderson, is not required to present the note for payment, but the maker is under obligation to hunt up his note and pay it. Mr. Henderson may have transferred it, and if the maker did not find it and redeem it on the 29th October, the present holder could any time after that date put it in suit.

139 **Joint and Several Note** is one signed by two or more persons, who thus promise to pay either jointly, or individually, if necessary. There are several forms for the wording in general use, as: "We, or either of us promise to pay," or "we jointly and severally promise to pay," and signed by two or more persons, or simply "I" promise to pay, and let as many sign it as are interested, it being an "I promise" for each one. The latter form is preferable, because shorter.

In any one of these cases they are all jointly liable, and each one is individually liable as well, so that the holder of the note, in case he has to sue, may proceed against all of them at once, or against as many or against either one of them he thinks best.

A joint note is written "we" promise to pay, or "we jointly" promise to pay, and signed by two or more persons. Do not mistake this note for the "joint and several note," as the liabilities are not the same.

$100.00. ST. CATHARINES, July 29th, 1903.

Three months after date we or either of us promise to pay James Smith or order One Hundred Dollars, at the Bank of Toronto here, for value received.

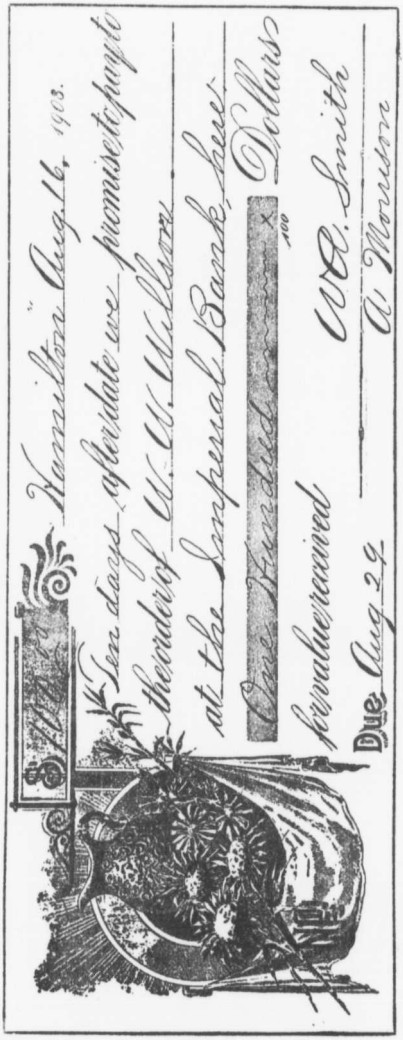
JOHN WINTERS.
J. H. WHITE.

In the above note each one is liable for the whole amount, and if the holder found it necessary to sue in order to recover payment, he could sue both or either one, just as he thought best. If he sued one and collected the whole amount from him, then that one, if they were equally interested, could sue and collect half from the other, including half of the costs of the previous suit. But if the party who paid the

note happened to be merely a surety for the other he would collect the whole amount from the other party.

Both of the preceding notes are negotiable by indorsement only, as they are made payable to James Smith or *order*; hence if he wished to dispose of them he would be compelled to write his name across the back, that is, *indorse* them.

If they were written payable to James Smith or *bearer*, then he could dispose of them simply by delivery or passing them over to the purchaser. It is far better to use *order* instead of *bearer*, because in that case a note lost or stolen before it had been transferred could not be disposed of.



140 Joint Note is written "we promise to pay," or "we jointly promise to pay," and signed by two or more persons, who are not *partners*. In the full form shown in this page both parties are supposed to have received value and agree to pay it jointly. Each one in this case, is only liable for one-half the amount. If it should become necessary to use in order to collect it, the parties must be sued jointly. If one of the parties left the country and his address could not be ascertained so as to

serve him, he may be served *substitutionally*; that is done by obtaining an order from the County Judge to serve another member of the family or otherwise as he may direct. The one-half can then be collected from the other party.

If, however, one of these two parties, instead of having an equal interest in the *consideration* for which the note was given, had no interest at all, but merely signed the note as a surety, and he should leave the country *before maturity*, or it was found that he was insolvent, so that nothing could be collected from him, in that case the whole amount would be recoverable from the other party who received the value.

Special care must be taken to distinguish between the wording of a *joint* note and joint and several note, for the liabilities of the makers are very different in the two cases.

141 Partnership Note is also usually written "*we*" promise to pay, but in that case it is not a joint note, although it has that form, but is a joint and several note. Although three or four may sign, they are all individually liable for payment of the whole note on account of the partnership laws, by which each one is liable for the whole debts of the firm.

142 Patent Right Notes. Any note or acceptance given for a patent right, or for any interest in a patent right, must have legibly written or printed across the face of it before the instrument is issued the words "Given for a patent right," and without such words thereon the instrument or any renewal of it is void, unless in the hands of an innocent holder for value.

Any person who intentionally transfers a note or acceptance which he knows was given for a patent right or for an interest in a patent right, and is not thus marked, is liable to a fine not exceeding $200, or one year's imprisonment.

The purchaser of a patent right note or acceptance that is thus marked receives no better title than the original owner possessed, hence if the instrument is affected with fraud or any illegality the mere transference does not relieve it in the hands of an innocent holder for value.

143 Note by Married Women. All of the Provinces, except Quebec, now give married women the exclusive control of their own separate estate, and allow them to enter into contracts independently of their husbands, hence in signing a note or other contract they should use their own Christian name, as "Sara A. Jones" instead of "Mrs. ——."

$50.00. OSHAWA, September 3rd, 1903.

Thirty days after date I promise to pay Henry Alexander or order Fifty Dollars, at the Bank of Toronto here, for value received. SARA A. JONES.

But where a bill is payable to the order of a married woman, thus, "Mrs. J. W. Jones," the preferable mode of indorsement would likely be to simply indorse the bill as it is described as "Mrs. J. W. Jones," then add her own proper signature, as "Sara A. Jones," under it. The same form of signature would be used in accepting a draft (incorrectly) drawn on a married woman, as "Mrs. W. H. Stevens."

144 Non-Negotiable Notes are those made payable to a certain person, firm or corporation, without using either of the words *bearer* or *order*, and placing the word *only* after the name of the payee. This form of note, shown in full size and form on this page, containing the word *only*, shows on its face that it was the intention of the parties to it that it should not be transferred, and it cannot be by merely delivery or indorsement as in case of other notes.

Simply marking out the word *order* or *bearer* from the printed blanks is not sufficient to make the bill non-negotiable. A bill or note made payable to a particular person, but which does not contain additional words *prohibiting* transfer is still negotiable, notwithstanding the words *bearer* or *order* are omitted. It is regarded by the Statute as simply an omission, the same as forgetting to date the bill, which any holder could subsequently insert. Hence to make the bill non-negotiable it is absolutely necessary to put the word *only* after the name of the payee.

A non-negotiable note or bill may be transferred by assignment the same as a book account or due bill. The party who purchases such a note takes it subject to all the defects and equities that may burden it,

and in no respect obtains any better title than the original owner possessed.

145 Legal Holidays. The following are legal holidays for all the Provinces: Sundays; New Year's Day; Good Friday; Easter Monday; Christmas Day; Victoria Day, May 24th; Dominion Day; H.M. Birthday, now Nov. 9th; Thanksgiving Day, any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday or a general feast or thanksgiving; Labor Day; Civic Holidays, appointed by proclamation of the chief magistrates of towns and cities; when New Year's, Christmas, King's Birthday, Victoria Day or Dominion Day falls upon Sunday, then the day following is observed. Newfoundland observes the same days except Labor Day.

N. W. Territories also have the above days with Ash Wednesday and Arbor Day added (2nd Friday in May).

And in the Province of Quebec the said days, and also the following: The Epiphany; the Annunciation; the Ascension; Corpus Christi; St. Peter and St. Paul's Day; All Saints' Day; Conception Day.

Promissory notes falling due upon Sunday or a holiday will legally mature on the day next following which is not a holiday.

The time limit also of any contract expiring or falling upon a holiday, the time so limited shall extend to, and such thing may be done on the day next following which is not a holiday.

Civic Holidays being merely local are not bank or general holidays, hence negotiable paper and all outside contracts must be attended to.

Persons engaged under a contract of service, and apprentices, cannot be compelled to work on any legal holiday, except under special agreement.

Employees working by the week, month or year, unless otherwise specially agreed upon, are entitled to their wages for the holidays.

146 Date of Payment Stated with Form. The following form of note, which names the date of payment, is coming into use, and is to be recommended:

$75.00. OWEN SOUND, July 10th, 1903.

On the tenth day of December, 1903, I promise to pay to James H. Hunter or order Seventy-five Dollars, for value received.

W. P. HENDERSHOT.

147 Renewal Notes. Taking another note in renewal for or on account of the whole or part of a note suspends right of action while such security is running and not yet due.

If the renewal note is not paid at maturity, unless it is in the hands of a transferee, the original debt revives. But a note taken merely as collateral security does not suspend the right of action on the original debt. If the note bears on its face that it was given as collateral security it is not a promissory note, but merely a written agreement.

148 Chattel Note is one payable in merchandise of some kind instead of money. They are not negotiable, even if the words *bearer* or *order* should be inserted, but they may be transferred by assignment the same as a due bill or book account. Following are two forms:

BRANTFORD, July 29th, 1903.

Five months after date I promise to pay James Smith, at his store, One Hundred Barrels of good Baldwin Apples at market prices.

J. W. WINTERS.

$85.00. INGERSOLL, July 29th, 1903.

Five months after date I promise to pay James Smith, at his store, One Hundred Bushels of good merchantable Barley, at 85 cents per bushel.

JAMES WINTERS.

If the party giving such a note does not tender the articles at the time and place mentioned in the note the holder may sue, and if payment in the chattel is not made the amount becomes payable in money, but a demand for their delivery at a certain date must be made before entering action. If the articles are cumbersome and he *offers* to deliver them, it will be sufficient. If the payee refuses to receive them the debt is discharged by the tender of the articles, according to the directions in the note, but the property in the articles tendered passes to the payee.

If the debtor should be compelled to take the goods home again, he becomes the bailee for the payee, and must give them ordinary care, but at the risk and expense of the payee. If at any time afterwards the creditor requests their delivery, they must be delivered up if the expenses that may have been incurred have been paid.

Such notes are not negotiable, still they are a binding contract and a very desirable form in which to place all such transactions, which are a frequent occurrence among farmers and fruit growers.

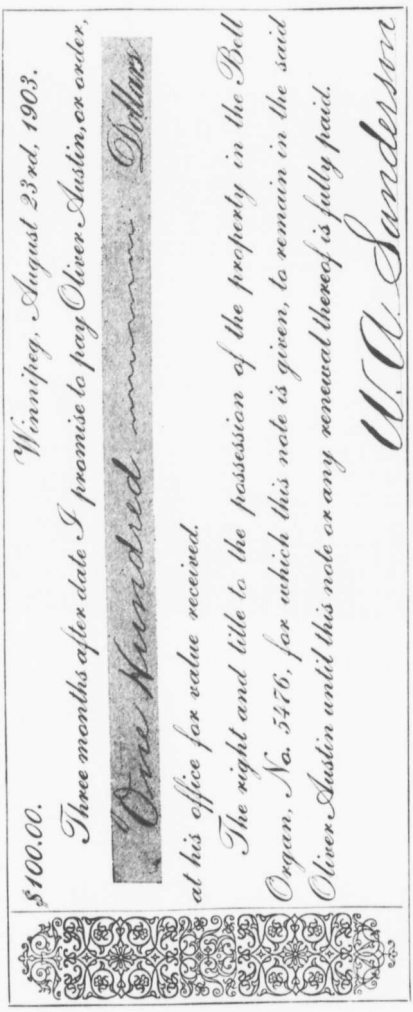
149 Note Signed by One who Cannot Write:

$100.00. BRANTFORD, August 4th, 1903.

Three months after date I promise to pay to the order of James Smith, at the Bank of Toronto here, One Hundred Dollars, with interest at eight per cent. per annum, for value received.

Witness: CHARLES SUMMERS. W. $\overset{his}{\underset{mark}{\times}}$ WINTERS.

The party signing a note in this way may take hold of the pen while his name is being written or he may not; he may make his own cross or he may not, just as he wishes. There must, however, be a witness to the signature. The party assisting to make the note may sign as the witness if no other person would be convenient.



150 Lien Note and Conditional Sales. A lien note is an ordinary promissory note with a clause added, which prevents the *ownership* of the article sold from passing to the purchaser until the note has been paid in full.

Lien agreements, and sometimes accompanied by a lien note, are in common use among sewing machine, organ and piano, and agricultural implement agents, but these are generally lengthy documents, with various conditions attached, for the safety of their property so widely scattered among strangers.

The form here shown is equally as safe for the sale of a carriage, or horse, or household furniture in a community where the parties are known.

Such a note may be taken for an article being sold, but not for a debt that has already been contracted. The purchaser takes the article and has the full use of it, but he does not acquire its ownership until the full amount of the note or any renewal of it is fully paid.

Care must be taken in writing the lien clause. It is "the right and title to the possession of the *property* in the article" that the vendor reserves until the article is paid for. Some persons incorrectly write that clause "the right and title to the *possession* of the article." In the latter case the vendor only reserves the right to retake possession of the article, which he may do at any time, even before the note falls due. In this case also the purchaser has the right to sell the article while it is in his possession and the vendor could not take it from a third party to whom the purchaser thus sold and delivered it.

Such a note is negotiable the same as though this clause were not added; indeed, it is better than an ordinary note, because it has this much additional security. This added clause is not a "condition" embodied in the note itself. The "condition" pertains to the ownership of the article sold and not to the note, therefore does not affect its negotiability. If the vendor desires to do so he may treat the note as any other without regard to this lien clause. If it has been indorsed and transferred the holder also may, if not paid at maturity, sue and collect from either the indorser or the maker without regard to the lien clause, and if he fails to collect the amount he may then resort to the lien clause and take possession of the article.

In transferring lien notes, however, if the holder is to have all the rights of the original payee, so as to follow and claim the *goods* wherever they might be, it should be done by *assignment* in addition to the *indorsement* of the paper. In that case it is also advisable to place a seal on the assignment, as that furnishes absolute evidence of the genuineness of the signature.

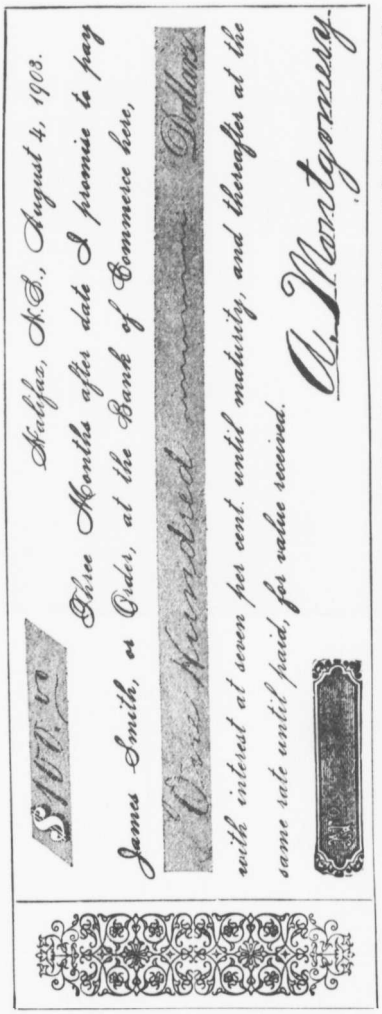
But if the note is not paid at maturity and the holder wishes to take possession of the article held by this lien, or to have the lien binding against subsequent purchasers and mortgagees the requirements of the "Conditional Sales Act" must be complied with, which see Sec. 315.

151 Lost Notes or Bills. Where a note or acceptance has been lost the debt is not thereby cancelled. If it was lost before maturity the person who was the holder may apply to the maker or acceptor to give him another of the same tenor, giving him security to indemnify him against all persons in case the lost bill should be found again.

If the acceptor or maker on such request should refuse to give a duplicate bill, he may be compelled to do so.

If action is brought to recover payment upon a lost bill, the loss of the instrument may not be allowed to be set up, provided an indemnity has been given to the satisfaction of the court or judge against the claims of any other upon the bill in question.

If no tender of indemnity is offered before action is taken, the plaintiff will seldom be allowed his costs, and will probably be ordered to pay the costs of the defendant.



The lost instrument is usually advertised as a warning to the public not to purchase it, but such advertisement would not prevent an innocent holder for value from collecting it, that is, a person who purchased it without knowing of the loss or advertisement.

Any person finding such an instrument and attempting to conceal it, or negotiate it instead of trying to find the owner, is liable on a charge for larceny or theft.

152 Protecting Interest After Maturity. The form shown here retains the same rate of interest after maturity as it does before. The legal rate of interest in Canada at present is five per cent., but any rate can be collected that a person legally agrees to pay, as we have no usury laws. A note drawn for a higher rate than five per cent. if not paid at maturity will then drop to five, and if drawing less than five it will rise to five unless it expressly stipulates the contrary.

The usual way in which this is attempted, by writing immediately after the rate of interest the words "until paid," is not sufficient. The courts rule that that simply means at maturity, for that is the time when the instrument is supposed to be paid.

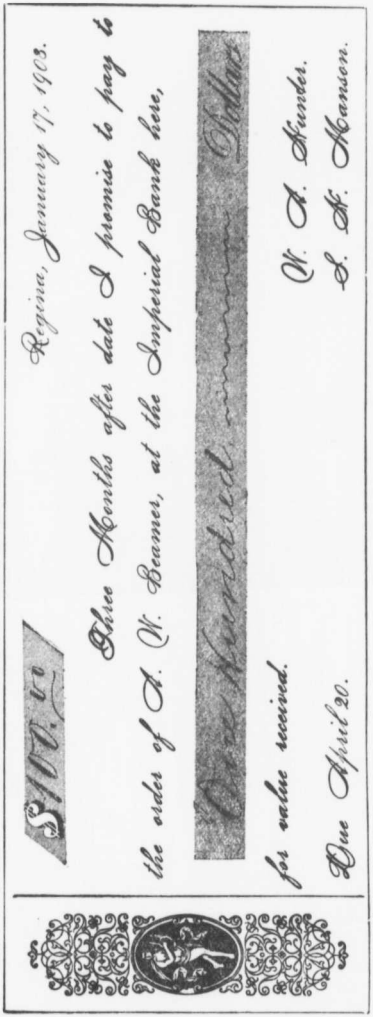
To make the rate in

the note binding after maturity, words like the following must be used, "with interest at (the rate desired) until maturity, and thereafter at the same rate until paid."

The same precaution must be taken in regard to a mortgage. This is one of those finer points in the law not usually understood by the people generally.

153 Restricting Place of Payment. The form illustrated here is a joint and several note restricting the place of payment, so that if it is not presented at the place stipulated on the date of maturity, no cost or expense will be incurred until after it has been presented. The makers contract to pay this note on April 20th at the Imperial Bank. The holder is supposed to have the note at the bank at maturity, but if there is no indorser on it he need not, however, do so. The omission to present the paper for payment on the date of maturity does not discharge the makers, but if any suit were instituted thereon before its presentment no costs would be added *provided* the makers tendered the money at the bank at maturity.

If the note were payable at any other place, a tender of the money at such place would also be a bar to any subsequent costs, and probably to interest after maturity.



If the note were payable at a bank, it would be advisable to deposit the money in the bank to cover the note and interest if there were any.

The Statute says that in such cases the question of costs and subsequent interest is left to the discretion of the court, but no judge, except under peculiar circumstances, would allow costs in a case of that nature, and but very few would allow interest after maturity.

154 Collateral Note. It often occurs that a person wishes to raise money on his own note where security would be necessary, and yet may not wish to give an indorser, but he has shares in some stock company or bank, or has a mortgage which he could place with the creditor as collateral and thus amply secure him. In such case the following note would be in order:

$200.00. DUNNVILLE, May 10th, 1903.

Three months after date, for value received, I promise to pay Wm. Braund or order, at the Bank of Commerce here, Two Hundred Dollars, with interest at seven per cent.

Having deposited six shares in the Ontario Navigation Co., Limited, which I authorize the holder of this note upon the non-performance of this promise at maturity to sell either at public or private sale, without demanding payment of this note or the debt due thereon, and without further notice, and apply the proceeds, or as much as may be necessary, to the payment of this note and all necessary expenses and charges, holding myself responsible for any deficiency.

A. J. PALMER.

N.B.—A life insurance policy could not be used as above unless the *beneficiaries* signed the note and the assignment was recorded on the company's books.

In all cases where collateral security is given with a note the right to such security goes with the note and may still be held even after the note might be outlawed.

An article, say a gold watch, left in this way as collateral security would not be "pawned," and the lender of the money would not be liable to a fine for practicing pawnbroking without a license. The transaction is legitimate and legal.

155 Instalment Note. It does not affect the negotiability of a note to make it payable in instalments, but it cannot be sued until the last instalment is due, whether the preceding instalments be paid or not. This may be guarded against by adding a clause like the following: "In the event of default in making any of the above payments at the time mentioned, the whole amount of this note shall become due and payable forthwith."

The following instalment note will illustrate the form:

$60.00. HUMBERSTONE, July 1st, 1903.

On the first day of each month hereafter for four months consecutively, I promise to pay to Messrs. Augustine & Kilmer the sum of Fifteen Dollars, the whole amounting to Sixty Dollars, the first of such payments to be made on the first day of August next. Interest after maturity until paid at the rate of eight per cent. per annum.

In event of the sale or other disposal of my land or personal property, or of default in making any of the above payments at the time mentioned, the whole amount of this note shall thereupon become due and payable forthwith.

Witness: GEORGE NEFF. JAMES HARDY.

A witness to such a note is not essential.

CHAPTER VI.

ACCEPTANCES.

156 Acceptance is the name given to a draft after it has been accepted. A draft is an unconditional written order from one person, called the *drawer*, to another called the *drawee*, to pay a certain specified sum of money, at a specified time, to a third party, called the *payee*. Drafts are also called Bills of Exchange. Bills of Exchange are divided into two classes, viz., Inland or Domestic, and Foreign.

Those payable in the same country in which they are drawn are called Inland, and those payable in another country are Foreign.

The Inland or Domestic have three days' grace allowed on all except those drawn "on demand."

If a draft is payable in anything but money, or if it orders something to be done in addition to the payment of money, it is not a bill. But to name a particular account to be debited with the amount, or to include a statement of what gives rise to the bill, would not be *conditional*, hence would not affect the bill.

The Foreign are usually sent in sets of three, called a "set of exchange," and each sent by a different route, or on a different day, so as to guard against delays in case of accident, one of the three being almost certain to reach its destination.

Bankers, lawyers, etc., would not need this explanation, but the general reader will notice that in this work a draft, after it has been accepted, is referred to as a bill or acceptance.

157 Parties to a Draft. The Drawer is the name of the person who makes or draws the draft. He signs his name in the lower right-hand corner, where the maker of a note would sign.

The Drawee is the one on whom the draft is drawn, and corresponds with the maker of a note, that is, the one who has to pay it. His name is placed in the lower left-hand corner.

The Payee is the one in whose favor the draft is drawn—the person who is to receive the money. The same name applies to both notes and drafts.

A bill or note may be made payable to two or more payees jointly, or it may be to one of two, or to one or more of several, or it may be to the holder of an office for the time being.

When the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

158 Payable to Bearer or Order. A bill is payable to bearer when it is so expressed, or when the only or last indorsement is an "indorsement in blank."

A bill is payable to order which is so expressed, or which is made payable to a particular person and does not contain words prohibiting transfer, or indicating an intention that it should not be transferred. A note or bill is negotiable notwithstanding that the word *bearer or order* is omitted. Before 1890 a note or bill not payable to order or bearer was absolutely non-negotiable, but not so since that date. Merely striking out the word "order" or "bearer" does not make the bill non-negotiable. (See Sec. 144.)

159 Acceptance of Drafts. A draft is not binding until it has been accepted any more than an ordinary order on a merchant would be until he has accepted it. In accepting a draft the mere signature of the acceptor is sufficient without the usual words being added. A draft is usually accepted by writing across the face of it, pretty well towards the upper end, which is the left-hand side, the word "Accepted," giving the date, stating where it is to be payable, and then signing the name immediately under, as:

"Accepted August 28th, 1903.
"Payable at Imperial Bank, here.
"D. A. McLaren."

With drafts drawn payable "at sight," or a certain time "after sight," or a "demand" draft that is not paid when presented, should have the *date* of "acceptance" given, but a draft drawn payable a certain time after "date" need not have the date of acceptance given; but even with these it is as well to give the date of acceptance, too. Where a draft is accepted it is said to be "honored," and where acceptance is refused it is said to be "dishonored."

When a draft is presented for acceptance the drawee may demand two days for acceptance, and in such case it cannot be protested until after that time. But if the time is not asked it may be protested the day it is first presented. The exact wording of the Act is: "The drawee may accept a bill on the day of its due presentation to him for acceptance, or at any time within two days thereafter."

160 General Acceptance is the name used when a draft is accepted in the ordinary way, as illustrated in previons section.

161 Qualified Acceptance is when the "acceptance" in express terms varies the effect of the draft from what it was originally. The acceptor has that privilege within certain limits. This may be done by what is called the Conditional acceptance, or a Partial acceptance, or one qualified as to Time, or by the acceptance of one or more of the Drawees, but not of all. (See following sections.)

162 A Conditional Acceptance is one in which the acceptor makes the payment conditional upon something contained in it, as: "Accepted, payable out of the funds of Amity Lodge, No. 32, A.F. & A.M. A. MATTISON, Treasurer."

In such a case A. Mattison would not make himself personally liable.

163 Partial Acceptance is where the acceptor only agrees to pay part of the amount stated in the draft, as: "Accepted September 4th, 1903, for fifty dollars. W. JOHNSON."

In this case, say the draft was for $75, the drawer and indorser would have to be notified that it was only accepted for part. (See following section.)

164 Acceptance Changing Time. An acceptor may change the time, as, for instance, from sixty to ninety days, but in all such cases where the original conditions of the draft are changed, the drawer and all indorsers are relieved, unless they are notified. If, after receiving such notice, they do not, within a reasonable time, express their dissent, they are held to have given their assent to the change, and thus remain bound. The change of place for payment does not affect the draft, but the change of amount or time does. The holder also may refuse a "qualified acceptance" and treat the draft as dishonored, in which case he must have it protested.

165 Mistake in Drawee's Name. Wherever in a draft the drawee is wrongly designated or his name misspelled, he may accept the bill as described, adding, if he thinks best, his proper signature, or he may simply accept it by his proper signature only.

166 Negotiating Overdue Bills. In negotiating an overdue bill it is subject to any defect of title affecting it at maturity. The absence of *consideration* will not likely be admitted a defect.

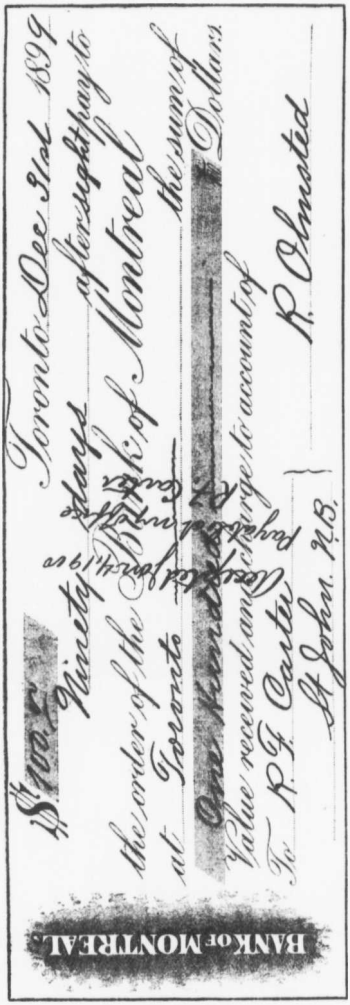
Where a bill is accepted or indorsed when it is overdue it is deemed, as regards the acceptor who so accepts it, or the indorser who so indorses it, as payable on demand.

167 Time Draft after Date.

$100.00. SAULT STE. MARIE, August 31st, 1903.

Ninety days after date pay to the order of The T. Eaton Co., Limited, at the Dominion Bank, Toronto, One Hundred Dollars, for value received, and charge to account of

To W. WINTERS, Toronto. D. A. MCLAREN.



In accepting the above draft, which is payable after "date," W. Winters need not write the date of acceptance, as the time when it will mature is fixed in the draft, being made payable ninety days after its date.

A bill drawn payable after date need not necessarily be presented for acceptance until presented for payment, but it is generally presented as early as convenient, and certainly should be.

168 Kinds of Drafts. Drafts are divided into four classes, according to their wording, which fixes the time they are to run and the way in which the time is to be counted: (1) Demand Draft; (2) Sight Draft; (3) Drafts payable a certain time after "sight;" (4) Drafts payable a certain time after "date." The following sections will give a form for each kind and the law governing it:

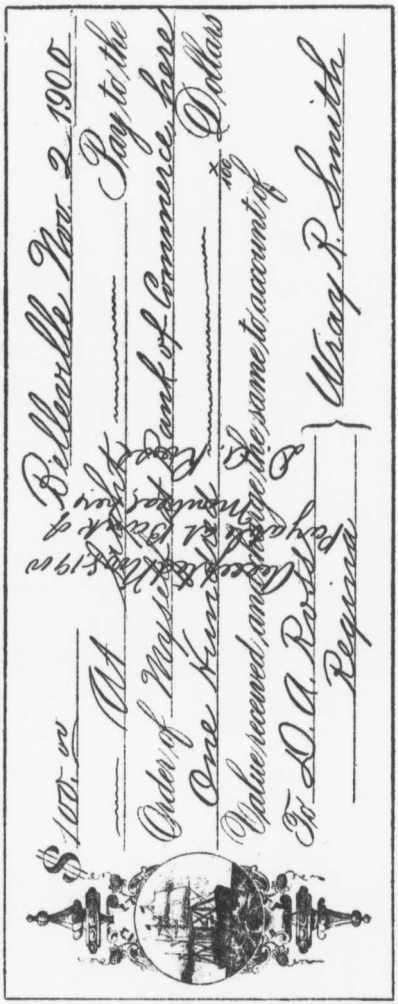
169 Time Draft After Sight. The form shown on this page is a "time draft," drawn the 31st December, 1899, and payable ninety days after *sight*. It was accepted January 4th, 1900, and would therefore fall due ninety days after that date, April 4th, and the three days of grace being added makes it legally mature April 7th, 1900.

It was made payable to the Bank of Montreal at Toronto, but when Mr. Carter accepted it, it will be noticed, he made it payable at his own office, and therefore the bank that pre-

sented it to him for acceptance will now have to present it at Mr. Carter's own office for payment when it falls due. Of course, Mr. Carter could have made it payable at some other bank at St. John, if he had wished to do so, but probably he did not have a bank account, and therefore it would be more convenient for him to pay it at his own office. After payment the money will be forwarded to the Bank of Montreal at Toronto, as Mr. Olmsted directed when he drew the draft.

170 Sight Draft. The form shown on this page is a sight draft. It is drawn by Wray R. Smith, of Belleville, on D. A. Ross, of Regina. It will be noticed that Mr. Smith made it payable to himself, and therefore the *drawer* and *payee* are the same person in this case.

This form of draft is supposed to be paid when it is presented, but if the *drawee* needs the time he may accept it in the usual way and take the three days of grace. It will be seen by the form shown here that Mr. Ross took advantage of the three days of grace and "accepted" it in the usual way.



It was drawn November 2nd, payable at the Bank of Commerce, Belleville, but in accepting it Mr. Ross made it payable at the Bank of Montreal, Regina.

It was accepted November 8th, 1900, and will therefore be payable November 11th. But November 11th falls on Sunday and, therefore, the acceptance is legally due on Monday, November 12th.

Sight Draft and Time Draft are governed by the same laws for presentment, and for payment.

171 Demand Draft.

$100.00. ACTON, October 13th, 1903.

On demand pay to the order of Brown Bros. One Hundred Dollars, for value received, and charge to account of
To H. C. REILLY, H. P. MOORE.
Welland, Ont.

The above form of draft has no days of grace allowed, but is payable when demanded.

If it is not paid when presented, the holder has the privilege of giving time. In that case it would be "accepted" as other drafts, placing the date of acceptance upon it. It would not commence to draw interest until it was presented, but would commence at that date to draw five per cent.

CHAPTER VII.

NDORSEMENT.

172 Purposes of Indorsement. Indorsements may be either (1) for the purpose of negotiation, (2) for additional security, (3) for the acknowledgment of a partial payment of the instrument, (4) for identification.

173 Methods of Indorsement. There are several ways of indorsing a note or draft in general use: (1) Indorsement in Blank. (2) Indorsement in Full. (3) Indorsement without Recourse. (4) Restrictive Indorsement—various forms. (5) Indorsement of Guarantee.

174 Indorsement in Blank is where the name only is written across the back of the instrument. Such an indorser becomes liable for its payment, and the note or draft negotiable simply by transfer.

175 Indorsement in Full is where the indorser restricts the payment of the bill or note to some particular person. There are several ways in which this indorsement may be worded, and the effect varied in each case. He may write across the back "Pay A. B. or order," and sign his name underneath. In this case A. B. cannot sell the paper without indorsing it. If such a note were lost no one could collect it but A. B. or the one to whom he indorsed it over.

176 Restrictive Indorsement is one which prohibits the further negotiation of the bill, or expresses that it gives merely the authority to deal with the bill as hereby directed, and not a transfer of the *ownership* thereof, as, for example, if a bill indorsed "Pay D. only," or "Pay D. for the account of H.," or "Pay D. or order for collection." Subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee had under the restrictive indorsement. That is, they are merely agents and not holders in due course, and therefore any defence against the first restrictive indorsee is available against them.

The restrictive indorsement gives the indorsee the right to receive payment of the bill, or to sue any party thereto that his indorsee could have sued, but gives him no power to transfer his right as indorsee unless it expressly authorizes him to do so, as in the last form given above.

A note or bill payable to *bearer*, or to a certain person or bearer, cannot have its negotiability restricted by indorsement, but those using the word *order* may be so restricted, as shown above.

177 Relation Between Indorsers. Where two or more persons indorse a paper at *the same time* as security, and the maker fails to pay, the holder may sue all or he may sue and recover from either one he thinks best. In case he collects the note from one, then that one may collect a proportionate share from each of the others. If there were three of them he could collect one-third from each of the other two; and if only two, then he would collect half from the other party.

(Back of Note.)

James Smith.
Peter Jones.
Henry Brown.

But if the indorsements were at different dates, as they naturally would be where paper is indorsed as it is transferred, the liabilities are altogether different. In fact, where two or more indorsers are on a bill or note each indorsement is deemed to have been made in the order in which it appears on the paper until the contrary is proved. Therefore, where the indorsements are at different dates the first indorser is security for all after him, the second is security for the third, etc.

If the maker of such a note failed to pay, the holder could sue all the indorsers, or any one of them he might choose. Say there were three, as in the form shown on this page, and the holder sued and collected from all, one-third from each, then in that case Jones and Brown could collect what they paid from Smith, thus making him pay all because he was surety for both. If Smith, however, proved to be insolvent, and Jones and Brown had to pay the whole debt, then Brown would collect what he paid from Jones, because Jones indorsed before him and was, therefore, his surety. Jones would have to pay the whole debt and look to Smith and the maker, who are both liable for it to him, and one or the other might some time be in a position to pay. If Smith were sued either by the holder or one of the subsequent indorsers and paid the amount he could only look to the maker of the note.

Again, if the holder sues both the maker and indorser and gets judgment, but subsequently obtains *payment* from the indorser, he is compelled to assign the judgment against the maker to such indorser, who may enforce it against the maker without entering a new suit.

178 Indorsement Without Recourse is where the note or draft is made transferable, but the indorser evades liability for its payment. The following is the usual form, "Without recourse to me," and the name written underneath as in other indorsements. No subsequent holder can have any claim against such an indorser. Such indorsement is simply for the purpose of negotiation and not security for payment.

179 Indorsement of Guarantee. When bills are subject to protest it may be rendered unnecessary by the indorser writing a form of guarantee over his signature (see Sec. 96).

180 The Indorser's Contract. By his indorsement he, in effect, agrees in good faith with all the subsequent holders: (1) That the instrument itself is genuine, and all the names on it previous to his own are competent to contract. (2) That he has a good title to the bill. (3) That he is competent to contract. (4) That the maker will pay the bill at maturity. (5) That in case the maker fails to pay the bill he will pay it himself.

181 Various Forms of Indorsement. This page illustrates the various forms of indorsements in general use in Canada, and parties who may not be familiar with them can readily understand their different uses by reading the explanation in the right hand column:

(Back of Note.)

1. James Smith.	1. Indorsement in Blank. The name only. It holds indorser liable.
2. Pay J. Murray or order. James Smith.	2. Indorsement in Full. It transfers the bill and holds him responsible if maker fails.
3. Pay A. Sanderson. James Smith. Or, Pay A. Sanderson only. James Smith.	3. Restrictive Indorsement. It transfers the paper and by restricting payment to a particular person it is evidence that it was not intended to be negotiated further. It does not absolutely prevent its further transfer, but *subsequent* holders take it subject to the equities that may burden it when it receives the restrictive indorsement.
4. Without recourse. James Smith. Or, Without recourse to me. James Smith.	4. Qualified Indorsement. It transfers the papers and frees the indorser from any liability for payment.

5. For collection only on account of James Smith.	5. Specific Indorsement. To guard against loss in sending by mail or through other hands.
6. For discount only to credit of James Smith.	6. Specific Indorsement. A precautionary measure, same as in No. 5.
7. For deposit only to credit of James Smith.	7. Specific Indorsement. Same object as in No. 5 and 6. All these should be practised by business men more than they are.
8. W. Carter is hereby identified. James Smith.	8. Specific Indorsement. It identifies the holder at the Bank without making the indorser liable for payment.
9. For value received, I hereby guarantee the payment of the within note. James Smith.	9. Indorsement of Guarantee. With this indorsement it is not necessary to protest the paper.
10. For value received, I hereby guarantee payment of the within note, and waive protest and notice thereof. James Smith.	10. Indorsement of Guarantee. Same as No. 9.
11. For value received, I hereby guarantee the collection of the within note. James Smith.	11. Indorsement of Guarantee. The guarantor is not liable until an attempt to collect by legal process has failed.
12. Presentation and protest waived. James Smith.	12. Indorsement Waiving Protest. This form of wording is usually employed when done before maturity.
13. I hereby accept notice of non-payment, and waive protest. James Smith.	13. Indorsement Waiving Protest. This form is common when done at maturity to prevent cost of protest.
14. Received on the within note, Aug. 26th, 1903, Twenty Dollars ($20.00). Sept. 16th, 1903, Forty Dollars ($40.00).	14. Indorsement of Partial payment. It is usual in indorsing payments on a note to give the date and amount, and if different persons receive the money, the initials of the person should be given.

182 Collection of Notes and Acceptances. Notes and drafts made payable at a certain place should be presented there for payment on the third day of grace, even if there is no indorser on them. Where no place of payment is specified in a bill, it is not necessary to present it for payment to render the acceptor or maker liable.

If there are indorsers on the bill, and it is not presented on the third day of grace, both the drawer and indorsers are discharged.

If the bill is payable at a bank then it must be presented during banking hours, but if not at a bank then the holder has the ordinary business day for presentment.

If there are no indorsers then it need not necessarily be presented on the date of maturity, but must be presented for payment before any action is taken, or the holder would likely be saddled with the costs, and possibly lose the interest after maturity as well (see Sec. 182). The failure of the holder to present a note or acceptance for payment at date of maturity will not generally discharge the maker or acceptor. (See following paragraph.)

A note payable at a bank is authority for the bank to apply the customer's funds in payment of the bill. If in such a case the maker could show that he had suffered loss by the omission to present the bill on the day of its maturity, he would probably be discharged.

183 Place of Presentment of a bill or note for payment:

1. At the place specified in the paper.

2. If no place of payment is specified, then at the address of the acceptor.

3. If no address is mentioned in the bill, then at his place of business, if known; if not known, then at his ordinary place of residence.

4. If neither is known, then at his last known place of business or residence, or wherever he may be found.

5. Where the place of payment specified in the acceptance is any city, town or village, and no place therein specified, the bill will be presented to the drawee's or acceptor's known place of business or residence, and if there is no such place found, then at the post-office, or principal post-office is sufficient. Many a holder has lost his security by not presenting the paper for payment as the law requires, and many an indorser has paid a note from which he was legally discharged by the holder failing to comply with the legal requirements. (See Sec. 185.)

184 Presentment Delayed or Dispensed With. When circumstances beyond the control of the holder prevent presentation, it is excused; but it must be presented as soon as the hindrance ceases.

Also, when presentment has been "waived" by the parties liable on the instrument.

185 To Hold Indorsers Liable. To hold an indorser liable for payment on a note or bill that is not paid at maturity, it is necessary:

1. To present the note or bill for payment on the third day of grace (for place of presentment, see Sec. 183). If this is not done the indorsers are free.

2. If it is not paid, then the paper may be protested, and a notice of the protest sent to each of the indorsers.

3. In most cases it is not necessary to protest, but if it is not protested the *notice* of the *dishonor* must be sent just the same. (See Sec. 187).

This notice must contain the following three facts:

1. That the note or bill (giving its date, amount, name of maker, indorsers, etc.) had been presented for payment.

2. That payment was refused.

3. That the holder looks to him (the indorser) for payment.

This notice may be sent by a notary, or the holder himself may send it.

An oral notice is also legal, but it is always better that it be put in writing.

It may be sent merely as a letter, but stating clearly the three facts above mentioned.

If the letter is not registered, it would be advisable to have a witness to its contents, and delivery to the post-office.

If the note or draft is made payable at a certain place it must be presented there for payment. If it is not mentioned in the paper where it is payable, then it must be at the place of business or private residence of the maker of the note or acceptor of the draft, as the case may be. If his place of residence cannot be found after due diligence, or if he has left the country, the holder then may present it at the post-office where he lived. It must be presented on the third day of grace during business hours, and not on any other day either before or after.

If these things are not complied with the indorser is free. The indorser might not receive the notice for several days or weeks after, but that would not make any difference so long as it was mailed to his supposed address. The notice should be sent within twelve hours. A similar notice is also sent to the maker.

186 Discharge of Indorsers.

1. Payment of the instrument by the maker or acceptor discharges all the indorsers.

2. Failure to make a legal presentment of the note or bill for payment.

3. Giving time to the principal discharges the sureties unless their consent has been obtained.

4. Any act which discharges the principal debtor discharges the sureties, unless the holder expressly reserves his rights against them, and in that case the principal debtor would still be liable to the claims of the sureties if they paid it.

5. Any party to a bill is discharged by the intentional cancellation of his signature by the holder or his agent.

187 Protest is a notice sent by a notary public, who is also usually a lawyer, to the makers and indorsers on a note or acceptance not paid at maturity. It must contain the following three facts: (1) That the note or acceptance (giving its date, amount, by whom drawn and endorsed) had been presented for payment. (2) That payment had been refused. (3) That the holders look to him for payment. A copy of this notice is mailed to each name on the bill or note.

Protests are always used by the banks, and sometimes by private individuals, because the notary will not fail to send a proper notice so as to legally hold the indorsers.

Generally it is not compulsory to protest, but a formal written notice sent to each of the indorsers would answer the same purpose. It should contain the same three facts mentioned above. Simply an oral notice would be binding also, but there might be difficulty in proving it.

It is necessary to protest foreign bills of exchange if not paid at maturity, in order to hold the drawer and indorsers.

In Quebec it is also necessary to protest an Inland bill, in order to hold drawers and indorsers.

A bill can be protested only at the place where it was dishonored, or at some other place in Canada within five miles of the place of presentment and dishonor.

A bill presented through the post-office and returned dishonored, may be protested at the place where it is returned on that day or the day following.

When an acceptor becomes bankrupt, or suspends payment before maturity, the holder of a bill may protest it for better security against the drawer and indorsers.

A bill may be presented at three o'clock. It is questionable if the banks could sustain an action on a protest at one o'clock on Saturday.

188 Indorser's Notice of Dishonor. When a bill has been dishonored and an indorser receives notice to that effect, if there is a previous indorser to himself he had better forward the notice to him, or notify him by letter that the bill has been dishonored, etc., in order to hold him for payment in case the holder did not notify him. He should be able to prove that the letter containing the notice was duly addressed and posted with the necessary postage prepaid. He has the same time in which to give the notice after he has been notified that the antecedent holder has after the dishonor.

189 Noting for Protest. Where a bill or note cannot be paid on date of maturity, the bank may "note" it for protest. This is done by the notary public the same as the act of protesting, but the expense is less. If not paid, then the paper must be protested the next business day.

190 Fees for Protesting. In Ontario, Nova Scotia and Prince Edward Island the fees for protesting are 50 cents, and 25 cents for each notice sent to the maker and indorsers. In Quebec and Manitoba the fee for protesting is $1.00, and 50 cents for notices. In British Columbia the fee is $2.50, including notices; in North-West Territories $2.00 for protest, and 50 cents for notices. In New Brunswick the fee allowed is $1.00, including the notices, but it is said that $3.00 are actually charged in some instances.

191 Protest by Magistrate. When there is no notary public, or none whose services can be obtained at the place where the paper is dishonored, any Justice of the Peace resident at the place may present and protest the paper, give the necessary notices and have all the powers of a notary public. All the expenses of protest shall be allowed to the holder in addition to any interest that may have accrued.

192 Form of Protest by a Justice of the Peace.

(A copy of the bill or note and indorsements.)

On this day of , in the year of 19 , I, A. B., one of His Majesty's Justices of the Peace for the district (or county) of in the Province of , dwelling at (or near) the village of in the said district, there being no practising notary public at or near the said village (or other cause) did at the request of , and in the presence of , well known unto me, exhibit the original bill (or note), whereof a true copy is above written, unto C. D., the acceptor (or drawer or promisor) thereof, personally (or at his residence, office, or usual place of business), in , and speaking to himself (or his wife, his clerk, or his servant, etc.) did demand acceptance (or payment) thereof, unto which demand he (or she) answered, wherefore, I, the said Justice of the Peace, at the request aforesaid, have protested, and by these presents do protest against the drawer and indorsers (or promisor and indorsers, or acceptor, drawer and indorsers) of the said bill (or note) and all other parties thereto and therein concerned, for all exchange, re-exchange and all costs, damages and interest, present and to come for want of acceptance (or payment) of the said bill (or note), all of which is by these presents attested by the signature of the said (witness) and by my hand and seal.

(Protested in duplicate.)

Signature of witness.

Signature and seal of the J. P. ✹

In Newfoundland, where the services of a notary cannot be obtained to protest a bill, any householder or substantial resident of the place, in the presence of two witnesses, may give a certificate which shall in all respects operate as a protest. The following is the statutory form:

"Know all men that I, A. B. (householder), of , in at the request of C. D., there being no notary public available, did, on the day of , 19 , at demand payment (or acceptance) of the bill of exchange hereunder written from G. F., to which demand he made answer (state answer, if any). Wherefore, I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

G. H. } Witnesses. (Signed) A. B.
J. K. }

193 Without Prejudice. The two words, "without prejudice," have great importance when used in a legal sense. This use can be best shown by an illustration, viz.: Two persons are at variance and likely to be drawn into court, but the one desires an amicable settlement and is willing to make any reasonable concession to affect it. He, therefore, takes these two words, *without prejudice*, and writes them across the upper left hand corner of his letter, or in the body of the letter, and then makes his proposition, whatever it might be. The effect of those

words is, that if the other party should not accept the proposition and terms thus offered, but the case goes to suit, this letter cannot be used in court as evidence against the writer. Hence, by using these words in that way a person who wishes to avoid litigation may safely make advances to secure a peaceful settlement, and if not successful his case is not jeopardized. A convenient form at the beginning of the letter would be similar to the following:

Dear Sir: "Without prejudice" I hereby make you the following proposition, etc.

Also, a debtor who may be taking the benefit of the Statute of Limitations may, by using these words, frankly acknowledge the justice of the claim against him, and assure his creditor that he will still pay him, or may even pay money to him, without reviving the *legal liability*. Also, in offering to make payment on a disputed account or claim by way of a compromise, these words prevent the offer being held to be an acknowledgment of the claim. Every man should be familiar with their use, and make use of them whenever occasion requires, instead of trusting to the other party's honor.

194 Use of Cheques. The practice of making payment by cheque is becoming general. It saves time in counting change, prevents mistakes in counting, and saves liability of loss by theft. A returned cheque from the bank is also the best evidence of payment a man can have, and should be filed away the same as a receipt.

Cheques are negotiable the same as notes are, and subject to the same laws that govern bills of exchange payable on demand.

A cheque may be made to answer for a receipt by inserting after the amount what it was given for, as "in full of account," or "for rent," etc.

Cheques operate as payment until presentment has been made and refused, when the debt immediately revives.

Crossed cheques are those specially marked to be made payable at a certain bank, and to be passed through a customer's account, instead of being paid in cash over the counter. No person is obliged to take a crossed cheque.

195 Presentment of Cheques. A cheque received should be presented for payment not later than the following day, or forwarded if the bank is in a different place or town. If it should be held an unreasonable time, and the bank fails, it would be the loss of the holder. Even twenty-four hours, under certain circumstances, has been held to be an unreasonable time.

Presentment and notice of dishonor are just as necessary with cheques as with other bills, to render the drawer and prior indorsers liable.

A cheque refused to be paid by a bank upon which it was drawn should be returned immediately to the drawer.

Banks usually require the person presenting a cheque for payment to indorse it, no matter how it is written, but this is only a custom of the banks and not law. A cheque written payable to a certain person or bearer, or to a certain person or order, needs no indorsement when pre-

sented by the person himself at the bank on which it was drawn, and no well-informed banker would refuse payment simply because the payee might refuse to indorse the paper. It seldom pays, however, to stand on technicalities, and therefore the usual bank custom prevails, but law does not require it.

196 Cheques. A cheque is a demand draft on a bank. They have no days of grace. Formerly cheques were written payable to bearer; but the form shown on this page is the standard form now used in the United States and quite generally in Canada.

A cheque is not legal tender, and a person cannot be compelled to accept it in payment for a debt.

197 Certified or Marked "Good." In sending cheques to strangers or long distance the drawer will sometimes have the ledger-keeper of the bank "certify" or mark them "good." In that case it is immediately charged against the drawer's account in the bank, just the same as though he had drawn out the money himself. It is done by writing the word "certified" or "good" on the face of the cheque, giving the name of the bank, and that of the ledger-keeper.

A "certified cheque" sent anywhere in the

country will be cashed by other banks. A cheque thus marked "good" discharges the drawer, as the bank immediately charges the amount against his account.

198 Paying Forged Cheques. If a bank pays a forged cheque the bank is the loser. It is the same with raised "cheques," where they have been raised from a smaller to a larger sum, the bank loses the difference unless it can be shown that the drawer's carelessness in writing the cheque facilitated the forgery. For instance: If you were to write a cheque for "five" dollars, and commenced so far from the end of the paper that the forger had sufficient room to write "fifty" before the five, thus making it "fifty-five," and the imitation in the writing was good, the bank would not be held responsible. Also in cases where the drawer is careless in writing his signature, having no uniform style, so the bank could not positively identify his signature, then the bank would not be held responsible for payment of a forged cheque.

199 Cheque Without Funds at Bank. For a person to obtain goods or money by giving a cheque when he had no account at the bank would be obtaining the goods or money under false pretences, the penalty for which is three years' imprisonment. But if the money were deposited in a bank to cover the cheque before its presentment, there would then be no fraud in it, although the transaction would be irregular.

But simply not having enough money in the bank to cover the cheque would not incur any such penalty.

200 Certificate of Deposit is a receipt given by a bank for money deposited. It is negotiable and bears interest. It is the same as a certified cheque, and will be cashed by any other bank; hence a convenient way of carrying money when it would not be desirable to have much cash on the person.

CHAPTER VIII.

DUE BILLS, ORDERS AND RECEIPTS.

201 Due Bills. A due bill is a written acknowledgment of a debt. They are not negotiable, either by delivery or by indorsement, no matter if the word *bearer* or *order* is used, because they are not a promise to pay.

They may be transferred by *assignment*. The following is a very good form: "For value received, I hereby assign to James Smith the annexed due bill. W. WINTERS."

This slip of paper should then be attached to the due bill, and James Smith should notify the maker of the due bill that he had purchased it, and that the money is to be paid to him only.

202 Forms of Due Bills.

1. Payable in goods.

RIDGEWAY, Aug. 4th, 1903.

Due James Smith Ten Dollars in goods from our store.

$10.00. HIBBARD & SONS.

2. Payable in money.

FORT ERIE, Aug. 4th, 1903.

Due James Smith for value received Ten Dollars.

$10.00. W. LAUR.

3. Of what is generally called an I. O. U., and payable in cash. It is convenient, and the person's name is not usually inserted but it is better to insert it. They are not a promise to pay hence not negotiable.

HAMILTON, Aug. 14th, 1900.

I. O. U. Twenty-five Dollars.

W. WINTERS.

203 Orders. An order is a written request to deliver goods, or money, on account of the person making the request. When such order is received and acceded to, the person signing the order should be charged for the amount. If the order is in favor of a third party, the name of the party receiving the goods or money should be mentioned in the entry, and the order preserved until settlement is made.

They differ from a draft in being more simple in form and generally for goods instead of for money. If the drawee owes the drawer the amount payment can be enforced.

SARNIA, Aug. 12th, 1903.

Mr. James Smith:

Dear Sir,—Please pay to Henry Brooks or order Thirty-five Dollars and charge the same to the account of

$35.00. HENRY SUMMERS.

2. MORDEN, Man., May 19th, 1903.

Mr. W. Winters:

Dear Sir,—Please let Mr. H. Brooks have from your store Fifteen Dollars in such goods as he may wish and charge to account of

JAMES SMITH.

3. AYLMER, May 26th, 1903.

Mr. W. Winters:

Dear Sir,—Please pay to the bearer, Mr. H. Brooks, Thirty-five Dollars from the funds left with you yesterday.

W. A. PHILLIPS.

204 Receipts. A receipt is a written acknowledgement of having received a certain sum of money or other value.

A receipt is not absolute evidence of payment, but it throws the burden of proof upon the party who impeaches it. It may have been obtained before payment was made, and then payment refused, or it

may have been obtained through fraud, or for some other purpose; but the burden of proof rests upon the party who gave it to show wherein it is not valid.

A receipt given in full of all demands to date would not destroy the creditor's claim for an additional item of account if an error had been made which he could satisfactorily prove. It is evidence only that so much money had been paid.

A cheque received, and having marked on it "in full of all demands" or "in full of account," which does not cover the account in full, may still be endorsed and cashed at the bank in the usual way without losing the balance of account. If the debtor inserted those words in the cheque through mistake the court would correct it, if proven; and if done intentionally the court would also order the correction. If, however, it stated that the amount should be paid on the condition of its being received as payment in full of account, then its acceptance and indorsement by the creditor would cancel the balance of debt. It would then be a "compromise" settlement and binding.

It is a creditor's duty to give a receipt on the payment of a debt, but generally he cannot be compelled by law to do so. When he holds a debtor's note, or any other security, he is compelled to surrender it on payment, also a mortgage when paid.

Promissory notes, acceptances, cheques, etc., when paid should invariably be retained as vouchers of payment. Every form of receipt, or other evidence of payment of a debt, should be securely preserved where they can be conveniently referred to when needed.

When a receipt is taken from an agent or collector it should have the name of the principal on it, as well as that of the agent or collector, who should always designate himself as agent or collector.

When a receipt is likely to be refused, payment should not be made except in the presence of a witness.

When a receipt is given for money paid on a note or other contract, and an indorsement made, the latter should state the fact that a receipt was given, and the receipt should state that the amount had also been indorsed on the note, or other written instrument.

The following forms of receipt are in general use:

205 Receipt on Account.

THOROLD, May 28th, 1903.

Received from James Smith One Hundred Dollars on account.

$100.00. H. SUMMERS.

206 Receipt in Full of Account.

THOROLD, Aug. 28th, 1903.

Received from James Smith One Hundred Dollars in full of account to date.

$100.00. J. BATTEN.

207 Receipt for Rent.

PARIS, June 1st, 1903.

Received from James Smith One Hundred Dollars for three months' rent of store, No. 4 St. Paul Street, due April 1st.

$100.00. J. BATTEN.

208 Receipt of Money by Hands of a Third Party.

FOREST, June 6th, 1903.

Received from Peter Smith, by the hands of H. Young, One Hundred Dollars, in full of all demands.

$100.00. H. BATTEN.

209 Receipt for Legacy.

KILLARNEY, MAN., May 1st, 1903.

Received from J. E. Anger, executor of the last will and testament of Henry Williams, of Winnipeg, deceased, the sum of Four Hundred Dollars, in full of a legacy bequeathed to me by said will.

ALBERT HOWIE.

210 Receipt by Clerk.

WELLAND, May 12th, 1903.

Received of Peter Smith Forty Dollars, in full of account.

$40.00. C. HOOD (Jones).

211 Receipt for Note.

BELMONT, MAN., May 16th, 1903.

Received from Peter Smith note at four months from this date for One Hundred Dollars, in full of account.

$100.00. C. E. WEEKS.

212 Receipt for Property Held in Trust.

OAKVILLE, May 16th, 1903.

Received from Peter Smith one gold watch, to be held in trust for him and delivered to his order without expense.

J. MUNRO.

213 Receipt for Payment of Interest on Mortgage.

TRURO, N.S., June 1st, 1903.

Received from Peter Smith One Hundred Dollars, being amount in full for six months' interest, due September 1st, on his mortgage, in my favor, dated October 2nd, 1898, which amount is also indorsed on the mortgage.

$100.00. O. L. HOWE.

214 Receipt for Money on a Note.

GRIMSBY, May 4th, 1903.

Received of Peter Smith One Hundred Dollars, in part payment for his note in my favor, dated Sept. 4th, 1895, which amount is also indorsed on the note.

$100.00. D. SYKES.

215 Release. A release is a written discharge of a debt, claim or demand held against one person by another. No special form of wording is necessary, simply using words that convey the intention to release, acquit and discharge the person from the debt or obligation. It is given under seal, and will discharge any debt whether acknowledged or not.

Releases may be individual, as when one person releases another from a debt or demand, or they may be mutual, as where two persons have been trading with one another and have contra accounts running for a considerable time. When a settlement is made, they very frequently release each other from all demands. A release will bar out any chance of opening up the matter again by showing that a mistake had been made, whereas a mere receipt in full of demands would not do so.

216 General Form of Mutual Release.

This Indenture made the 17th day of June, A.D. 1903, between Henry Hibbard, of the first part, and Benjamin Disher, of the second part, all of the Township of Bertie, County of Welland, Province of Ontario, merchants.

WHEREAS, there have been divers accounts, dealings and transactions between the said parties hereto respectively, all of which have now been finally adjusted, settled and disposed of, and the said parties hereto have respectively agreed to give each other the mutual releases and discharges hereinafter contained in manner hereinafter expressed:

NOW, therefore, these Presents Witnesseth, that in consideration of the premises and of the sum of one dollar of lawful money of Canada to each of them, the said parties hereto, respectively, paid by each of them at or before the sealing and delivery hereof (the receipt of which is hereby acknowledged), each of them, the said parties hereto, respectively, doth hereby for himself, his heirs, executors, administrators and assigns, remise and release and forever acquit and discharge the other of them, his heirs, executors, administrators and assigns, all his and their lands and tenements, goods, chattels, estate, and effects, respectively, whatever and wheresoever, of and from all debts, sum and sums of money, accounts, reckonings, actions, suits, cause and causes of action and suit, claims and demands whatsoever, either at law or in equity, or otherwise howsoever, which either of the said parties now have, or has or ever had, or might or could have against the other of them, on any account whatsoever of and concerning any matter, cause or thing whatsoever between them, the said parties hereto, respectively, from the beginning of the world down to the day of the date of these presents.

In witness whereof the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of GEORGE KNIBBS.) HENRY HIBBARD. ✹
BENJAMIN DISHER. ✹

CHAPTER IX.

PRINCIPAL AND AGENT.

217 Agency is where one person transacts business for another. The errand boy, the clerk, the conductor, engineer, switchman, the commission merchant and the farm laborer are all agents as much as those engaged in selling machinery or fruit trees on commission or salary. In all branches of business where one person acts for another there is an agency.

Any person may act as agent that the principal employs, even a minor employed as agent may make any contract that his principal could make.

218 Agent's Appointment. An agent may be appointed simply by word of mouth, by writing or by Power of Attorney, or it may be only gathered from facts and general course of business.

219 Appointment by Power of Attorney. When the business to be performed by the agent is of such a nature that it requires him to sign notes, accept drafts, issue cheques, sign deeds, mortgages, etc., or to enter into other contracts under seal, a formal document under seal, called a Power of Attorney, is usually given. This Power of Attorney may be general—giving the agent power to transact all the usual business of the principal; or it may be specific—giving authority only to one or more particular acts, and no more. A Power of Attorney may also be proved by being executed in the presence of a notary public who places thereon his attestation of its execution.

220 Form of Power of Attorney.

KNOW ALL MEN BY THESE PRESENTS, that I, James Everingham, of the town of Strathroy, in the County of Middlesex, and Province of Ontario, merchant, do nominate, constitute and appoint James Marion, of the City of Chatham, County of Kent, my true and lawful attorney, for me, in my name and on my behalf to (give in full the work to be done by Marion for Everingham).

AND for all and every of the said purposes hereinbefore mentioned, I do hereby give and grant unto the said James Marion, full and absolute power and authority to do and execute all acts, matters and things necessary to be done for the full and proper carrying out of all said matters entrusted to him and do hereby ratify and confirm, and agree to ratify and confirm and allow all and whatsoever the said James Marion shall lawfully do by virtue thereof.

In witness whereof I have set my hand and seal this 31st day of August, 1903.

Signed, sealed and delivered in the presence of A. L. JONES. } JAMES EVERINGHAM. ✹

221 Agent's Authority. General agents are those who have authority to act in all capacities in the place of and for their principal, or act in a certain locality or for a certain work or kind. General agents bind their principals, rendering them liable to third parties even for the fraud or neglect on the part of the agent.

Commission merchants, secretaries and treasurers and managers of stock companies, employees of railroad and steamboat companies, etc., are all general agents.

Special agents are those who are limited to a certain class of action or kind of work and do not bind their principal only in so far as they keep within the scope of their authority. If they pass beyond this, or are guilty of a fraudulent act, they only render themselves liable and not their principal.

But if an agent should do business for the principal which he is not authorized to do and the principal accepts it, he thereby ratifies it, and thus becomes responsible, not only for that particular transaction but for all similar acts. Ratification of an act has the same effect as prior authority. Ratification may be effected in two ways: (1) By express words. In case of corporations and stock companies it is usually done by resolution. (2) By accepting the benefits accruing from the act.

By refusing to make the transaction his own, either by express words, or by refusing to accept the benefits accruing from it is disaffirming the act and frees him from liability.

222 Dealing with Agents. Third parties should ascertain the authority possessed by special agents if they would protect themselves when contracting with such, if it is important to them that the principal should be held responsible.

An agent should always have the evidence of his authority with him, and if he has it not no important transaction should be performed with him. It is not enough to bind the company, that an agent *declares* himself to be either a special or general agent, for his misrepresentation would not bind the company. The parties in dealing with him must demand the proof of his authority if they would be safe.

Money paid to an agent who has no authority to receive it cannot be recovered from the principal (or any other person).

Money should never be paid to an agent for a note unless he has the note to deliver over, nor even to the original payee.

A contract made with a special agent who is exceeding his authority cannot be enforced against his principal.

Notice given by the agent to third parties is notice given by the principal, and notice given by third parties to the agent is notice given to the principal at the same time it was given to the agent. Payment tendered to the agent is payment tendered to the principal and *vice versa*.

A signature by procuration (as agent) operates as a notice to the public that the person so signing has but a limited authority, and the principal is bound by such signature only so far as the agent is acting within the actual limits of his authority, but no further.

CHAPTER X.

MASTER AND SERVANT.

223 The Relation subsisting between Master and Servant is in many respects the same as that subsisting between principal and agent.

In order to constitute a contract of hiring and service there must be either an *expressed* or *implied* mutual engagement binding one party to *hire* and remunerate and the other to *serve* for some determinate time. In cases where the employer only agrees to pay as long as the servant remains, leaving it optional either with the servant to serve or the master to employ, there is no *contract* of service and hire.

224 Contract of Service and Hire. Oral as well as written agreements between master and servant, and between master and journeyman or skilled laborer in any trade or calling, are binding unless the term exceeds one year.

If for a longer period than one year it must be in writing and signed by the contracting parties, and if for a shorter period than one year, but which does not commence in time to be completed within the year, it is required to be in writing.

No voluntary contract of service shall be binding on either party for a longer time than nine years from date of contract.

If no *express* contract has been made for hire between the parties a contract will be *presumed* if the service is performed, unless it is with near relatives, as with parent or uncle.

If service has been performed without anything being said about wages *the law presumes* that the parties agreed for the customary wages for that kind of service paid in that community. But the law will not presume either "a contract of hire" or "an agreement to pay wages" where service is rendered with near relatives, as a parent or uncle. In such cases an expressed hiring must be *proved* in order to support a claim for wages. Where it is not specially agreed to the contrary, wages would be payable at the end of the time.

A person agreeing to serve as laborer or clerk cannot be compelled to fulfil his agreement, but damages may be recovered for breach of the contract.

A person agreeing to hire another for a day, week or month cannot be compelled to furnish work, but if the one hired presents himself for service each day he can collect his wages.

225 Form of Agreement for Hire.

THIS AGREEMENT, made on the 3rd day of April, 1903, between John Smith, of Grantham, yeoman, of the first part, and James Robinson, of St. Catharines, laborer, of the second part.

Witnesseth that the party of the second part agrees with the party of the first part to serve him as a farm laborer and general servant for the period of one year from this date, and in all things to faithfully observe and do all the reasonable wishes and commands of the party of the first part.

And the party of the first part agrees to pay the party of the second part one hundred and fifty dollars and to board and lodge the party of the second part during said period, and to cause all necessary laundry wash to be done for him. Said money to be paid as follows: Fifty dollars in six months from this date, and the balance at the expiration of said service.

Witness our hands the day and year above written.

Witness: } JAMES ROBINSON.
CHARLES SUMMERS. } JOHN SMITH.

226 Contract of the Employee. The employee must fulfil the agreement, whatever that may be, and to do this faithfully requires not only diligence, but his careful attention, skill and forethought. The implements, machinery, or other property with which he may be working or which fall under his care, require not only proper use by himself, but also his care that they be not stolen. The live stock that may be entrusted to him, humanity as well as his agreement requires that he sees to it that they have food and water and proper care in general. His master pays for his *skill* as well as he does for his *time*, also his diligent forethought in planning or executing his work. He is expected to obey all reasonable orders from his master, to be punctual and courteous, and to work every day except Sundays and holidays.

A flagrant violation of the implied agreement in any of these particulars renders him liable for damages or for discharge, as the case may be.

227 Notice to Leave. A servant hired for a definite period, either for a day, a week, a month or a year, may, on the termination of the time, leave, or the master may discharge him without giving any notice.

Where the hiring is for no definite time and the wages paid so much per day, week, month, or year, when either party wishes to terminate the contract the other party is entitled to a "reasonable notice."

If paid by the week.....A week's notice.
If paid by the month.....A month's notice.
If paid by the year.....Three months' notice.

The notice need not be in writing, but where the time is longer than a week it would be much better to give a written notice.

228 Discharge Without Notice. The employee is presumed to give due diligence to the discharge of the duties assigned to him, to be punctual as to time, to obey all reasonable commands, and to be responsible for all damage caused by his negligence. If, therefore, he violates the agreement by habitually neglecting his duties, by taking absences without permission, or in any of the following ways, he may be discharged without notice by paying him the wages due:

1. Wilful disobedience of any lawful order of the master.

2. Gross moral misconduct.

3. Habitual negligence in business, or conduct calculated seriously to injure the master's business.

4. Incompetence in the higher service where special knowledge or skill is required, or permanent disability through illness. Temporary illness would not be sufficient cause for discharge.

The wages to be paid in case of a discharge *for cause* are not necessarily in proportion to the time the servant has labored. The wages that are due must be paid, but the wages that may have been earned but not yet due, need not necessarily be paid.

In the N. W. Territories if a servant is guilty of misconduct through drunkenness or absenting himself from his employment without permission, disobeys commands or destroys the master's property he may upon summary conviction before a magistrate for one or more of such charges be liable to a fine of $30, with costs, and in default of payment forthwith to imprisonment not exceeding one month.

229 Discharge with Notice. Persons employed on a weekly or monthly service may quit or be discharged by giving a week's or a month's notice; or at a moment's notice by payment of a week's or a month's wages.

230 Servant Leaving. The master's commands are presumed at time of contract to be reasonable, legal, and to be within the limit of work the servant was employed to perform. The implements and machinery are supposed to be suitable for that kind of work, and so protected as to be reasonably free from danger. If, therefore, the master gives unreasonable commands and endeavors to enforce them the servant has cause for leaving.

If the machinery or any particular machine used by the employee is not considered suitably protected and he gives notice to the employer, who still requires work to be done with the dangerous machine, it is a cause for leaving.

If any accident occurs after giving of such notice the employer is liable for damages.

If the servant used the machine, knowing it to be unsafe, without giving any notice of its danger he cannot claim damages for an accident.

If the master does not pay the wages as per agreement the servant may procure a discharge and wages due by placing the matter in the hands of a Justice of the Peace, who deals summarily with such cases.

231 Master Liable for Servant's Acts. The master's liability is not boundless, but justice and common sense fix certain well-defined limits. In general terms the master is liable for all those acts which are brought about through his instrumentality, as:

1. He is liable for the acts of his servant performed within the scope of his employment, however wrongful they may be, but he is not responsible for the wrongful act if it is not done in the execution of his authority and in the course of his employment, and,

2. Where a servant is driving a horse, which runs away and does damage, if on the master's business, or

3. Where in executing his orders with reasonable care and does damage, or

4. Where he does an injudicious act and does damage, or

5. When the servant even wantonly does injury if acting within the scope of his employment, or

6. For injury done by the servant through drunkenness, if acting within the scope of his employment, or

7. If he orders the servant to commit a trespass, or if the trespass results from the action to be done, the master is liable.

He would not be liable for a wrong done by the servant that was contrary to his orders, or if the master were absent.

The master is liable for the act of his domestic or menial servant whether it be one of omission or commission, neglect, fraud, deceit, or even of misconduct, if it be done within the scope of his employment or with the express direction or assent of his master, no matter how much he may abuse his authority.

232 When Master is Not Liable. The master is not liable in any case for the injurious acts of his servant unless they are wilful or the result of negligence.

Where there is no express or implied authority to do the act, or the act of the servant is an act of his own, the master is free from liability.

If the master does not give any express or implied authority for the servant to pledge his credit, he is not liable for any contracts made by the servant in his name.

The master is not liable for the contracts of his servant where they have an express authority and exceed it; or where they have an implied authority and act beyond the scope of their employment, do not bind the master.

The master is not liable after he has given notice that he has terminated his servant's authority to pledge his credit. The notice must be brought home to third parties, to whom he has by his previous acts given an implied authority, as, for instance, to merchants or mechanics.

233 Servant's Liability. A servant may render himself liable:

1. On contracts made on behalf of his master if he does not disclose the fact of his agency. When contracting in his own name for the employer he should always use words describing his capacity, as "agent for," or "per," "pro," etc.

2. For damages committed on behalf of his master he is liable as well as his master, and to all third parties he stands as a principal.

3. He is also liable for a joint fraud committed with his master; for no contract of service compels a legal obligation to commit a fraud or do a wrong.

4. In *crimes* as well as in *injuries* he is liable, and cannot evade responsibility by saying that he was only a servant and acting under his master's orders.

234 Termination of Service. A contract of service is terminated by lapse of time. By completion of work to be performed.

By the death of the hirer. The servant must be paid wages up to that time.

By the death of the servant. His legal representatives will collect his wages for the time during which service was rendered.

By the assignment of the employer. If the employer should commence business again after making an assignment, and servants and other employees go to work again, the previous agreements are not binding unless the contract is renewed.

235 Wrongful Discharge, or Quitting. If an employee be wrongfully dismissed his remedy is an action for damages against his master for the breach of agreement or contract, and unless he can show a reasonable excuse for discharging he may be made liable for wages for the whole time, but the employee must not sit down and do nothing and then sue for the wages at the end of the term. It is his duty to try and find employment, and if he succeeds, then whatever wages he earns during the term would be deducted from the amount of damages to be recovered for the breach of contract, that is, the loss he actually sustained could be recovered.

Temporary illness is not a sufficient cause for a discharge, unless the contract has been rescinded, or the nature of the work necessitates it.

A domestic servant wrongfully quitting his master's service forfeits that part of his wages due since the last day of payment.

Any employee leaving before the expiration of the week or month or year, as the case may be, for just cause, or who is illegally dismissed, can recover wages for the time he worked. But if he cannot show a valid cause for leaving or was discharged for proper cause he cannot recover wages *pro rata* for the portion of time worked.

236 Servant and Holidays. Whether the servant or employee is compelled to work on Sunday and legal holidays depends altogether on the agreement made, and the nature of the work to be done. Some kinds of work require something to be done every day, for instance, the hired man on a farm would be compelled to feed and care for the stock on Sunday, milking cows, etc., unless there was an express agreement to the contrary. The same would be true as to the servant doing housework.

Unless there is an agreement, expressed or implied, to the contrary employees or apprentices cannot ordinarily be compelled to work on legal holidays, nor can they be discharged for absence, or for not working on such days.

Employees working by the week, month or year are entitled to pay for the legal holidays unless there is an agreement to the contrary.

237 Length of Working Day. The length of the working day for farm laborers is not fixed by law. In the absence of any agreement between the master and servant as to what work the servant is to do, or as to the length of time he is to work, whatever is customary or reasonable must govern; and the season of the year and nature of the work to be done must be taken into account in settling such matters. If a servant refuses to work when reasonably requested to do so, he may on that ground be discharged by the master.

238 Legal Proceedings. If any disagreement exists between master and servant, summary proceedings may be taken before a Justice of the Peace.

If the Justice receives the evidence of the plaintiff he must also receive that of the defendant.

If to collect wages due it must be done within one month after the engagement ceased in Ontario, and in most of the provinces it is the same, but in the North-West Territories three months are allowed. In North-West Territories if the master is in arrears for wages, not exceeding two months, and the same has been demanded, or is guilty of ill usage, or improper dismissal, the servant may lay complaint before a Justice of the Peace or Magistrate, who will investigate and may order the discharge of such servant and order the payment of the amount due not exceeding two months, but such proceedings must be taken within three months after the engagement or employment ceased or three months after the last instalment of wages was due, which ever event happens last. In North-West Territories laborers have priority over all other claims and liens on growing crops to the extent of $75.

CHAPTER XI.

STATUTE OF LIMITATIONS.

239 The time within which the various kinds of debts must be paid, or action commenced to recover payment is fixed by Statute, and if action is not commenced within that time they are said to be outlawed. The debt is not cancelled, but the creditor loses his right to sue and recover payment by legal process.

Action is commenced by the issue of a summons or writ. It is not required to obtain judgment within the specified time, but merely that the writ be issued.

The Statute limiting the time within which an action at law must be commenced for the collection or enforcement of a claim is called the Statute of Limitations. The time limit for the various kinds of debt is as follows (see Section 249 for exceptions):

240 Promissory Notes and Acceptances in all the Provinces of Canada, except Quebec, outlaw in six years after maturity or last payment made on either interest or principal. The date of maturity is the last day of the three days of grace, hence the time commences to count the day after the third day of grace.

Any payment, or written acknowledgment of the debt, will keep the paper alive six years from that date as against that party making the payment or the acknowledgment, but not against any other person whose name is on the paper.

In Quebec the time is five years instead of six. The law is the same in other respects, except that the debt as well as the right of action is barred.

In Newfoundland and England the time is also six years.

Demand notes are deemed to be due when they are made, and demand acceptances when they are accepted, therefore, six years from that date they are outlawed as far as the maker or acceptor is concerned. But it is different with indorsers on such paper, as no right of action accrues against them until a demand for payment has been made and dishonored, and therefore action on the bill is not barred against them until six years from date of demand. But a demand note having an indorser must be presented for payment within a "reasonable time," otherwise the indorser is discharged. For Quebec five years.

241 Book Accounts. Actions for the recovery of merchants' accounts and all other debts founded upon any lending or other contract (not under seal), for the recovery of rent, or interest, or arrears of legacy, or arrears of dower, must be commenced within six years after the cause of action arose, or the last payment, or a written acknowledgment of the debt or claim. This applies to all the provinces (except Quebec), Newfoundland and England.

In the Province of Quebec it is five years for such accounts. Professional fees, as of doctors and advocates, justices, notaries, and rents, interest and commercial matters in general are barred after five years from maturity or last payment. Slander, libel and wages of employees engaged for a shorter period than one year outlaw in one year. Damages for injuries and wages for employees engaged for a longer period than one year outlaw in two years. Breaches of contract, restitution to minors, rectification of tutors' accounts, contractors' and architects' warranty outlaw in ten years. Judgments in thirty years, if no action is taken.

In all the Provinces accounts are, with regard to outlawing, "itemized," that is, each item or purchase is treated as a separate account, and all moneys paid on it are, unless otherwise specified, applied to the oldest items. This particular feature of accounts should be remembered.

They commence to outlaw from the date of purchase unless there is a time fixed for payment.

A debtor has the right, when making a payment, to say on what particular account it shall be applied. In case he neglects to do this, the creditor has the privilege of applying it to any part he likes. In case neither one applies it to any particular debt, it is by law, in case of personal accounts, applied to the oldest items.

The various purchases on different dates being put into one bill and rendered to the debtor does not merge them into one debt so as to change the time for outlawing of any particular purchase, but they all remain entirely separate, and six years from the date of purchase of each item it is outlawed, unless there has been a part payment made on that individual purchase, or a written acknowledgment. (Five years for Quebec.) A part payment on a running account does not keep the whole alive.

The items of an account may, however, be merged into a single debt by what is called an "Account Stated." To form an "account stated," an agreement must be come to between the debtor and creditor

by which the whole account is *acknowledged*. Where this has not been done, if the merchant wants a part payment to keep all the items of the account alive, he must apply part on every individual purchase, even if it is not more than twenty-five cents on each. This can be done by a day book entry without saying anything to the debtor. The following or similar words would answer: "Received from James Smith $4.50 on account, an equal amount to be applied on each purchase up to date." Give the customer the ordinary receipt on account without any reference to the special application you have made of the payments.

A definite formal settlement in writing between the parties, even though no money is paid, will serve to extend the time for another period of six or five years as the case may be.

242 Judgments in all the Provinces, except Quebec, continue in force twenty years. In Ontario and most of the Provinces executions may issue any time within six years, but after that an order from a judge must be obtained. Judgments would not bind land in Ontario, Manitoba and North-West Territories twenty years, but same time as mortgage does.

In England judgments are barred in twelve years. In Quebec they remain in force for thirty years. Newfoundland twenty.

In New Brunswick judgments in the Justices, Parish Court, Commissioners' or Stipendiary Magistrates' Court outlaw in six years if no execution issues, but in County or Supreme Court twenty years.

243 Mortgages on Real Estate in Ontario and Manitoba outlaw in ten years after maturity or last payment on either principal or interest; in British Columbia, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland they outlaw in twenty years.

In North-West Territories and England in twelve years, and in Quebec thirty years. Mortgagor's equity of redemption is barred in North-West Territories and England in twelve years, in Manitoba and Ontario ten, and other Provinces and Newfoundland twenty years after mortgagee takes possession, unless his right is acknowledged in writing.

In each province and country a part payment of either principal or interest, or a written acknowledgment of the debt or right will extend the time for another period of ten, twelve, twenty or thirty years, as the case may be.

Action upon bonds, covenants or any instrument under seal, except mortgages on real estate, may be commenced any time within twenty years.

244 Legacies are barred in the same length of time that mortgages on real estate are, from the time a right to receive it accrued, unless legatee were a minor or under some other disability, in which case the Statute of Limitations does not commence to run until the removal of such disability. Arrears of legacy barred in same time that interest is.

245 Dower. The right to recover dower by a widow out of her deceased husband's estate is also barred in the same length of time a mortgage on real estate is barred. The right to dower accrues at the husband's death. Arrears of dower barred in same time that interest is.

246 Chattel Mortgages as between debtor and creditor in all the Provinces (except Quebec) and Newfoundland will hold the claim for twenty years, being an instrument under seal and not affecting interest in lands. As against other creditors, however, they only hold the property as security for a period varying in the different Provinces from one to five years. (See Sec. 258).

247 Ownership by Possession. A person having continuous peaceable possession of land (except in trust), paying taxes on same and treating it as his own, acknowledging in no way the right or title of any other person for the same, becomes the owner of the property in Ontario and Manitoba within ten years; in New Brunswick, Nova Scotia, P. E. Island, and Newfoundland in twenty years. In North-West Territories and England in twelve years, and in Quebec ten years give a possessory title.

A person "squatting" on land to which he has no right that is yet "in a state of nature," usually called "wild land," that has not been fenced or tilled or occupied, must occupy it for twenty years to get title to it unless it can be shown that the rightful owner had knowledge that such party was in possession of it. If the grantee from the Crown, or his heirs or assigns had no knowledge that such other person was occupying the ground it would take twenty years' possesion in all the Provinces, England and Newfoundland, to give the "squatter" a good title.

Land enclosed by a fence while the land is "in a state of nature," and subsequent survey showing the fence to include land belonging to an adjoining owner, the Statute of Limitations would not commence to operate until such survey and discovery.

In cases where a fence is fraudulently placed or removed the statutes would not commence to run until the time the fraud is discovered.

248 Reviving Outlawed Debts. In promissory notes, acceptances and book accounts, a part payment or a written acknowledgment will revive them and keep them alive again from that date for a further period of six years, or five for Quebec. Mortgages, legacies, dowers, rents, etc., are kept alive in same manner.

Money also paid by the debtor to the creditor on account without any instructions as to what debt it should apply to, may be applied by the creditor to any such debt that has been barred by Statute, and thus reduce it. This cannot be done by a third party to whom such debt may have been transferred, neither does it revive the balance.

Payments of money on a promissory note by one of the parties do not prevent it from outlawing in six years (five for Quebec) as far as the indorsers are concerned.

Written acknowledgments from one joint debtor will not affect the other.

249 Exceptions to Outlawing. Bank bills or bank notes, or other evidence of debt issued by a bank never outlaw by lapse of time.

Statute of Limitations does not apply to express trusts. For instance, a farm deeded in trust to a person for heirs or other persons would never

become the property of the trustee by possession, even if he occupied it forty years. Money left in bank in trust the Statute of Limitations does not apply, and no lapse of time will bar the right to recover it.

Also, where there is any legal disability on the part of either the debtor or creditor so that action cannot be commenced the time does not begin to count until the disability is removed. The Statute says: "Actions by or against minors, persons insane, or out of the Province may be commenced within the like period after the removal of the disability, as is allowed for bringing action in ordinary cases."

The disability, however, of whatever nature it is, must be in existence at the time when the debt became due, if a debt, or in other cases "when the cause of action arose." If the debtor were living outside the Province at the time the debt fell due the time for outlawing would not commence until he returned. If, however, he left the country after the debt was due and before action was commenced it would then not form an exception, because action could have been taken to collect before he went away.

Disabilities, however, do not hold indefinitely, and each Province and country has fixed the limit ranging, respectively, from twenty to forty years.

The absence of one joint debtor from the country does not prevent the statute from running against the other.

CHAPTER XII.

CHATTEL MORTGAGES.

250 A chattel mortgage is a lien on personal property—goods and chattels. It is in reality a deed or conveyance of the property as security for a debt or for borrowed money, with a proviso that when the debt is paid the mortgage becomes null and void.

By derivation the word mortgage means a death pledge (*mors*, death; *gage*, a pledge). No wonder that people are afraid of them. The debtor is called the mortgagor and the creditor the mortgagee. The effect of a chattel mortgage is practically the same as a Bill of Sale. It is a conveyance of the *title*, but not of the *possession* of the property, but the mortgagee may take *possession* of the property on a breach of any of the covenants.

The Statutes do not give a form for chattel mortgages with which they are compelled to comply, nor define what covenants they shall contain, therefore, to know what the covenants, provisos and conditions are, the mortgage itself must be carefully read. The printed forms in general use are what have been settled by conveyancers as being appropriate and suitable to meet the usual requirements of borrower and lender. As there is no statutory form to which they must conform it will be readily seen that they may greatly vary in the number and stringency of the covenants they embody, so do not fail to read the mortgage carefully

before signing it. There is a definite statutory form for a Discharge and Renewal.

In Quebec chattel mortgages are not used. Bills of Sale will hold the property as between the debtor and creditor, but are not binding there against third parties unless the goods are taken possession of by the creditor.

251 Description of Property. They must contain a full description of the goods and chattels, so they can be readily distinguished; also, where they are located and whose possession they are in at the time. In describing an animal, give age, color, sex, name, breed, and any particular spot or mark. In describing a machine, give the manufacturer's name and number of machine, color and condition.

252 Must be a Bona-Fide Transaction. Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change of possession of the goods mortgaged, or a true copy thereof must be registered as provided in each province, together with the affidavit of an attesting witness of the due execution of such mortgage, which affidavit shall contain the date of the execution of the mortgage, and also with the affidavit of the mortgagee, or his agent, that the mortgagor is justly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage was executed in good faith and for the express purpose of securing the payment of the money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor.

Mortgages to secure future advances with which to carry on business are also valid, so are mortgages to secure indorsers and sureties if registered within the time required in each province. Also written contracts or agreements to give a mortgage are valid if registered.

A chattel mortgage given by a person who is on the eve of insolvency may be set aside on the ground that it was given to defeat creditors, or to give one a preference over other creditors.

But a person who is able to pay his debts is not insolvent, although he may be considerably in debt, and a chattel mortgage given by him even after a judgment may have been secured against him would be good providing a seizure of the goods had not been actually made.

253 Registration. To hold the goods against judgment creditors, and subsequent purchasers and mortgagees in good faith for valuable consideration, the mortgage or bill of sale must be registered in the district where the goods are located within a specified number of days, together with two affidavits, one of a witness, and one of *bona fides* by the mortgagee, otherwise against such parties it becomes absolutely null and void. The time varies in the different Provinces. It would, however, still be good against the debtor or mortgagor as evidence of debt and a lien on the goods for the amounts.

In Ontario they require to be registered at the office of the clerk of the County Court within five days after their execution. Fee for registering, 50c.

For the districts of Algoma, Thunder Bay, or Nipissing they must be filed within ten days after their execution in the office of the District Court Clerk.

For the districts of Parry Sound, Muskoka or Rainy River they must be filed within ten days in the office of the Clerk of the First Division Court of the district in which the goods are situate.

For the Provisional county of Haliburton they must be filed within seven days from execution in the office of the Clerk of the First Division Court.

For the District of Manitoulin they must be filed within ten days in the office of the Deputy Clerk for Manitoulin.

Chattel mortgages made by an incorporated company whose head office is not in Ontario, thirty days are allowed for filing.

In Manitoba they must be filed at the office of the Clerk of the County Court within twenty days after date. Fee for filing is 50c. Those given against growing crops to secure the purchase price of the grain have preference over all other mortgages and executions covering the same property.

In North-West Territories they must be filed within thirty days from execution at the office of the Clerk of the Registration District in which the property is situate, and they only take effect from date of filing. Fee for filing is 50 cents.

Mortgages against growing crops are not valid unless it is to secure the purchase price of seed grain and then they have preference over all other mortgages or bills of sale previously given or executions. The mortgage must contain the date of the purchase of the seed grain, the number of bushels and price per bushel, and the same information must be in the affidavit of *bona fides*.

In British Columbia chattel mortgages for the whole Province must be filed within twenty-one days to hold against third parties. They are filed with the Registrar of the County Court in each county or Registration District in which the property is situated, and if more than one Registrar of a County Court they are to be filed with the nearest one within the county or district.

In New Brunswick they must be filed within thirty days in the office of the Registrar of Deeds. Fee for filing is 25 cents.

In Nova Scotia there is no time limit within which they must be filed, but they only hold good against laws of insolvency, *bona fide* purchasers, judgment creditors and subsequent mortgages in good faith for valuable consideration after filing.

Either the original Bill of Sale or a certified copy may be filed, and if there is any schedule annexed or referred to it must also be included, and if the instrument is subject to any condition whatever it must be considered a part of it and be filed with the instrument, otherwise the Bill of Sale is null and void against all third parties.

In Prince Edward Island the original must be filed in the office of the Prothonotary of the Supreme Court accompanied by the usual affidavits of witness and *bona fides*, otherwise is void against third parties.

In Newfoundland, Bills of Sale and mortgages of personal property, being deeds of gift, or where the consideration is over $400, and where the possession of the property remains in the mortgagor, they must be registered in the office of the Registrar of Deeds in order to be binding against subsequent purchasers, mortgagees, etc., or an assignee when a deed of conveyance is made for the benefit of creditors.

Fee for registering when value of property does not exceed $400 is $2.00, and when exceeding $400 it is 25 cents extra for each additional $100.

254 Removal of Mortgaged Goods. Chattel mortgages only hold the property in the one county or registration district where they are filed or registered, and every chattel mortgage contains a covenant that the goods will not be removed from the county or registration district where they are situate.

If all or a portion of the goods covered by a chattel mortgage should be permanently removed to another county or registration district, a duly certified copy of the mortgage must be filed in the proper office of that county or district for chattel mortgages, otherwise the goods are liable to seizure and sale under an execution, neither would the mortgagee have recourse against subsequent purchasers or mortgagees for value. In case the goods are removed without consent they may be seized and sold to satisfy the mortgage on a breach of the covenant, if the mortgagee prefers it.

In Ontario a copy of the mortgage must be filed in the office of the County Court Clerk where the goods have been removed to within two months.

In Manitoba six months and subsequent renewals must be filed in such Judicial District to which the goods are removed.

In N. W. Territories a certified copy must be filed with the Clerk of the Registration District to which they are removed within three weeks from such removal. If mortgagor wishes to remove the goods the Statute requires him to give the mortgagee notice twenty days prior to such removal.

255 Form of Chattel Mortgage.

This Indenture made in (duplicate) the tenth day of May, one thousand nine hundred and three,

Between James Smith, of the Township of Stamford, in the County of Welland, Province of Ontario, merchant, hereinafter called the Mortgagor, of the first part; and Walter Winters, of the Township of Stamford, in the County of Welland, Province of Ontario, yeoman, hereinafter called the Mortgagee, of the second part,

Witnesseth that the Mortgagor for and in consideration of Five Hundred Dollars of lawful money of Canada to him in hand well and truly paid by the Mortgagee at or before the sealing and delivery of these Present (the receipt whereof is hereby acknowledged) hath granted, bargained, sold and assigned, and by these Presents Doth Grant, bargain, sell and assign unto the Mortgagee, his executors, administrators and assigns, All and Singular the goods, chattels and store fixtures hereinafter particularly mentioned and described, that is to say:

One bay horse four years old, having black mane and tail and white star on forehead; three Jersey Cows; 24 Southdown sheep; 36 hives of bees; one Gladstone carriage made by Augustine & Kilmer; one Democrat waggon; two sets single

harness, one light sleigh; one J. & J. Taylor safe, No. 4326; all the counters, shelving, show cases, weighing scales and fixtures used in connection with the grocery business conducted by the Mortgagor in the village of Stamford.

All of which said goods and chattels are the property of the Mortgagor and are now upon the premises situate and known as Lot No. 19 in the Seventh Concession in the Township aforesaid, in the County of Welland and Province of Ontario, together with all goods and chattels that may be added to or substituted for the said goods and chattels, or any of them as herein mentioned.

TO HAVE AND TO HOLD all and singular the said goods, chattels and store fixtures hereby assigned or intended to be assigned unto the said Mortgagee of the second part, his executors, administrators and assigns, as his or their own proper goods and effects.

PROVIDED ALWAYS and these Presents are upon this express condition that if the Mortgagor, his executors or administrators do and shall well and truly pay or cause to be paid unto the Mortgagee, executors, administrators or assigns the full sum of Five Hundred Dollars, with interest for the same at the rate of five per cent. per annum, on the tenth day of May, 1904, then these Presents shall be void and every matter and thing herein contained shall cease, determine and be utterly void to all intents and purposes anything herein contained to the contrary thereof in anywise notwithstanding:

AND the Mortgagor for himself, his executors and administrators, shall and will warrant and forever defend by these Presents all and singular the said goods, chattels and property unto the Mortgagee, his executors, administrators and assigns against the Mortgagor, his executors and administrators, and against all and every other person or persons whomsoever.

AND the Mortgagor doth hereby for himself, his executors and administrators, COVENANT, PROMISE AND AGREE to and with the Mortgagee, his executors, administrators, and assigns, that the Mortgagor, his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the Mortgagee, his executors, administrators or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, on the day and time and in the manner above limited for the payment thereof: AND ALSO IN CASE DEFAULT SHALL BE MADE IN THE PAYMENT of the said sum of money in the said proviso mentioned or of the interest thereon or any part thereof, or in case the Mortgagor shall attempt to sell or dispose of or in any way part with the possession of the said goods and chattels or any of them, or to remove the same or any part thereof out of the County of Welland or suffer or permit the same to be seized or taken in execution without the consent of the Mortgagee, his executors, administrators or assigns to such sale, removal or disposal thereof first had and obtained in writing, THEN and in such case it shall and may be lawful for the Mortgagee, his executors, administrators or assigns with his or their servant or servants and with such other assistant or assistants as he or they may require at any time during the day, to enter into and upon any lands, tenements, houses and premises wheresoever and whatsoever where the said goods and chattels or any part thereof may be, and for such persons to break and force open any doors, locks, bars, bolts, fastenings, hinges, gates, fences, houses, buildings, enclosures and place for the purpose of taking possession of and removing the said goods and chattels: AND upon and from and after the taking possession of such goods and chattels as aforesaid, it shall and may be lawful and the Mortgagee, his executors, administrators or assigns, and each or any of them, is and are hereby authorized and empowered to sell the said goods and chattels or any of them or any part thereof at public auction or private sale, as to them or any of them may seem meet: AND from and out of the proceeds of such sale in the first place to pay and reimburse himself or themselves all such sums and sum of money as may then be due by virtue of these Presents, and all such expenses as may have been incurred by the Mortgagee, his executors, administrators or assigns in consequence of the default, neglect or failure of the Mortgagor, his executors, administrators or assigns in payment of the said sum of money with interest thereon as above mentioned, or in consequence of such sale or removal as above mentioned, and in the next place to pay unto the Mortgagor, his executors, administrators and assigns all such surplus as may remain after such sale and after payment of all such sum or sums of money and interest thereon as may be due by

virtue of these presents at the time of such seizure and after payment of the costs, charges and expenses incurred by such seizure and sale as aforesaid:

PROVIDED ALWAYS, nevertheless, that it shall not be incumbent on the Mortgagee, his executors, administrators or assigns to sell and dispose of the said goods and chattels, but that in case of default of payment of the said sum of money with interest thereon as aforesaid, it shall and may be lawful for the Mortgagee, his executors, administrators or assigns peaceably and quietly to have, hold, use, occupy, possess and enjoy the said goods and chattels without the let, molestation, eviction, hindrance or interruption of the Mortgagor, his executors, administrators or assigns or any of them or any other person or persons whomsoever. AND the Mortgagor doth hereby further COVENANT, PROMISE AND AGREE to and with the Mortgagee, his executors, administrators and assigns that in case the sum of money realized under any such sale as above mentioned shall not be sufficient to pay the whole amount due at the time of such sale, that the Mortgagor, his executors or administrators shall and will forthwith pay or cause to be paid unto the Mortgagee, his executors, administrators and assigns all such sum or sums of money with interest thereon as may then be remaining due:

AND the Mortgagor doth put the Mortgagee in the full possession of said goods and chattels by delivering to him this Indenture in the name of all the said goods and chattels at the sealing and delivery hereof:

AND the Mortgagor COVENANTS with the Mortgagee that he will, during the continuance of this mortgage and any and every renewal thereof, insure the chattels hereinbefore mentioned against loss or damage by fire in some insurance office (authorized to transact business in Canada) in the sum of not less than Five Hundred Dollars, and will pay all premiums and moneys necessary for that purpose as the same becomes due, and will on demand assign and deliver over to the said Mortgagee, his executors and administrators the policy or policies of insurance and receipts thereto appertaining: PROVIDED that if on default of payment of said premium or sums of money by the Mortgagor, the Mortgagee, his executors or administrators may pay the same, and such sums of money shall be added to the debt hereby secured (and shall bear interest at the same rate from the day of such payment) and shall be repayable with the principal sum hereby secured.

IN WITNESS WHEREOF the parties to these Presents have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of CHARLES SUMMERS. } JAMES SMITH. WALTER WINTERS.

RECEIVED *on the day of the date of this Indenture, from the Mortgagee, the sum of Five Hundred Dollars mentioned.*

Witness: CHARLES SUMMERS. } JAMES SMITH.

AFFIDAVIT OF MORTGAGE.

ONTARIO: COUNTY OF WELLAND, TO WIT: } I, Walter Winters, of the Township of Stamford, in the County of Welland, yeoman, the Mortgagee in the foregoing Bill of Sale by way of Mortgage named, make oath and say: That James Smith, the Mortgagor in the foregoing Bill of Sale by way of Mortgage named, is justly and truly indebted to me, the deponent, Walter Winters, the Mortgagee therein named, in the sum of Five Hundred Dollars mentioned therein. That the said Bill of Sale by way of Mortgage was executed in good faith and for the express purpose of securing the payment of the money so justly due or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the said Bill of Sale by way of Mortgage against the creditors of the said James Smith, the Mortgagor therein named, or preventing the creditors of such Mortgagor from obtaining payment of any claim against him.

SWORN before me at the Town of Welland, in the County of Welland, this tenth day of May, in the year of our Lord 1903. } WALTER WINTERS.

E. R. HELLEMS, *J. P. in and for the County of Welland.*

AFFIDAVIT OF WITNESS.

ONTARIO: COUNTY OF WELLAND, TO WIT: } I, Charles Summers, of the Village of Niagara Falls South, in the County of Welland, make oath and say:

That I was personally present and did see the within Bill of Sale by way of Mortgage duly signed, sealed and delivered by James Smith and Walter Winters, the parties thereto, and that the name Charles Summers, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me this deponent, and that the same was executed at the Town of Welland, in the said County of Welland, on the tenth day of May, one thousand nine hundred and three.

SWORN before me at Welland, in the County of Welland, this tenth day of May, in the year of our Lord 1903. } CHARLES SUMMERS.

E. R. HELLEMS, J. P.

256 Maturity of Chattel Mortgages. If a chattel mortgage having the usual covenants for payment of principal and interest is not paid at maturity the mortgagee is free to take any one of several courses:

1. He may go himself upon the premises and take possession of the goods and remove them, or he may send a bailiff.

If he takes possession of the goods he is expected to sell them either by public auction or by private sale, and if there is any surplus money after payment of principal, interest and costs it must be turned over to the mortgagor or his legal representatives. But some mortgages are so written that he is not bound to sell, but may simply take possession of the goods and hold them as his own (see Sec. 257), or

2. He may sue the mortgagor for the amount due on the mortgage or,

3. He may leave the goods in the hands of the mortgagor and extend all the time for payment he desires up to twenty years. Any time during that time he deems it necessary he may take possession of the goods, if they can be found. Of course, if he desires to keep both his lien and preference over other creditors good, he must file a renewal statement within the time provided by statute in the Province where the goods are located. He can file this renewal statement without the mortgagor's consent or request.

A chattel mortgage drawn for a shorter period, in any of the Provinces, than time fixed by statute for renewal, that is not paid when due need not be closed or renewed until the expiration of the statutory time. An earlier renewal would be useless and a waste of money.

A chattel mortgage that has not been renewed at the proper time according to statute, if the mortgagee wishes to retain his priority over other creditors he must take possession of the goods, after which any desired time may be extended. Of course, if during the time the mortgage stood void against third parties, any of the goods were purchased or mortgaged or seized under execution the mortgagee could not make his mortgage valid against such parties by taking possession, but it would be good against all others.

257 Causes for Taking Possession. The mortgagee cannot take possession of the goods until the the mortgage is due, unless some covenant is broken that gives the right of possession. (See previous section for proceedings at maturity.) The forms in general use give the mortgagee the right to seize the goods mortgaged in case of default in payment, or for non-performance of any of the other covenants affecting the security. Some of the mortgages contain a forfeiture clause that gives the mortgagee not only the right to take possession of the goods upon default of payment, but also to retain them as his own property.

If the goods are moved out of the registration district without the consent of the mortgagee, or if any portion of the goods covered by the mortgage are disposed of or concealed it usually gives the right to take possession. If any of the goods are distrained for rent, or taxes, or seized under execution it gives a right to take possession.

Furniture and goods not included in the mortgage cannot be seized unless there is a general clause covering them.

To take possession illegally gives the owner of the goods or his legal representatives a claim for damages which may be recovered by ordinary suit, and if successful the amount of the judgment would be applied on the mortgage debt.

258 Renewal of Chattel Mortgages. A chattel mortgage, being an instrument under seal and not affecting interests in lands, holds the *claim* against the debtor for twenty years. Each Province has, however, fixed by statute a short time in which it holds both the lien on the *property* and priority of claim over other creditors. Therefore, if the mortgage is not paid at maturity and it is desired to be binding against third parties it must be renewed promptly within the time provided in each Province.

In Ontario it holds the property for one year only from date of execution unless renewed, or the goods taken possession of, or a new mortgage executed. To hold the goods against other creditors it must be renewed *within the last thirty days* before the year expires, and so on from year to year as long as it runs.

In Manitoba and Nova Scotia they must also be renewed within the last thirty days the same as for Ontario, except that in Manitoba they run two years, and in Nova Scotia for three years from date of *filing* and so on from time to time.

In the North-West Territories they are good for two years from date of filing without renewal, but must be renewed within the last thirty days before the expiration of the two-year period, and after the first renewal at the end of the two-year period, if the mortgage is not paid it must be renewed annually within the last thirty days every year thereafter from the date of filing the previous statement.

In British Columbia they are good for five years without renewal, but may then be renewed.

In New Brunswick a renewal statement must be filed each year showing the amount yet due. If this is not done and the goods are

taken under execution the holder has thirty days in which to file such statement, and if not done he loses his claim on the goods, and they may be sold under the execution.

The renewal statement is similar in all the Provinces and must contain the information shown in the following Renewal Form of a chattel mortgage, which gives:

The date of original chattel mortgage, the parties to it, their residence, date of filing, and that the mortgage has not been assigned, and if it has been assigned, it must give the name of the assignee, and if assigned more than once it should give each assignment, and the name of the holder at the time of renewal, also the original amount of the mortgage, the amounts paid, and date when paid, and the amount still due.

The following form, simply by changing name of Province, will answer for every Province:

259 Form of Renewal Statement.

Statement exhibiting the interest of Walter Winters, of the Township of Stamford, County of Welland, yeoman, in the property mentioned in a Chattel Mortgage dated the 2nd day of August, 1902, made between James Smith, of the Township of Stamford, County of Welland, merchant, of the one part, and Walter Winters, of the Township of Stamford, aforesaid, of the other part, and filed in the office of the Clerk of the County Court of the County of Welland, on the 2nd day of August, 1902, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said Walter Winters is still the Mortgagee of the said property, and has not assigned the said Mortgage. One payment has been made on account of the said Mortgage.

July 29th, 1903. Cash received, $230.

The amount still due principal and interest on the said Mortgage is the sum of three hundred dollars, computed as follows:

Principal	$500 09
Interest, 1 year ending August 2nd, 1903	30 00
	$530 00
Cr.	
By cash, July 29th, 1903	230 00
Balance due	$300 00

COUNTY OF WELLAND, TO WIT } I, Walter Winters, of the Township of Stamford, in the County of Welland, the Morgagee named in the Chattel Mortgage mentioned in the foregoing statement, make oath and say:

1. That the within statement is true:

2. That the Chattel Mortgage mentioned in the said STATEMENT has not been kept on foot for any fraudulent purpose.

SWORN before me at the Town of Welland, in the County of Welland, this 29th day of July, A.D., 1903. } WALTER WINTERS.

E. R. HELLEMS, *a commissioner for taking affidavits in the H.C.J., etc.*

260 Assignment of Chattel Mortgage. A chattel mortgage is not a negotiable instrument, but it may be transferred by assignment. The assignment must be filed at the same office where the mortgage is filed, and same fee charged as for a discharge.

261 Discharge of Chattel Mortgage. When a chattel mortgage has been paid a discharge should be filed also at the office where the mortgage is filed. The fee for Ontario, Manitoba and North-West Territories is 50c., New Brunswick, Nova Scotia and Prince Edward Island, 25 cents.

In British Columbia the mortgage is discharged by being marked "satisfied." The fee is $1.00. Newfoundland fee is $1.00.

See following Statutory Form:

262 Discharge of Chattel Mortgage.

DOMINION OF CANADA,
PROVINCE OF ONTARIO.

To the Clerk of the County Court of the County of Welland, I, Walter Winters, of the Township of Stamford, County of Welland, yeoman, do certify that James Smith, merchant, of the Township of Stamford, County of Welland, Province of Ontario, hath satisfied all money due on or to grow due on a certain Chattel Mortgage made by James Smith, aforesaid, to Walter Winters, of the Township of Stamford, aforesaid, which mortgage bears date the 2nd day of August, A.D. 1902, and was registered in the office of the Clerk of the County Court of the County of Welland on the 2nd day of August, A.D. 1902, as No. 4287.

That such Chattel Mortgage has not been assigned, and that I am the person entitled by law to receive the money, and that such Mortgage is therefore discharged.

Witness my hand this 29th day of July, A.D. 1903.

Witness:
CHARLES SUMMERS,
Stamford, Student. — WALTER WINTERS.

ONTARIO:
COUNTY OF WELLAND.
TO WIT: — I, Charles Summers, of the Township of Stamford, County of Welland, student, make oath and say:

1. That I was personally present and did see the within Certificate of Discharge of Chattel Mortgage duly signed, sealed and executed by Walter Winters, one of the parties thereto.
2. That the said Certificate was executed at the Town of Welland.
3. That I know the said parties.
4. That I am a subscribing witness to the said certificate.

SWORN before me at Welland, in the County of Welland, this 29th day of July, in the year of our Lord 1903. — CHARLES SUMMERS.

E. R. HELLEMS, *a commissioner for taking affidavits in H.C.J.*

263 Expense of Closing a Chattel Mortgage. The Ontario Statutes allow the following fees and expenses, and no more unless agreed upon:

1. For making seizure where amount of debt does not exceed $100 $1.00.

2. Where it exceeds $100, $1.50.

3. One man keeping possession, per day, $1.00.

4. If printed advertisements are used, not to exceed $1.50.

5. For catalogues, sale and commission and delivery of goods, 5 cents on the dollar on the net proceeds of the sale up to $100. When over $100, then 2½ per cent. on the excess over $100.

6. When debt is paid before sale, a commission of 2½ per cent., and the amount actually disbursed in cartage not to exceed $2.00.

The party levying the distress must give a copy of the charges to the person distrained upon.

The expense in the other provinces is similar.

264 Cautions. Read all the covenants carefully. If a mortgage is taken as security for a debt previously contracted it will not give priority over other creditors if there is not sufficient other property to pay their claims in full.

If money is actually paid over it will hold against other creditors unless done on the eve of bankruptcy, when it might be set aside by an action for that purpose.

If the mortgagee gives consent to the mortgagor to dispose of any of the articles covered by the mortgage it virtually destroys his lien, and other creditors may come in and share *pro rata*. Relieving part relieves all as far as priority is concerned. This, of course, does not apply to mortgages covering goods in a store or other property of trade, in which case the amount of goods only is required to be maintained.

A chattel mortgage covering the growing crops of a farm would not cover the crops of the next year unless it so expressly provided.

Articles of furniture, etc., belonging to the wife either by purchase or gift cannot be seized under a mortgage given by the husband, even though they are named in it, unless she also signed the mortgage.

If the mortgagor disposes of any of the goods covered by a mortgage, or removes them out of the county without the consent of the mortgagee he is liable to a criminal action. It is also a breach of a covenant that gives the mortgagee the right of possession.

If the mortgagee simply takes possession of the goods and holds them as his own without selling them the mortgagor has then an "equity of redemption" for a limited time, which the courts will recognize, and he may enter an action against the mortgagee for redemption or sale of the goods."

CHAPTER XIII.

MORTGAGES.

265 A Mortgage on real estate is a deed or conveyance of the property by the debtor to the creditor to secure the payment of a certain sum of money, with a "proviso" that it shall become void upon the payment of the debt and accumulated interest. It must therefore be remembered that all the mortgagor retains is the possession and the "equity of redemption."

Mortgages, and deeds also, should be executed in duplicate, one part to be left in the Registry Office and the other one retained by mortgagee.

266 Securing Clear Title. Before paying over the money there should be an *abstract* of title procured; then sign and register the mortgage and have the abstract continued so as to include the mortgage, thus making certain that nothing has been entered in the meantime. At the same time this is being done the Sheriff's office should be searched to see if there are any judgments, and the Treasurer's office to see if taxes are all paid. With these precautions a safe title would be assured. Where the Torrens System of lands transfer is adopted, the certificate of title will contain all the facts, except arrears of tax.

267 Registration of Mortgages. In all the Provinces a mortgage is binding on the property as soon as it is executed, but the first mortgage registered is the one that has first claim. Of three mortgages that might be given on the same property the same week or day, the first one that is recorded is first mortgage, no difference whether it was written first or last.

All mortgages and other instruments registered must be verified by affidavit in proper form of a subscribing witness present at the time of the signing.

The Torrens system is now in force in British Columbia, Manitoba, Ontario and the North-West Territories. (See Section 340.) It was introduced in Manitoba and Ontario in 1885, in the North-West Territories in 1886 and in British Columbia 1898, and all grants from the Crown since that time in those Provinces are under its provisions. Where lands are under that system mortgages on them must be registered in order to be valid, and they cannot be registered without the production of the certificate of title. A memorandum of the transaction is entered by the proper officer at the Land Titles office on the Certificate of Title, and also on the duplicate certificate in the office, and this constitutes the registration.

Mortgages on lands not brought under that system are registered in the usual way by leaving a copy in the Registry Office. The fees for registration under the Registry Acts of the different Provinces are very much the same. For Ontario the fees are $1.40 where the aggregate of words to be copied does not exceed 700, and 15 cents for each additional hundred words up to 1,400, and 10 cents for each additional 100 words or fraction of a hundred over 1,400.

In Ontario the statutes provide that in order to lessen the cost of registration the mortgage may have indorsed upon it "not to register in full," in which case the registrar does not copy the mortgage in his books, but the mortgage is numbered and filed, and merely the date and name entered in the books. The fee is $1.00.

268 Implied Covenants in a mortgage are:

1. To pay the mortgage money and interest.
2. A good title.
3. A right to convey.
4. That on default the mortgagee shall have quiet possession.
5. Free from all encumbrance.
6. That the mortgagor shall execute such further assurance of the lands as may be requisite.
7. That the mortgagor has done nothing to encumber the lands.

There are no other covenants *implied* in a mortgage, but any others may be expressed that are agreed upon. The "personal covenant" is not implied, but would be inserted unless omitted for cause.

There are various clauses or covenants in a mortgage that should be noticed. One provides that if interest is not paid it may be compounded; another, that if taxes are not paid the lender may pay them and charge the same rate of interest that the mortgage draws; another one provides that if the borrower does not keep the buildings insured for a certain specified sum the lender may insure them and charge the same rate of interest the mortgage draws. If the value of the security is being depreciated in any way the mortgagee may take possession.

Loan companies and sometimes private individuals put in various extra covenants to better secure themselves, and these should all be carefully noticed before signing the mortgage.

For the usual covenants that a mortgage contains see following section, "Form of Mortgage," which follows the Ontario Short Forms of Mortgage with covenants:

269 Form of Mortgage.

This Indenture made (in duplicate) the first day of March, one thousand nine hundred and three, in pursuance of the Act respecting Short Forms of Mortgages:

BETWEEN James Robert Manning, of the Township of Ancaster, in the County of Brant, Province of Ontario, yeoman, of the first part, hereinafter called the mortgagor;

Ida Jane Manning, wife of the party of the first part, of the second part;

And James William Brown, of the Township of Ancaster aforesaid, gentleman, of the third part, hereinafter called the mortgagee.

WITNESSETH that in consideration of One Thousand ($1,000) Dollars of lawful money of Canada now paid by the said Mortgagee to the said Mortgagor (the receipt whereof is hereby acknowledged), the said Mortgagor doth Grant and Mortgage unto the said Mortgagee, his heirs, executors, administrators and assigns forever.

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster aforesaid, containing by actual measurement One Hundred Acres, more or less, being composed of Lot Number Twelve (12), on the Fourth (4th) Concession of the Township of Ancaster aforesaid; and Ida Jane Manning, of the second part, hereby bars her dower in said lands.

PROVIDED this Mortgage to be void on payment of One Thousand Dollars of lawful money of Canada with interest thereon at five per cent. per annum, as follows:

The said principal sum of One Thousand Dollars to be due and payable in four equal annual instalments of Two Hundred and Fifty Dollars each, with interest at the rate of five per cent. per annum on the unpaid principal, payable annually with each instalment of principal. The first of such payments of principal and interest to be due and payable on the first day of March, A.D. 1904, and taxes and performance of statute labor.

The said Mortgagor covenants with the said Mortgagee that the Mortgagor will pay the mortgage money and interest and observe the said proviso, that the Mortgagor has a good title in fee simple to the said lands, and that he has the right to convey the said lands to the said Mortgagee ;

And that on default the Mortgagee shall have quiet possession of the said lands, free from all encumbrances ;

And that the said Mortgagor will execute such further assurances of the said lands as may be requisite ;

And that the said Mortgagor has done no act to encumber the said lands ;

And that the said Mortgagor will insure the Buildings on the said lands to the amount of not less than Six Hundred Dollars currency.

And the said Mortgagor doth Release to the said Mortgagee all his claims upon the said lands subject to the said proviso.

Provided that the said Mortgagee on default of payment for four months may, on giving three months' notice in writing, enter on and lease or sell the said lands.

Provided that the Mortgagee may distrain for arrears of interest.

Provided that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.

Provided that until default of payment the Mortgagor shall have quiet possession of the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, sealed and delivered in the presence of R. H. OLMSTED. } JAMES ROBERT MANNING. IDA JANE MANNING.

COUNTY OF BRANT, TO WIT: } I, Russell Hamilton Olmsted, of the Village of Ancaster, in the County of Brant, manufacturer, make oath and say :

1. That I was personally present, and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James Robert Manning and Ida Jane Manning, two of the parties thereto.

2. That the said instrument and duplicate were executed at the Village of Ancaster, of the said Township of Ancaster.

3. That I know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at the Village of Ancaster, in the County of Brant, this first day of March, in the year of our Lord, 1903. } R. H. OLMSTED.

H. N. HIBBARD, *a commissioner for taking affidavits in H. C. J., etc.*

270 Sinking Fund Mortgages are those in which the principal and interest together are divided into a number of equal yearly, or half-yearly, or quarterly or monthly payments. This form is not used much in Canada since the recent legislation made it compulsory to state in the Repayment Clause the four following particulars: (1) The amount of the loan. (2) The rate of interest. (3) The part of each payment that is for interest. (4) And the part of each payment that is for principal.

With this protection the borrower may know whether he is paying five, six or twenty per cent. interest, as the case may be. The Building Societies are about the only institutions still using this old "sinking fund" form of mortgage.

271 Payment of Mortgage. The repayment clause which provides when and how the loan or debt is to be repaid, should have great care and be made so explicit that there cannot be any doubt as to the time and manner of the payment. Some persons desire the whole amount of principal payable in one sum at a fixed date, but the interest payable in annual or semi-annual instalments, as the case may be, while others would desire to repay part of the principal each year as well as the interest. The form shown in preceding section is of the latter class The wording can easily be varied to suit any case.

When a mortgage falls due it may be paid without any notice to the mortgagee.

If it is overdue and the mortgagee *demands* payment for the whole amount or even part it may be paid in full if the mortgagor wishes to do so. But if only part is demanded and only that much paid together with the interest due, then in that case the mortgagor cannot subsequently, except by consent, pay the balance without giving six months' notice, or paying six months' advance interest. This six months' advance interest in payment of a mortgage past due (which is in reality only six months' notice) is a custom that has become law although it is not found in the statutes.

If the mortgage is not paid at maturity the mortgagee has several remedies, any one of which he may pursue: He may bring an action to obtain payment for principal and interest due; or he may bring an action of ejectment and obtain possession of the land by order of the court and then collect the rents and profits until the full mortgage debt and interest are paid; or he may bring suit to have the mortgage foreclosed, in which event all equities of redemption are barred and he becomes the absolute owner; or if the mortgage contains a "power of sale" he may take the legal steps to sell, but if the mortgage has no "power of sale" he may bring action to have the lands sold under the direction of the court, in which case if the proceeds are sufficient the debt and all expenses will be paid and balance paid over to the mortgagor, and if not sufficient the mortgagor will be ordered to pay the balance, and it will stand against him if not paid. In Ontario all mortgages are declared by statute to contain a "power of sale."

If a mortgage is payable by instalments and one or more instalments are in arrears the mortgagee may sue for the overdue instalments, or he may sue for the possession of the property, but he cannot be thereby compelled to accept the whole sum of the mortgage debt, neither to foreclose unless he desires to do so.

When making payments of either principal or interest it is not advisable merely to take a receipt, but the payment should be indorsed on the back of the mortgage, still the receipt operates as a legal discharge of the mortgage to the extent of the payment.

When a mortgage is payable by instalments it is advisable to take a partial discharge from the mortgagee, or assignee for each instalment as it is paid, and then register such discharge, especially is this advisable if the mortgage is for a large amount.

272 Discharge of Mortgage. When a mortgage has been paid the mortgagee is required to give the mortgagor a discharge, which is a statutory form of receipt. When this has been filled out and signed in the presence of witness duly sworn, it is registered by the mortgegor.

If the mortgage has been assigned, the assignment should be as accurately described in the discharge as the mortgage itself. The date, registration, etc., should be taken from the Registrar's certificate on the assignment.

A discharge may be given at any time at or after payment, either by the mortgagee or his assigns or executors.

A discharge operates as a re-conveyance of the lands to the mortgagor or his legal representatives, and is as good as a re-conveyance.

When a mortgage has been paid in full the mortgagee is compelled by law to hand back the mortgage, and return all title deeds and other papers he may hold in connection with the property that belong to the mortgagor. The mortgagee is also bound to give a discharge when payment in full is made. The mortgagor should immediately register the discharge.

The mortgagor may instead have a re-conveyance of the property prepared and have the mortgagee sign it if he wishes it, but it is sufficient, however, to simply have a discharge executed and registered.

Or he may require the mortgagee to assign the mortgage debt and convey the mortgaged property to any third person the mortgagor directs.

For a Form of Discharge of Mortgage see Section 262 of Chattel Mortgage, which is the same in every particular, simply by omitting the word chattel wherever it occurs and changing the name of Ontario for other Provinces required.

We give here, however, the form of discharge authorized by statute for New Brunswick, which is almost *verbatim* that of Ontario, as follows:

273 Form of Discharge of Mortgage.

To the Registrar of Deeds of the County of King's, I, John Doe, of the Parish of Havelock, in the County of King's and Province of New Brunswick, farmer, do hereby certify that James Roe, of the Parish, County and Province aforesaid, farmer, and Mary Roe, his wife, have satisfied all money due on or to grow due on a certain mortgage made by the said James Roe and Mary Roe, his wife, to me, the said John Doe, which mortgage bears date the sixth day of September, A.D. 1902, and was registered in the Registry Office for the County of King's, aforesaid, on the tenth day of September, A.D. 1902, in Libro No. 5, as number 54 on folio 5; and that I am entitled by law to receive the money, and that such mortgage is therefore discharged.

In witness whereof I, the said John Doe, have hereunto set my hand and seal this fourteenth day of March, A.D. 1903.

Witness: }
PETER JONES. } JOHN DOE. ✹

The Discharge must be accompanied by an affidavit of the mortgagee. See following form for New Brunswick.

New Brunswick, } On the 14th day of March, A.D. 1903, before me
King's County, } Peter King, one of Her Majesty's Justices of the
To wit: } Peace in and for the said County of King's, personally came and appeared the within-named John Doe and acknowledged that he did sign, seal and execute the within release or discharge of mortgage for the purposes therein contained.

PETER KING,
J.P. in and for King's County.

274 Transfer of Mortgages. Mortgages are not negotiable by indorsement, but may be transferred by assignment. The assignment is also an instrument under seal, and must be recorded at the same place the mortgage is registered.

If a mortgage is assigned the assignee takes it subject to all the equities that bound the original holder. Therefore, if a payment were made on it before the assignment the assignee could not force the mortgagor, his heirs, executors, administrators or transferee to pay it again. He could only look to the assignor. But if a payment were made after it had been assigned then the assignee could make the mortgagor pay it over again, and the mortgagor would have to look to the mortgagee for a refund of the money. In these respects it will be noticed a mortgage differs entirely from a promissory note transferred before maturity for value.

275 Form of Assignment.

This Indenture made (in duplicate) the first day of September, in the year of our Lord one thousand nine hundred and three:

BETWEEN James William Brown, of the Township of Ancaster, in the County of Brant, Province of Ontario, student, of the first part, hereinafter called the "Assignor," and James Wilson, of the City of Hamilton, in the County of Wentworth, Province of Ontario, merchant, hereinafter called the "Assignee," of the second part;

WHEREAS, by a Mortgage dated on the first day of March, one thousand eight hundred and ninety-nine, James Robert Manning, of the Township of Ancaster, County of Brant, Province of Ontario, farmer, and wife, did grant and mortgage the land and premises therein and hereinafter described to James William Brown aforesaid, his heirs, executors, administrators and assigns for securing the payment of One Thousand Dollars of lawful money of Canada, and there is now owing upon the said Mortgage the sum of One Thousand and Twenty-five Dollars:

NOW THIS INDENTURE WITNESSETH, that in consideration of One Thousand and Fifteen Dollars of lawful money of Canada, now paid by the said Assignee to the said Assignor (the receipt whereof is hereby acknowledged), THE said Assignor DOTH HEREBY ASSIGN and set over unto the said Assignee, his executors, administrators and assigns, ALL that the said before in part recited Mortgage, and also the said sum of One Thousand and Twenty-five Dollars now owing as aforesaid, together with all moneys that may hereafter become due or owing in respect of said Mortgage and the full benefit of all powers and of all covenants and provisos contained in said Mortgage. And also full power and authority to use the name or names of the said Assignor, his heirs, executors, administrators, or assigns for enforcing the performance of the covenants and other matters and things contained in the said Mortgage. AND the said Assignor DOTH HEREBY GRANT AND COVENANT unto the said Assignee, his heirs and assigns, ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of Ancaster, in the County of Brant, Province of

Ontario, containing by admeasurement One Hundred Acres, be the same more or less, being composed of Lot Number Twelve (12) in the Fourth (4) Concession of the Township of Ancaster aforesaid, To HAVE AND TO HOLD the said Mortgage and all moneys arising in respect of the same and to accrue thereon, and also the said land and premises thereby granted and mortgaged To THE USE of the said Assignee, his heirs, executors, administrators and assigns, absolutely forever; but subject to the terms contained in said Mortgage.

AND THE SAID ASSIGNOR for his heirs, executors, administrators and assigns doth hereby covenant with the said Assignee, his heirs, executors, administrators and assigns, THAT the said Mortgage hereby assigned is a good and valid security, and that the said sum of One Thousand and Twenty-five Dollars is now owing and unpaid, AND that he has not done or permitted any act, matter or thing whereby the said Mortgage has been released or discharged either partly or in entirety: AND that he will upon request do, perform and execute every act necessary to enforce the full performance of the covenants and other matters contained therein.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in the presence of D. E. POTTER. — WILLIAM JOHN BROWN. JAMES WILSON.

RECEIVED on the day of the date of this Indenture from the said Assignee the sum of One Thousand and Fifteen Dollars.

Witness — W. J. BROWN.

COUNTY OF WENTWORTH, TO WIT: I, Dexter Edgar Potter, of the City of Hamilton, County of Wentworth, Province of Ontario, student, make oath and say:

1. That I was personally present and did see the within Instrument and Duplicate thereof duly signed, sealed and executed by James William Brown, one of the parties thereto.

2. That the said Instrument and Duplicate were executed at the City of Hamilton.

3. That I know the said party.

4. That I am a subscribing witness to the said Instrument and Duplicate.

SWORN before me at Hamilton, in the County of Wentworth, this first day of September, in the year of our Lord 1903. — D. E. POTTER.

J. W. LAMOREAUX, *a Commissioner for taking affidavits in H.C.J., etc.*

276 Assignment by Indorsement on Back of Mortgage.

This Indenture made (in duplicate) the first day of September, in the year of our Lord one thousand nine hundred and three.

BETWEEN William John Brown, of the town of Dundas, within named, of the first part, and James McKay, of the City of Hamilton, of the second part.

WITNESSETH, that the party of the first part in consideration of the sum of $250 to him paid by the second party, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and assigned, and by these presents doth grant, bargain, sell, and assign to the party of the second part, his heirs, executors, administrators and assigns all the right, title, interest, claim and demand whatsoever of him, the party of the first part, of, in and to the lands and tenements mentioned and described in the within Mortgage. And also to all sum and sums of money secured and payable thereby and now remaining unpaid.

To have and to hold the same and to ask, demand, sue for and recover the same as fully to all intents and purposes as he, the party of the first part, now holds, and is entitled to the same.

IN WITNESS WHEREOF the parties to these presents have hereto set their hands and seals, the day and year first above written.

Signed, Sealed and Delivered in the presence of JAMES BLACK. — WILLIAM JOHN BROWN.

277 The Personal Covenant. It must not be forgotten that nearly every mortgage contains a Personal Covenant by the debtor to pay the creditor the sum named in the mortgage, together with interest, etc. The mortgage is simply a lien on the property as security for the payment of the stipulated sum. Therefore, if the debtor after giving the mortgage should sell the property it is not enough that the purchaser assume the mortgage, because the personal covenant still binds the original debtor. The mortgage should either be discharged, or a release under seal obtained from the creditor or mortgagee. In Ontario, on mortgages given since 1894 the personal covenant expires with the mortgage in ten years after maturity.

This personal covenant does not hold against the person who may buy the property subject to the mortgage.

If the person buying property subject to an existing mortgage covenants with the *mortgagor* to pay the mortgage, the mortgagor can enforce payment if it is due—that is (as the law books express it) indemnify the mortgagor against the mortgagee. But the *mortgagee* cannot compel him to pay either principal or interest. He can foreclose.

In *assigning* a mortgage as collateral security for an existing debt, or for money borrowed the personal covenant of the assignor to pay the debt should not be put in the assignment, as the mortgage only is intended to be the collateral security.

A mortgage would also be binding against the property if it were written without the personal covenant being inserted.

278 Power of Sale. Every mortgage contains a clause similar to the following: "Provided that the mortgagee on default of payment for four months may, on three months' notice, enter on and lease or sell the said lands," etc. This clause empowers the mortgagee, after complying in all respects with the terms of the notice, to take possession of and sell the mortgaged lands. The time mentioned in this paragraph may be changed, and whatever number of months may be stated in the mortgage will hold.

In case a mortgage does not contain an express "power of sale," in Ontario the statutes allow "that after four months' default in payment of principal due," or six months' default in payment of interest due, or after an omission to pay premiums on insurance there shall be a "power of sale" and the mortgagee may sell the whole or part of the property, either by public auction or private sale. The mortgagee himself may be the purchaser.

No sale shall take place until after two months' notice to the mortgagor, unless the mortgage provides for a shorter time.

In case the mortgagee demands payment of the whole mortgage debt because a payment of either principal or interest is in arrears the mortgagor may either pay off the mortgage according to the notice, or he may pay the arrears of principal or interest, as the case may be, with interest on the arrears since due together with the costs of notice and the mortgage will remain as before. But the payment must be made promptly before action further than the notice is taken.

279 Form of Notice to Sell:

I hereby require you on or before the ——— day of ——— 19— (a day not less than two calendar months from the service of the notice, and not less than six months after the default), to pay off the principal money and interest secured by a certain indenture dated the ——— day of ———, 19—, and expressed to be made between (here state the parties and describe the mortgaged property), which said mortgage was registered on the ——— day of ———, 19— (and if the mortgage has been assigned, add "and has since become the property of the undersigned"). And I hereby give you notice that the amount due on the said mortgage for principal, interest and costs, respectively, is as follows: (state the separate amounts).

And unless the said principal money, interest and costs are paid on or before the said ——— day of ——— I shall sell the property comprised in the said indenture, under the authority of the Act entitled, "An Act respecting Mortgages on Real Estate."

Dated the ——— day of ———, 19—.

(Signed) ———.

This notice may be registered in the Registry Office of the county or district in which the lands are situate, and serve as proof of compliance with the Act. The two months' notice may run concurrently with the time of default as it may be given any time after default.

When such demand for payment has been made and notice of sale given no other proceedings can be taken until the time expires, unless an order from a County or High Court is obtained.

The mortgagor may pay the debt within the time mentioned in the notice and prevent a sale, and if any dispute arises as to the amount of costs the bill will be "taxed" by the Clerk of the County Court or the Local Master.

In case of sale the mortgagor is required to deliver over all title deeds and documents in his possession affecting the land.

Money derived from the sale goes first to cover costs of sale, then the interest and next the principal, and remainder (if any) goes to the mortgagor.

The land may be sold either by public or private sale, and either for cash or credit, and the mortgagee or assigns may buy in and resell the said lands, or any part thereof, either by private sale or public auction, without being responsible for any loss or deficiency for, or on account of such estate; and that no purchaser under such power of sale shall be bound to inquire into the legality or regularity of any sale under the said power, or to see to the application of the purchase money.

Where the mortgagee becomes the purchaser he is required to give the mortgagor a release of the mortgage debt, but not if sold to a third party.

A mortgage might provide for a sale "without notice," but where no time is fixed it must be two months. It is questionable if the courts would uphold a sale "without notice" as it is contrary to equity and would destroy the equity of redemption. It should not be in a mortgage, but some companies have it inserted.

280 Interest on Mortgages is implied, unless expressly stipulated to the contrary. Mortgages on real estate may draw any interest that the mortgagor covenants to pay, but in Canada if the rate is not named it will be five per cent; Newfoundland six. If the interest is not paid when due the mortgagee usually has power either to take possession, or foreclose and sell. In Ontario he may sue for the arrears of interest in the Division Court if the amount is within its jurisdiction, but he cannot employ the judgment summons process to enforce payment. The different instalments of interest or principal may be sued for separately so as to bring them within the jurisdiction of the Division Court. Or if there are goods and chattels of the mortgagor on the premises he may distrain for the arrears of interest. The mortgagee cannot seize or sell the goods or crops of a tenant on the property for either overdue interest or principal. Neither can he seize or sell the goods and chattels of the mortgagor that are exempt by statute from seizure under an execution or landlord's warrant.

The mortgagee's right to distrain for interest is limited to one years' arrears of interest as against execution creditors or an assignee for the general benefit of creditors. Goods distrained for interest shall not be sold except after such public notice as is required under a landlord's warrant.

If a mortgage does not contain the personal covenant to pay the debt, then interest in arrears could not be recovered after six years. But, although the mortgagee could not in this case recover more than six years' arrears of interest by suit or distress, still if the mortgagor ever wanted to redeem the property he would in that case be compelled to pay the arrears of interest.

If a mortgage is not paid at maturity the mortgagee is entitled to six months' notice and interest for that time in addition to the original sum and costs (if any) in order to redeem.

In case action has been entered for payment, or a demand for payment made, or notice of sale given, the six months' further interest is not chargeable if the mortgagor redeems at that time.

281 Prepayment of Mortgages. If a mortgage has not yet become due, generally speaking the mortgagee cannot be compelled to accept payment, unless there is a clause in the mortgage binding the mortgagee to accept payment sooner. There are, however, some exceptions, as the following:

1. By a Dominion statute, chap. 27, Sec. 7, R.S.C., provision is made, which applies to all the provinces, for the payment of mortgages after they have run five years, no matter for what length of time they were drawn. As the clause is very concise it is here quoted in full:

"Whenever any principal money or interest secured by mortgage of real estate is not in the terms of the mortgage payable till a time more than five years after the date of the mortgage, then any person liable to pay or entitled to redeem the mortgage, may, after the expiration of five years, tender to the person entitled to receive the money the amount due for principal and interest, together with three months' further interest in lieu of notice, no further interest shall be

chargeable, or payable, or recoverable at any time thereafter on principal money or interest due under the mortgage." The mortgagee, of course, cannot be compelled to receive the money until it is due, but if the tender of the money is made as above no further interest can be collected.

2. If, for default in payment for either principal or interest or for any other supposed breach of covenant, the mortgagee enters action to recover payment, or demands payment, then the mortgage may be paid in full.

282 Mortgagee Taking Possession. A mortgagee may take possession of the property at any time after the mortgage falls due, or if interest is past due, and may collect the rents and apply them on the mortgage.

The mortgagor cannot compel him to foreclose nor sell, but he can compel him to give an account of the rents and his dealings with the property. If he is ready to pay the principal and interest he may bring an action to redeem should the mortgagee be unwilling to receive the money.

Also, if the mortgagor should abandon possession of the property it gives the mortgagee the right to take possession, but he must keep an account of all rents and income derived from it, and account to the mortgagor or his assigns for the same or to subsequent mortgagees.

A mortgagee who simply takes possession of the property without foreclosure, or a sale, is not the absolute owner of the property, in reality only a "trustee," as the mortgagor in that event still retains his equity of redemption, and may hold the mortgagee liable for all damages that may be done to the property. The mortgagor may, any time within twenty years, redeem the property by procuring an order from the court, that is, enter an action to recover possession of the property (see Sec. 243), and in that case the mortgagee would be compelled to account for all his dealings in connection with the property and make good any waste, such as needlessly cutting down the standing timber, destroying or removing from the property any of the buildings, or for buildings that may have been burned down (if insured), and the insurance money not been used to replace the buildings, etc.

In a matter of much importance, if the mortgagee is committing waste or materially reducing the value of the property, an injunction could be obtained restraining him, but unless the mortgagor were sure he would be able to redeem the property it would only be money wasted to do so. It would help subsequently, however, to secure a verdict for damages if the mortgagor would at the time the waste was being done, or contemplated to be done, serve the mortgagee with a written protest, duly witnessed, against the act, and notify him at the same time that he would be held for damages.

To become the absolute owner of the property without the expense of foreclosure or a sale, the mortgagee must obtain from the mortgagor a release of his equity of redemption, either by purchase or otherwise, or let it rest until it is barred by statute.

When a mortgagee takes possession and evicts a tenant of the

mortgagor who is willing to remain in possession and pay rent, the mortgagee is liable for the rent during the whole period of said tenancy.

Where a mortgagee takes posession and remains in actual possession of the premises, using them in place of a tenant, he is chargeable for the same rent that a tenant would reasonably be expected to pay for them. This is called "occupation rent." The Statute of Limitations does not apply in case of "occupation rent," and the mortgagee would get no title simply by possession, but he is rather in the position of a "trustee." Such rent would be applied by the courts first to the payment of interest, and the remainder to the mortgage principal. But when in case the tenant of a mortgagor is ordered by the mortgagee to pay rent to him, and he promises to do so but does not, in that event it would not be held that the mortgagee is in possession, and he would not be held liable for such rent.

But the mortgagee is liable for rents which, but for wilful neglect, might have been received, and naturally would have been received if property had been left in hands of the mortgagor.

A mortgagee taking possession under an agreement with the mortgagor at a certain rental does not bind subsequent mortgagees who did not assent. They can claim a fair rental to be charged so as the faster to pay off the first mortgage.

283 Provision for Foreclosure. The object of foreclosure is to take away the mortgagor's equity of redemption, and also to bar claims of subsequent mortgagees without a sale of property. Foreclosure of mortgage is merely filing a bill of foreclosure against the mortgagor calling upon him to redeem his estate forthwith, with payment of principal, interest and costs, and if he fail to do so within the time specified by the court (usually six months) he is forever barred of his equity of redemption.

Unless the mortgage specifically provides otherwise the mortgagee may upon default in payment of either principal or interest according to the terms of the mortgage, or for the length of time mentioned in the statute commence a suit for foreclosure.

And if the mortgagor desires to prevent the foreclosure he may, any time before judgment, pay the amount of mortgage, interest and expense incurred to date; or if the mortgagor or any subsequent mortgagee desires to force a sale of the property instead of a foreclosure he may do so by filing in the office from which the writ of foreclosure was issued, a memorandum stating as follows:

"I desire a sale of the property instead of foreclosure," at the same time stating the true reason, as for instance, "that the property is valuable and would sell for more than the mortgage debt." In Ontario he would be required to deposit $80 in the court to which he applied for the sale to cover the expenses of a sale, unless the judge would not require it, or would order otherwise.

The law of foreclosure is that a mortgagee has a right to redeem the property from those in priority to him; and to foreclose against all those subsequent to him unless redeemed by them.

But if the mortgagee can secure by purchase or otherwise from the

mortgagor, his equity of redemption, or purchase the same under a judgment, a decree or execution, he becomes the absolute owner of the property without the expense of foreclosure. The mortgagee thus obtaining the equity of redemption does not give subsequent mortgagees any claim against him, neither can they foreclose or sell the property without paying this first mortgage claim in full.

This first mortgagee securing mortgagor's equity of redemption and entering into possession is not liable to subsequent mortgagees for any rents or profits he may obtain, even though they may amount to more than his claim, because he is regarded as absolute owner.

A mortgagee getting a release of the equity of redemption from the mortgagor does not affect the priority of mortgages under the Registry Act.

Where a debt is secured by a mortgage on real estate, and by covenant and by bond, and a note given by third parties as collateral, the mortgagee may pursue all his remedies at the same time, and if he obtained payment either from the note or covenant or bond the foreclosure would be prevented.

284 Period for Redemption. When an order for foreclosure has been obtained the mortgagor and subsequent mortgagees have six months in which to redeem before final foreclosure. Where there are several mortgagees or encumbrancers who have proved their claims in defence at the suit for foreclosure, the court will usually grant from one to three months additional time in which for them to redeem, according to their respective priorities. The court may also for sufficient cause allow a shorter period than six months if it is deemed necessary.

285 Foreclosure and Redemption. After foreclosure, if the mortgagee should sue on the covenant for an alleged balance due, it gives the mortgagor the right of redemption in case he pays the balance of debt. In such case the mortgagee must have the mortgaged estate still in his possession so as to be in a position to be redeemed. Therefore, upon the commencement of the action on the covenant the mortgagor should file a bill for redemption, and upon payment of the debt he will be entitled to the estate and whatever securities the mortgagee held belonging to the mortgagor.

The mortgagee may be put to his election. If, after the final order for foreclosure the mortgagor is prepared to pay off the mortgage debt, and notifies the mortgagee to that effect, and the mortgagee consents to receive the money, the right of redemption is restored. But if he refuses to receive such payment and should subsequently attempt to sue on the covenant he would be restrained by a court of equity.

It is possible to have a final order of foreclosure set aside, but there must be substantial grounds for it.

286 Unsatisfied Mortgages. If a mortgage for a certain amount covers certain properties of a debtor which, upon being sold, do not pay the whole claim of principal, interest and expenses, and the debtor has other property, the mortgagee can come on that other property until his full claim has been satisfied. To do so he would sue on the covenants and thus securing judgment against the debtor personally, issue an execution which would bind all the property of the mortgagor.

Of course the mortgagee could not touch the goods or crops of a tenant nor even the personal property of the mortgagor *exempt* from seizure, under an execution or landlord's warrant.

If the mortgagee became the purchaser of the mortgaged land when sold he is required in that case to give the mortgagor a release of the mortgage debt. But if sold to a third party and a balance remained unpaid he would still have a further claim, as above stated.

287 Outlawing of Mortgages. Mortgages on real estate outlaw in Ontario and Manitoba in ten years after maturity or last payment of either principal or interest, unless re-acknowledged in writing; British Columbia, Nova Scotia, Prince Edward Island, and New Brunswick, twenty years; North-West Territories and England, twelve years; Newfoundland, twenty years; Quebec, thirty years, providing the mortgage is duly registered.

CHAPTER XIV.

PROPERTY.

288 Definition. The legal definition of property is "The right and interest which a man has in lands and chattels to the exclusion of others." A man purchases so many acres of land and thus acquires the possession and exclusive right to its use. He drains it, plants it with fruit trees, erects buildings upon it, and thus increases its value. The soil itself is not his, but he has acquired the right to its possession and use—a right that excludes all others from its use.

In the common language of the people property means the thing itself. Thus, a man buys a bay horse; he calls it his property, but in legal language it would be his "property in the bay horse." That is, the right and title to its possession.

289 Division of Property. Property is divided into Personal and Real, usually called Real Estate. In Quebec they are styled Movables and Immovables.

1. Personal property includes all classes of property except lands and buildings. It consists of such things as are movable from place to place with the owner, as money, mortgages, stocks, carriages, machinery, farm implements, live stock, book accounts, annual crops, nursery stock, good-will and lease of property for a term of years.

2. Real property includes lands, buildings, trees growing upon the soil, and every natural source of wealth such as coal, gas, oil and minerals that may be buried in the soil.

Temporary buildings, not placed upon stone foundations nor nailed to the permanent buildings, trees and shrubs planted to be removed again, as nursery stock, do not become a part of the realty, but are personal property of the tenant.

Also, temporary structures inside of the building, as counters, shelv-

ing, etc., attached by means of screws so they can be removed without injury to the property, do not become a part of the freehold, but are personal property of the tenant, but must be removed when possession is given up.

290 Owner's Authority. As the owner has a right to the use and possession of the property to the exclusion of all others, he may expel, even by force if necessary, any other person from his premises. He can sell or deed it away, or give it to his heirs, pull down his buildings or otherwise destroy them, so long as he does not interfere with the rights of others.

291 Rights Over Others' Property. If he has property removed from the street or road, and pays another property holder between him and such street or road a certain sum for a right of way, as a lane, to reach his property, he acquires a perpetual right, which also passes to his successors, unless otherwise specified in the contract.

If he has fruit trees standing so near the division line that the limbs overhang a neighbor's property the fruit on the limbs that overhang the fence still belongs to him and if it falls on his neighbor's ground he has a right to go on such ground to gather and take it away. He is not liable to an action for trespass for so doing, but would be liable for any damage through the falling of the fruit, or in exercising his right to collect and take it away.

The neighbor also has the right to cut off the limbs that overhang his property, or the roots which extend into it. But before doing so he should give due notice, and demand their removal and if his demand is not complied with he can then cut them off.

But the provision that formerly protected the owner of a building from having his windows darkened or a pleasant view cut off by the erection of a high fence or a building by his neighbor is now virtually abolished by the Statute of Limitations.

292 Joint Ownership is where two or more persons own a piece of property jointly. All have a right to it at the same time.

This class of ownership occurs where a syndicate of persons combine to purchase and hold for speculative or other purposes a portion of land or other property. Also when a person dies without a will, his heirs have a joint interest.

Joint walls built by two parties on the dividing line between two properties would be an illustration of joint property. Neither one could take it down without the consent of the other, but neither one can go on the ground of the other to repair it without permission.

Also in case husband and wife have real estate deeded to them as joint owners neither one can sell without the consent of the other, and neither one can will his or her interest to any other person, but in case of death of either one the other takes the whole interest.

293 Life Ownership is where a person has the use of property during his natural life. It may be acquired by gift or will. He cannot sell or mortgage such property. He cannot decrease its value by removing buildings, etc., or make any disposition of it at his death.

He may use and enjoy it for himself, or rent it to others and enjoy the proceeds, or he could sell or mortgage the use of it during his life time.

294 Ownership by Possession. In all the Provinces a "squatter," or any person (except where property is held in trust) who has peaceable, uninterrupted possession of land, treating it as his own, paying taxes and not in any way acknowledging the right of any other person for a definite number of years, obtains a good title to the same and can subsequently transfer it and give a clear title. (For length of time see Section 247.)

Peaceable possession does not mean that there has not been any dispute about the ownership, but rather that no action has been taken to dispossess the intruder.

295 Dower is a life estate a wife has by law in the lands acquired or held by her husband during coverture in which she has not barred her right to dower. It is of course not available until after the husband's death. If marriage has been legally dissolved the right of dower ceases.

A wife is also entitled to dower in the equitable estates of the husband to which he was beneficially entitled and had not parted with in his life time. A legacy in land due but not yet taken possession of, is subject to dower. Also where there is a will which gives the wife all the property, or all the residue, a legacy due but not yet paid would be hers.

A wife need not be twenty-one years old to bar her dower. If a wife sign a deed it bars her dower, but a wife barring her dower in a mortgage only effects her to the extent of the rights of the mortgagee, and dower is due on the surplus after payment of mortgage. It is calculated on the basis of the amount realized from the sale of the land. If the land sold for $3,000, and the mortgage was $2,000, she would be entitled to the whole of the surplus, viz., $1,000.

In Ontario her dower is one-third of the real estate. The husband cannot deprive her of the right during his life time by selling or mortgaging the property he has in Ontario or in any other Province or State which allows dower unless she bars her dower by signing the deed or mortgage. If the husband dies possessed of real estate and makes a will she can either take the portion left to her in lieu of dower by the will or she can refuse to take under the will and claim her dower. If nothing is stated in the will that the bequest is in lieu of dower she is entitled to both.

In Manitoba and North-West Territories the wife has no dower in the lands of her deceased husband, but the Statute of Devolution of Estate gives her the same interest in the lands as in the personal property of the husband dying intestate. (See Sec. 470.)

In Quebec the wife has one-half the husband's immovables. In Nova Scotia, New Brunswick and P. E. Island the wife has the common law right of dower of one-third of husband's real estate.

In British Columbia, Newfoundland and England wife has one-third interest as dower, providing husband dies legally entitled to lands without having absolutely disposed of them by deed or will.

296 Sale of Personal Property. In the sale of personal property, as in all other contracts, the parties themselves must be competent to contract. The seller must have a valid title to the property sold; the property must be something legal to be handled, and the sale must be without fraud, or concealment of facts which ought to be known and which the other party cannot reasonably discover for himself.

The price is either paid in money or promised to be so paid, for if it were paid in goods or service it would be a barter and not a sale.

Selling personal property, which is still retained in possession, is binding as between the parties themselves, but is not binding against creditors or subsequent purchasers, unless a Bill of Sale is recorded.

When the sale is completed the property in the article passes to the purchaser, whether the article is delivered or not, and the risk also passes at the same time.

But the statutes of each Province (except Quebec) and of Newfoundland definitely state that every sale of goods and chattels not accompanied by an immediate delivery followed by an actual and continued change of possession of the goods and chattels sold shall be in writing by way of chattel mortgage or bill of sale, which, to be binding against third parties, must be registered.

The Mortgage or Bill of Sale executed and recorded is the notice to the public, and where this is not done personal property honestly purchased would be liable to seizure under execution, or would be retained by a subsequent purchaser for value who had no knowledge of the previous sale. (See following section.)

297 Barter is where one article is given in exchange for another or for service, and if there is no warranty given as to the soundness or quality the property in each passes with the delivery of the article and the exchange is complete, no matter how poor a bargain one or the other may have made. Neither party can forcibly or otherwise take the article back he bartered away, except by consent of the other, without becoming liable to an action for theft and also for damages. The article also, if found, could be recovered back from him.

298 The Property Sold Must Exist. Jones sells Smith a certain horse at a certain price, but after the sale is concluded it is discovered that the horse is dead, both parties having been ignorant of the fact. There is no sale, even though the money had been paid.

But if the horse were actually bought and, say $20 paid, the balance to be paid at a subsequent date, and the agreement was that the horse was to remain on the premises a few weeks, but before being removed or balance paid he dies, the loss would be that of the purchaser and he would still have to pay the balance of purchase price.

299 Property May Have a Potential Existence. The natural products of the soil, the increase of live stock or other property may be sold in advance. For instance: A farmer may sell his apple, peach or pear crop before the buds even begin to show; or the wool clipped from his sheep the following spring, etc. They are not yet in existence, but they are possible; hence they may be sold.

300 When a Verbal Agreement Binds. In all the Provinces the sale of personal property by verbal or oral agreement is binding up to a certain sum, but beyond that amount it does not bind either seller or buyer, no matter how many witnesses there might be to the bargain.

In Ontario, New Brunswick and Nova Scotia anything *under* $40 will bind; but if the amount is $40, or more, it is utterly worthless.

In Manitoba, North-West Territories, British Columbia and Quebec anything under $50 binds.

In Prince Edward Island $30, Newfoundland and England $50.

In each of the Provinces if the amount is not *under* the figures here named then, in order to be binding, the contract must either be in writing, or a part or the whole of the goods delivered, or a part payment made.

But up to the amounts here named for the respective Provinces a bargain made "by word of mouth" is every whit as binding as though it were in writing.

Retail merchants and other traders giving verbal orders to commercial travellers or others for a smaller sum than those respectively for the different Provinces named above cannot cancel their order, except by permission of the wholesale house or the manufacturing firm, and if the goods are not received when shipped in accordance with the order the shippers have an action for damages, which would naturally be the price of the goods. But if the amount is over the sums named here for each Province the order may be cancelled any time before the goods have been actually shipped.

301 Breach of Contract of Sale. If either party should violate such a contract of purchase or sale, he would incur a penalty to the amount of damages the other party could prove he had suffered by the breach of contract, which amount would naturally be the price of the article. Illustration: A cattle buyer agrees to purchase ten head of cattle from a stock raiser and pays $20 to bind the bargain, and is to take them within ten days. After he goes away, he sees the market quotations show a great depression in foreign prices and he concludes not to carry out his contract. He cannot recover his $20, but the stock raiser can sue him for the balance of the purchase money.

It must be remembered that usually only such damages can be recovered as actually occur. When an article or goods have been bought for the purpose of resale, and if at the time of the purchase the existence of a sub-contract for the goods is made known to the seller and the seller then makes default in delivering the property the purchaser may either purchase the article from some other person to fulfil the sub-contract and charge the seller with the advance price he may be compelled to pay, or he may repudiate the sub-contract and recover damages from the seller and for whatever damages he may be charged with for breach of the sub-contract.

If a purchaser is misled by the seller as to the quantity of goods he is purchasing, or part of the goods he supposed he was purchasing prove to belong to other parties, he may either claim a reduction in the price or refuse to carry out the contract of purchase and recover back any money that may have already been paid.

302 When Sale is Completed. In sales that have been completed there is usually a delivery of the property and a continued change of possession, but not necessarily so. Goods yet in charge of a railway or in a warehouse may be delivered by simply handing over the bill of lading or warehouse receipt. This is called a "constructive delivery."

When the contract for the sale of specific articles or goods is completed the right to the property is immediately vested in the buyer as also the risk, and the right to the price in the seller, unless the contract specially provides otherwise.

If the buyer assumes the risk of the delivery or leaves the goods in possession of the seller and they are destroyed before delivery, it will be the loss of the buyer; but if the seller assumes the risk of delivery then the loss will be his. The courts have ruled "that where a *legal bargain* is made for the purchase of goods and nothing is said about payment or delivery the ownership nevertheless passes immediately so as to cast upon the purchaser all future risk," and the parties are in the same position as they would be after a delivery of the goods. If this fact is borne in mind it will remove all doubt in numerous cases of injury, or death of live stock, etc., between time of purchase and removal of the goods or chattels. (See following section.)

In case of live stock, for instance, say a team of horses were purchased and $20 paid on account of the price, with the agreement that they were to remain on the premises a few weeks, the sale would be completed and the risk as well as the ownership would pass to the purchaser. If either of them should die or be stolen before removal the vendor would not be responsible for the loss unless it could be shown that the death or loss was occasioned by his gross or wilful negligence. If he can by reasonable or ordinary care prevent the animals from being stolen or from dying while in his possession, he is bound to exercise such care, and if he should neglect to do so, and loss result from such neglect, he will be liable to the purchaser to the extent of the loss.

303 Bill of Sale. If the goods are not delivered at time of sale, but still left in the possession of the former owner, a Bill of Sale must be filed in the office where Chattel Mortgages for that district are filed, in order to make such a sale binding against judgment creditors, and subsequent purchasers and mortgagees for value. It will be noticed here that a Bill of Sale differs from a Chattel Mortgage in that it is an absolute sale of the goods, and not merely a lien on them as security for payment of a debt, hence only one party signs it. (See form in following section.)

304 Form of Bill of Sale.

This Indenture made the fourth day of April, in the year of our Lord one thousand nine hundred and three, between James Smith, of the Town of Welland, in the County of Welland, and Province of Ontario, merchant, vendor of the first part, and Walter Winters, of the City of Toronto, County of York, and Province of Ontario, gentleman, the vendee of the second part.

WHEREAS the said party of the first part is possessed of the stock of dry goods and groceries and store and office fixtures hereinafter set forth, described and enumerated, and hath contracted and agreed with the said party of the second part for the absolute sale to him of the same for the sum of six hundred dollars.

NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of six hundred dollars of lawful money of Canada, paid by the said party of the second part, at or before the sealing and delivery of these Presents (the receipt whereof is hereby acknowledged), he, the said party of the first part, hath bargained, sold, assigned, transferred, and set over and by these Presents doth bargain, sell, assign, transfer and set over, unto the said party of the second part, his executors, administrators and assigns, ALL THOSE the said dry goods and groceries and store and office fixtures, as per inventory hereunto attached and marked "A."

AND all the right, title, interest, property, claim and demand whatsoever, both at law and equity, or otherwise howsoever, of him the said party of the first part, of, in, to and out of the same and every part thereof.

TO HAVE AND TO HOLD the said hereinbefore assigned dry goods, groceries and store and office fixtures and every of them and every part thereof, with the appurtenances, and all the right, title and interest of the said party of the first part thereto and therein, as aforesaid, unto and to the use of the said party of the second part, his executors, administrators and assigns, to and for his sole and only use forever.

And the said party of the first part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said party of the second part, his executors and administrators, in the manner following, that is to say: That he, the said party of the first part, is now rightfully and absolutely possessed of and entitled to the said hereby assigned dry goods, groceries and store and office fixtures, and every part thereof; and that the said party of the first part now hath in himself good right to assign the same unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these Presents; and that the said party hereto of the second part, his executors, administrators and assigns, shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess and enjoy the said hereby assigned goods and fixtures and every of them, and every part thereof, to and for his own use and benefit, without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him the said party of the first part, or any person or persons whomsoever, and that free and clear, and freely and absolutely released and discharged, or otherwise, at the cost of the said party of the first part, effectually indemnified from and against all former and other bargains, sales, gifts, grants, titles, charges, and encumbrances whatsoever.

And moreover, that he the said party of the first part, and all persons rightfully claiming, or to claim any estate, right, title or interest of, in, or to the said hereby assigned goods and fixtures and every of them, and every part thereof, shall and will from time to time, and at all times hereafter upon every reasonable request of the said party of the second part, his executors, administrators or assigns, but at the cost and charge of the said party of the second part, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectually assigning and assuring the said hereby assigned goods and fixtures unto the said party of the second part, his executors, administrators and assigns, in manner aforesaid, and according to the true intent and meaning of these presents, as by the said party of the second part, his executors, administrators or assigns, or his council shall be reasonably advised or required.

IN WITNESS WHEREOF the said parties to these Presents have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of CHARLES SUMMERS. } JAMES SMITH. ✹

Affidavit of purchaser as to the sale being bona-fide for value:

COUNTY OF YORK, TO WIT: } I, Walter Winters, of the City of Toronto, in the County of York, the vendee in the foregoing Bill of Sale named, make oath and say:

That the sale therein made is bona-fide, and for good consideration, namely the actual present payment in hand to the vendor by the vendee of the sum of six hundred dollars, and not for the purpose of holding or enabling me, this deponent, to

hold the goods mentioned therein against the creditors of the said bargainor, or any of them.

SWORN before me at Toronto, in the County of York, this 4th day of April, A.D., 1903. } WALTER WINTERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

Affidavit of witness proving the signing, sealing and delivery of the Bill of Sale :

COUNTY OF YORK, TO WIT : } I, Charles Summers, of the City of Toronto, in the County of York, make oath and say :

That I was personally present, and did see the within Bill of Sale duly signed, sealed and delivered by James Smith and Walter Winters, the parties thereto, and that I, this deponent, am a subscribing witness to the same. And that the name Charles Summers, set and subscribed as a witness to the execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at the City of Toronto, County of York, on 4th day of April, A.D. 1903.

SWORN before me at the City of Toronto, County of York, this 4th day of April, 1903. } CHARLES SUMMERS.

JAMES BROWN, *a commissioner for taking affidavits in H. C. J.*

305 Sales on Trial. When articles are purchased on trial at a certain price they must be rejected before the time expires if they do not suit, or the sale is complete and the party bound to keep them.

306 Guaranteeing Machinery. The descriptions of machinery as to manner and excellence of work, etc., that appear in newspaper advertisements and circulars cannot be made a binding guarantee to protect the purchaser. To have an effective guarantee of excellence, or that the machine or instrument will do what is claimed for it in the circulars it must either be in a definite form of guarantee, or in a written or type-written letter. The courts allow for a good deal of what may be called exaggeration in mere advertisements, hence as an instrument or machine may always be tested before being paid for, there is not much chance afterwards to recover damages for misrepresentation except on a written guarantee.

307 Sales by Sample or Description are made on the warranty that the goods when delivered will correspond in kind and quality with the description given or sample shown, and if such is not the case there is no binding sale. The article must not be retained, or used. If the seller was to remove the article, if unsatisfactory, the notice should be given as per agreement, and the article cared for until removed. If a cumbersome machine were left an unreasonable time, it must still be cared for, but storage could be charged and collected before delivering the property.

308 Selling Stolen Goods does not give them a good title in the hands of an innocent purchaser for value, as in the case with the promissory note. They can be re-taken wherever found. Receiving stolen goods, knowing them to be stolen, is an indictable offence liable to fourteen years' imprisonment.

309 Sale of Book Accounts is effected by assignment. The following brief instrument is sufficient:

For value received, I hereby assign to (person's name) the accompanying accounts and claims against the persons whose names are enumerated (enumerate the names and amounts).

(*Signed*) J. WINTERS.

Every form of account or debt due a person may be sold or transferred as well as notes, but not by indorsement. They can only be transferred by assignment. The above form or one similar to it, will answer for all kinds of accounts, but for mortgages see Section 274.

310 Goods Stopped in Transit. Goods not yet paid for, having been shipped to the purchaser, but before their delivery word being received of the purchaser's insolvency, may be stopped by ordering the company in whose possession they are not to deliver them, providing the bill of lading has not been delivered.

If it should turn out, however, that the purchaser is not insolvent, then the seller who unlawfully stopped the goods in transit may be required to indemnify the purchaser's loss, or to deliver the goods and pay damages sustained by the delay in delivery.

311 Goods Sold by Order. With all implements and machinery sold by order, the party giving the order should require a duplicate of the order to be left with him. The law does not compel an agent to leave a copy of the order with the person giving the order, but the person himself has the right and the *power* to *demand* it or refuse to give an order. Care should be taken to see that the copy reads exactly like the original. Where the agent would refuse to give a copy of the order it would be strong evidence of an intended fraud.

When a person signs an order for a machine or any other article, and hands it to the agent or vendor the contract is complete. It cannot thereafter be cancelled except by permission of the manufacturer or vendor. If the purchaser should cancel the order and refuse to accept the article when it is tendered merely because he had cancelled the order and not because of any defect in it, the manufacturer has two courses open to him—1st. He may resell it to another party and collect the difference in price (if any) from the first purchaser; or, 2nd. He may tender the article according to contract and sue for its price.

312 Auction Sales. At every auction sale the "terms of sale" are always well advertised. If nothing were said about the terms they would be cash.

The proprietor may have various conditions, as well as the terms of credit announced by the auctioneer before the sale commences, such as, that the first bid must be above a certain sum named, and even the amount to be advanced at each bid, an underbidder, and a certain amount to be deposited at the time of sale, all of which will be binding if so announced.

313 The Auctioneer is the agent for both the seller and the buyer; hence binds both by his acts. When he is selling he is acting as agent for the seller, but in the act of "knocking down" the article to a certain bidder he is the agent of the purchaser, and in the memorandum of the sale he makes in his book he acts for both parties and binds both. Auctioneers' licenses are granted by counties and cities, who may charge a fee and also give special rules for their governance, and no other person may sell by public auction.

In Ontario, and probably all the Provinces, a merchant could not sell his own goods by public auction without a license.

Bailiffs who sell goods under distress for rent need no license.

314 Conditional Sales are what have been referred to under the head of a "Lien Note." In selling sewing machines, organs, pianos, etc., it is common to sell them on the "instalment plan," the buyer obtaining the possession and use of the article, but the seller retaining the ownership until it is paid for. These conditional sales are binding and enforceable by common law, and all the Provinces recognize them, but each Province, and Newfoundland, has enacted special legislation to protect the interests of innocent third parties in certain cases. The following summary of the various provincial enactments must be carefully noticed as the differences are radical.

If tenants purchase any article under such terms which the law regards as a fixture to the freehold the owner or landlord may hold it, but he must pay the balance of the purchase price.

Again, if an article, say a wagon, covered by such lien were taken to a shop for repairs, the mechanic would have a preference lien on such wagon while it remained in his possession for the amount of his bill and could hold it until paid.

315 Registration of Conditional Sales.

In Ontario the Lien Law provides that for these conditional sales in respect to manufactured articles (only) to be binding against subsequent purchasers or mortgagees without notice in good faith for valuable consideration, one of two things must be done:

(1) At the time possession is given to the purchaser the name and address of the manufacturer or vendor must be painted, printed, engraved on or attached to the article; (2) A copy of the lien note, receipt note or agreement must be filed at the office of the County Court Clerk within ten days. Fee for filing is 10 cents.

It is only for manufactured articles that the Act requires one or the other of these things to be done in order to be binding against subsequent purchasers and mortgagees.

Household furniture (except musical instruments), carriages, live stock, etc., do not seem to require either to be done, as they are not included in the Act, still it would be safer to file a copy of the note or agreement within the ten days. Carriages usually have the maker's name on them. Persons selling manufactured goods in their own name, but who are not the manufacturers of the same, should register the lien note or agreement.

It must be noticed that subsequent purchasers and mortgagees in good faith only are protected. General creditors are not permitted to seize such property, no matter even if the statutory requirements have not been complied with.

A man purchasing an article under these lien agreements does not acquire the ownership of it, merely its possession until it is paid for, therefore, if he were to sell it he could not give a good title, and the sale would be fraudulent.

Landlords may seize and sell such property for rent, but they must pay the balance of purchase money. It is the same with execution creditors.

In British Columbia all conditional sales are void against subsequent purchasers and mortgagees without notice in good faith for valuable consideration, unless a true copy of the receipt, note or instrument is filed within twenty-one days at the office where Bills of Sale are filed for that district. Here the articles need not bear the manufacturer's or vendor's name.

Such property is liable to distress by landlord for three months arrears of rent.

In Manitoba a copy of the note or agreement need not be filed, but in case of *manufactured* articles the name of the manufacturer or vendor must be painted, printed or stamped on the articles.

In the North-West Territories when for a sale of goods of value of $15 or over, to be binding against executions, attachments, subsequent purchasers or mortgagees without notice for valuable consideration, the agreement must be in writing, signed by the manufacturer or agent, and such writing or a copy of it filed in the office of the Registration Clerk for Chattel Mortgages in the registration district in which the purchaser resides, within thirty days from sale; and also in the registration district to which the goods may be removed (if they are removed) within 30 days from such removal, verified in each case by affidavit of the vendor or his agent that the sale is *bona fide*. The lien holds good for two years from date of registration and may be renewed. If any false statement is made in the renewal statement it incurs a penalty of $100. Fee for registration, 25 cents. They take priority from date of filing same as chattel mortgages.

The statute does not apply to receipt notes or orders for farming and agricultural implements of less value than $30, and other goods not exceeding $15.

They may be discharged or partially discharged by filing a receipt or certificate same as in case of a chattel mortgage, and the seller is required to give such receipt when the claim is paid.

In New Brunswick three things are required. (1) The name of the manufacturer must be printed, stamped or painted on the article. (2) A copy of the writing filed in the office of the Registrar of Deeds for that county within ten days from the execution of such receipt note. Fee for filing, 10 cents. (3) The manufacturer or seller must leave with the purchaser a copy of the lien agreement or hire receipt at the time of sale or within twenty days.

Also, upon demand of any creditor or interested person he must file with the Registrar within twenty days a sworn statement of the amount due thereon, and failing to do so he forfeits his rights under same as against such creditor or interested person.

In Nova Scotia the agreement must be signed by the parties, with affidavit setting forth the contract, and registered like a bill of sale.

In Prince Edward Island to be binding against third parties one of two things must be done. Either (1) the name of the manufacturer must be printed, stamped on or otherwise attached to the article, or (2) a copy of the lien agreement or receipt note must be filed in the office of the Prothonotary or Deputy Prothonotary. This does not apply to household goods, except pianos, organs or other musical instruments.

316 Retaking Possession. Articles thus sold and the note not being paid at maturity, the seller may retake them at once, or he may sue on the note, and if he fails to recover he may then retake the articles. It is not necessary to procure the help of an officer, but care must be taken not to commit a breach of the peace. If the conditional purchaser resists, force must not be used, but the article must then be taken by an "action of replevin," if it cannot be obtained peaceably any other way. It would not be theft to take it without permission.

317 Time to Redeem. In Ontario, North-West Territories, New Brunswick and British Columbia, goods thus retaken by the manufacturer or seller must be retained twenty days from the time possession was retaken before they can be sold to others unless the agreement provided otherwise. Any time during those twenty days the purchaser may redeem them by paying arrears, interest and legal costs.

318 Notice of Sale. In Ontario, New Brunswick, North-West Territories, goods, when the price of which exceeds $30, being thus retaken for a breach of the condition, must not only be retained for twenty days, but cannot be sold without five clear days' notice to the debtor. The notice may be given orally or by letter. If sent by letter it should be registered and posted at least seven days before the day of sale. The said five days or seven days may be part of the twenty days in previous section. The North-West Territories require the goods to be retained twenty days, even though the amount is less than $30, and also the five days' notice. In each case if the agreement named the time it would hold.

319 Form of Notice.

To [person's name], of [place]:

Sir,—Please take notice that at the expiration of five days from the service of this notice upon you, *to wit*, upon the....day of..... 19..., I shall proceed to sell the following goods or chattel [describe the property] at the.....in the.....of.....in the county of..... province of..... The said goods were taken possession of by me on account of a breach of condition in the conditional sale or promise of sale thereof to you by me. If you desire to redeem the said goods or chattel you may do so at any time within the twenty days required by Statute after the.....day of..... [the day of taking possession] on

payment of the sum of $...., being the amount in arrear on such conditional sale, together with the interest, costs and actual expenses incurred in taking possession.

Dated this.....day of.....19....

(Signed)..... .....

It is not compulsory that the sale should take place, but simply that it must not take place without the notice being sent.

320 Third Parties Asking Information. In Ontario and most of the other Provinces any prospective purchaser of an article thus covered by a lien may demand and is entitled to receive, within five days thereafter, from the manufacturer or vendor claiming ownership, full information concerning the amount yet due and the terms of payment. A refusal or neglect to furnish such information incurs a penalty not exceeding $50 upon conviction before a Stipendiary or Police Magistrate or two Justices of the Peace. Appeal from such judgment is to the Judge of the County Court without jury. The inquiry may be by letter giving the name and post-office address, and a reply within five days by registered letter to such address would be sufficient.

321 Copy of Lien with Vendee. The Act in some of the Provinces requires that a copy of the lien note or agreement be left with the purchaser:

In Ontario and British Columbia twenty-one days; **New Brunswick and Prince Edward Island** it must be left at the time or within twenty days thereafter.

322 Sale of Real Estate. There are two kinds of sales, viz., Executed and Executory.

1. EXECUTED SALES are those where the sale has been completed by the payment of the money and the execution and delivery of the deed of conveyance.

Where property is sold on a part payment, deed given and a mortgage taken for the balance, it is advisable to insert a clause in the deed stating the amount in cash paid and that a mortgage has been given for the unpaid balance, thereby preventing the possibility of a second mortgage taking priority.

2. EXECUTORY SALES are those whose possession has been passed by agreement for sale, but the title does not pass until the price has been paid in full.

The seller of real estate has a lien on the property sold for the purchase price, which is as binding as a mortgage. If payments are not made according to agreement he has the option of suing for them, or if not made within a reasonable time he may regain possession by an action to have the sale cancelled.

323 Agreement to Sell or Buy Real Estate, unless in writing signed by the contracting parties or their duly authorized agents, is not binding. An oral contract made, even if money be paid on it, to "bind the bargain," does not bind either party to buy or sell.

When for any reason a bargain is made for the sale of real estate that cannot be executed immediately, a memorandum of the agreement

should be written out, and signed by the parties, or their agents authorized, in writing. This makes the contract binding, even though nothing be paid down. An ordinary agreement without seal is sufficient, as in the following section. It does not convey a title, but is simply a binding promise to convey.

324 Form of Agreement for Sale. This agreement for sale of land may be proved by affidavit of witness and registered by the purchaser, except where the Torrens System is in use.

Articles of Agreement made and entered into this 1st day of June in the year of our Lord one thousand nine hundred and three.

BETWEEN James Gray, of the Town of Simcoe, in the County of Norfolk, Province of Ontario, vendor, of the first part;

And William Franklin, of the Township of Woodhouse aforesaid, purchaser, of the second part.

The said James Gray and William Franklin, do hereby, respectively, for themselves, their respective heirs, executors and administrators agree each with the other, THAT the said James Gray shall sell to the said William Franklin, and that the said William Franklin shall purchase all that certain parcel or tract of land, being composed of Lot No. 10 in the Fifth Concession of the Township of Woodhouse, aforesaid, containing by admeasurement fifty acres more or less, together with the appurtenance and the freehold and inheritance thereof in fee simple in possession free from all encumbrances, at or for the price or sum of one thousand dollars of lawful money of Canada, being the residue of said purchase money, on the 20th day of September next, at which time the purchase is to be completed, and the said William Franklin shall, on and from that day, have actual possession of said premises, all outgoings up to that time being discharged by the said James Gray.

That the production and inspection of any deeds or other documents not in the possession of the said James Gray, and the procuring and making of all certificates, attested office or other copies of or extracts from any deeds, wills or other documents and of all declarations or other evidences whatever, not in his possession, which may be required, shall be at the expense of the said William Franklin.

That on payment of the said sum of $1,000 at the time specified for the payment thereof as aforesaid, the said James Gray and all other necessary parties shall execute a proper conveyance of the said premises with their appurtenances and the freehold and inheritance thereof in fee simple in possession free from all dower or other encumbrances, unto the said William Franklin, his heirs and assigns or as he or they shall direct.

That if from any cause whatever the said purchase shall not be completed on the said 20th day of September next, the said William Franklin shall pay interest at the rate of five per cent. on the residue of the purchase money from that day till the completion of the purchase.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands the day and the year first above mentioned.

Signed in the presence of } JAMES GRAY.
HARRY POTTS. } WILLIAM FRANKLIN.

325 Fraudulent Sale of Real Estate. Any person who knows of the existence of an unregistered prior sale, mortgage or other encumbrance upon any real property who fraudulently makes any subsequent sale of the same is liable to one year's imprisonment and a fine not exceeding $2,000.

326 Warranty Deed with full covenants is one that guarantees a perfect title and quiet enjoyment of property to the purchaser and his heirs and assigns after him. The covenants are all written out at length, but owing to the expense of registering they have been legally "boiled

down" so as to express all the covenants in fewer words and thus called a Warranty Deed with abbreviated covenants. That is the form shown in this work, Section 331.

327 Quit Claim Deed is made by a person who does not hold a perfect title to a property in favor of some one that has a claim to the property. It is much like an ordinary deed without the covenants. It conveys only the party's interest in the property without any guarantee of title. It would be used when a mortgagee purchases the land already mortgaged to him, the covenants being already made in his favor in the mortgage. It would also be used when heirs in common of an estate quit their claim to one another and to executors. (See Section 339.)

328 Deed-Poll is a deed made by one person, as in case of a Sheriff's Deed.

329 Trust Deed is one made to a person called a trustee, conveying property to him to be held in trust for some other person. The Statute of Limitations does not apply in such cases. He is empowered by the conveyance to carry out its provisions whatever they may be, as to collection of rents, sale of property, etc., and for investment of the funds. He cannot use the property for his own personal benefit. The person for whose benefit the trust is held cannot exercise any authority over it.

The trustee is bound to exercise reasonable and ordinary care to prevent loss or injury and can only be held personally liable for loss occurring through gross or wilful negligence on the part of himself or his agents. If he is committing waste he may be restrained by action brought for that purpose.

Property for any legitimate cause being temporarily deeded to another cannot be retained by that person, if it can be satisfactorily established to the court that such person was merely a trustee, although the deed itself did not disclose that fact.

330 Tax Sales Deeds. All the Provinces allow the sale of lands for taxes. In Ontario after three years in arrears for taxes the land may be sold, and a title to property derived from a tax sale extinguishes all other titles, heirs included, if the sale was legal and the proceedings according to Statute.

331 Form of Statutory Deed. The following is the Ontario short form or Statutory or Warranty Deed with abbreviated covenants:

This Indenture made (in duplicate) the first of November, in the year of our Lord one thousand nine hundred and three, IN PURSUANCE OF THE ACT RESPECTING SHORT FORMS OF CONVEYANCES.

BETWEEN James Smith, of the Township of King, County of York, and Province of Ontario, merchant, of the first part, and

Mary Jane Smith, wife of the party of the first part, of the second part, and Walter Winters, of the Township of King, County of York, and province aforesaid, yeoman, of the third part.

WITNESSETH that in consideration of Three Thousand Dollars ($3,000) lawful money of Canada, now paid by the said party of the third part to the said party of the first part (the receipt whereof is hereby acknowledged), he, the said party of the first part, DOTH GRANT unto the said party of the third part, in fee simple,

ALL AND SINGULAR that certain parcel or tract of land and premises situate, lying and being in the Township of King, County of York, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the South part of Lot Number 19 in the 7th Concession of the Township of King aforesaid.

TO HAVE AND TO HOLD unto the said party of the third part, his heirs and assigns, to and for his and their sole and only use FOREVER, SUBJECT, NEVERTHELESS, to the reservations, limitations, provisos and conditions expressed in the original GRANT made thereof from the Crown.

The said party of the first part COVENANTS with the said party of the third part, THAT he has the right to convey the said lands to the said party of the third part, notwithstanding any act of the said party of the first part.

And that the said party of the third part shall have quiet possession of the said lands, free from all encumbrances.

And the said party of the first part COVENANTS with the said party of the third part, that he will execute such further assurances of the said lands as may be requisite.

And that he will produce the title deeds enumerated hereunder and allow copies to be made of them at the expense of the said party of the third part.

And the said party of the first part COVENANTS with the said party of the third part that he has done no act to encumber the said lands.

And the said party of the first part RELEASES to the said party of the third part, ALL HIS CLAIMS upon the said lands.

And Mary Jane Smith, the party of the second part, hereby bars her dower in the said lands.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of C. ROY ANGER. } JAMES SMITH. MARY JANE SMITH.

Affidavit of Witness:

COUNTY OF YORK, TO WIT: } I, C. Roy Anger, of the City of Toronto, County of York, and Province of Ontario, student, make oath and say:

1. That I was personally present and did see the within instrument and duplicate duly signed, sealed and executed by James Smith and Mary Jane Smith, two of the parties thereto.

2. That the said instrument and duplicate were executed in the Township of King.

3. That I know the said parties.

4. That I am a subscribing witness to the said instrument and duplicate.

SWORN before me in Toronto, in the County of York, this 1st day of November, A.D. 1903. } C. ROY ANGER.

JOHN H. WILLIAMS,

A commissioner for taking affidavits in the County of York.

332 Who Should Sign. Any person who has anything yet to do should sign the deed. In the deed shown here, the purchaser paid the whole purchase price, hence having nothing further to do did not sign. If, however, there were a mortgage or claim that he had covenanted to pay off or to allow a portion of the property to be used as a lane, etc., then he would be required to sign so as to bind himself.

333 Deed Subject to Mortgage. Where property is sold subject to a mortgage, the purchaser agreeing to pay off the mortgage as part of the purchase money, the mortgage is referred to after the descriptions of the property, or after the clause ending with the words "subject to the reservations, limitations, provisions and conditions expressed in the original grant from the Crown," with words like the following:

"Subject, however, to a certain mortgage made by the parties of the first and second part (if wife signed, too, giving name and date), securing the payment of (giving amount and interest), which mortgage the party of the third part agrees to pay, satisfy and discharge and save harmless therefrom the party of the first part."

334 A Deed of Gift of property from father to son, etc., is usually drawn in the parts that relate to the consideration, "Witnesseth that in consideration of the natural love and affection and the sum of one dollar," thus giving both a *good* and a *valuable* consideration.

335 Purchaser Restricting Nature of Title. In purchasing land a man should decide when having the deed made how he wants to hold it, either:

1. In his own name, his wife holding her dower in the ordinary way, in those Provinces allowing dower.

2. In his own name, his wife having no dower in it.

3. In his wife's name, he having no interest.

4. In the names of man and wife, each having a half interest as partners, or

5. In the names of man and wife jointly, so that when one of them dies the other owns it all without the formality of a will or any other process.

336 Writing Deeds. Any person may write a Deed who is capable of describing the property, and it will be legal, but in most of the Provinces they would not dare to make a charge for so doing unless they held the proper license, or were a duly qualified solicitor, etc. In Ontario a charge could be made, but it could not be collected by suit. The Christian names of the various parties must be given in full. The Deed should be written in duplicate, one for registration and one retained by the purchaser. There need also be a witness, who makes an affidavit that he saw the instrument signed. The affidavit may be made before a Registrar, Deputy Registrar, Supreme or County Judge, a Notary, a Magistrate or a Commissioner for taking affidavits. For form of Deed see Section 331. The forms are practically the same for all the Provinces, and printed blanks can be obtained from nearly any stationer.

An agreement or deed may be signed and sealed, but it has no binding effect on the maker until it is delivered into the hands of the parties in whose favor it is drawn.

Where there is any contradiction between different parts of a Deed or other document, the part that is in writing holds against the part that is printed, and in mortgages what is written first over the last, but in wills the last written holds over the first.

When land is conveyed to a corporation it is made to "their successors" instead of their "heirs," and to their "successors in office," where a conveyance is made to trustees. Corporation deeds do not need the affidavit of the witness, as the affixing of the corporate seal of the corporation or company is sufficient evidence of genuineness when signed by their chief officers.

337 Searching Titles. (1) Search the Lands Registry Office or get an abstract from the Registrar to see if there are any mortgages, liens or dowers against it. (2) Search the office of the Sheriff of the County to see if there are any judgments recorded against the owner. (3) Search the town or city or County Treasurer's office to see if there are any unpaid taxes against the property. Where Torrens System is used the Land Titles office must be consulted.

338 Registration. All instruments respecting titles of real estate should be registered in the Registry Office of the County or Registration District in which the property is situate as soon as possible after their execution, as all documents take precedence according to priority of registration.

Also, if a deed or mortgage should be lost or destroyed a duly certified duplicate can be had at any time from the Registrar for a small fee. For twenty-five cents the title of any property may be examined and copies taken from every mortgage or agreement respecting it.

The fees for registration vary according to the number of words in the deed.

All deeds and documents to be registered must be verified by affidavit in proper form of a witness present at the time of signature.

339 Form of Quit Claim Deed.

This Indenture made (in duplicate) the first day of October, in the year of our Lord one thousand nine hundred and three,

BETWEEN James Smith, of the Township of Stamford, County of Welland, Province of Ontario, merchant, of the first part; and Walter Winters, of the Township of Stamford, County of Welland, Province aforesaid, yeoman, of the second part.

WITNESSETH that the said party of the first part, for and in consideration of the sum of three thousand dollars ($3,000) of lawful money of Canada, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these Presents (the receipt whereof is hereby acknowledged), has granted, released and quitted claim, and by these presents doth grant, release and quit claim unto the said party of the second part, his heirs and assigns for ever, all estate, right, title, interest, claim and demand whatsoever, both at law and in equity or otherwise howsoever, and whether in possession or expectancy of him the said party of the first part, of, in, to or out of

ALL AND SINGULAR that certain parcel or tract of land premises situate, lying and being in the Township of Stamford, in the County of Welland, Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, being composed of the south part of Lot No. 19, in the Seventh Concession, in the Township of Stamford aforesaid.

To have and to hold the aforesaid lands and premises, with all and singular the appurtenances thereto belonging and appertaining unto and to the use of the said party of the second part, his heirs and assigns forever.

Subject, nevertheless, to the reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown.

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered in presence of CHARLES SUMMERS. } JAMES SMITH. ✹

Received on the day of the date of this indenture, the sum of Three Thousand Dollars ($3,000).

Witness: CHARLES SUMMERS. } JAMES SMITH.

Affidavit of witness to the execution.

COUNTY OF WELLAND } I, Charles Summers, of the Township of Stamford,
TO WIT : } County of Welland, Province of Ontario, gentleman, make
oath and say :

1. That I was personally present, and did see the within Instrument and the Duplicate thereof duly Signed, Sealed and Delivered by James Smith, one of the parties thereto.

2. That the said Instrument and Duplicate were executed in the Township of Stamford.

3. That I personally know the said parties.

4. That I am a subscribing witness to the said Instrument and Duplicate.

Sworn before me in Stamford, County of Welland, Province of Ontario, this fourth day of October, A.D. 1903. } CHARLES SUMMERS.

JOHN H. WILLIAMS, *a commissioner for taking affidavits.*

340 Torrens System of Lands Transfer is now in force in Manitoba, North-West Territories, British Columbia and Ontario. So far in Ontario it has only been adopted by the County of York and City of Toronto, County of Elgin and City of St. Thomas, County of Ontario, and the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Manitoulin, Thunder Bay and Rainy River. Other municipalities may introduce it simply by by-law, which should be speedily done. It is referred to as the "Land Titles Act."

Lands granted by the Crown since the introduction of this system are subject to this Act, and the old cumbersome system of conveyancing cannot be used, but all dealings with such lands must be recorded on the "Certificate of Title." All other lands may be brought under the Act on the application of the persons interested and payment of a small fee.

The application, with the deeds, is left at the Land Titles Office, where the necessary blanks and all information may be obtained. The title is there fully investigated, and if found secure against ejectment or against the claims of any other person, the proprietor will receive a "certificate of title," which operates as a government guarantee that the title is perfect and there is no going behind it. If a certificate of title should be issued to the wrong person the government is liable for the damages to the injured party. The certificates are issued in duplicate, one being given to the proprietor and the other retained in the Land Titles Office. Crown grants of land bought since the Act came into force are also issued in duplicate. The one retained in the office constitutes the Register Book. Therefore, if a proprietor wishes to mortgage, lease, or in any wise encumber his land he executes a memorandum of such mortgage in duplicate or lease in triplicate or encumbrance, which he presents at the Land Titles Office with the "Certificate of Title." The proper officer makes a record of the transaction on the certificate of title, and also on the duplicate certificate which is in the office. This constitutes the registration of the instrument, and a note under the hand and seal of such officer of the fact of such registration is made on both duplicates of the instrument, one duplicate is then filed in the office, and the other handed to the mortgagee or lessee, thus each party will have a certificate showing him exactly the nature of his interest.

When a mortgage is paid under this system a receipt is indorsed on

the duplicate mortgage held by the mortgagee, which is then brought to the Land Titles Office, and the fact of the payment of the mortgage is noted on the certificate of title.

When a lease is surrendered it has "surrendered" indorsed on it, "signed" by the lessee and "accepted" by the lessor, and being properly attested is brought to the office where the proper officer records the fact of its surrender on the certificate of title.

Both mortgages and leases under this system may be transferred by indorsement written upon the copy of the instrument held by the proprietor and then registered.

All instruments for registration must be free from erasures, properly witnessed, and proved. For deeds or transfer in fee one instrument is sufficient, while mortgages require two copies and leases three.

In this system it must not be forgotten that it is not the execution of an instrument that transfers the title, but its registration in the Land Titles office.

All necessary information can be obtained at the Land Titles Office.

341 Mortgage under Torrens System.

I, A. B., being registered as owner of an estate (here give nature of interest), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or indorsed hereon), of that piece of land (describe it), part of.....Section....., Township of ....., range ..... (or as the case may be), containing ..... acres, be the same more or less (here state rights of way, easements, if any, intended to be conveyed along with the land, and if the land dealt with contains all included in the original grants refer thereto for description of parcels and diagrams otherwise set forth in the usual way of boundaries, and accompany description with a diagram), in consideration of the sum of ..... dollars lent to me by C. D. (insert description), the receipt of which sum I do hereby acknowledge, covenant with the said C. D.:

First, that I will pay to him, the said C. D., the above sum of..... dollars on the ..... day of .....

Secondly, that I will pay interest on the said sum at the rate of ..... on the dollar in the year, by equal payments on the .... day of ....., and on the .... day of ....., in every year.

Thirdly (here set forth special covenants, if any).

And for the better securing of the said C. D. the repayment in manner aforesaid of the principal sum and interest, I hereby mortgage to the said C. D. my estate and interest in the land above described.

In witness whereof I have hereunto signed my name this.....day of....., 19...

Signed by the above named A. B., in the presence of .....

Signature of Mortgagor.
(No seal).

(Insert memorandum of mortgages and encumbrances).

342 Form for Transfer of Mortgage or Lease.

I, C. D., the mortgagee (encumbrance or lease, as the case may be), in consideration of.....dollars, this day paid to me by E. F., of....., the receipt of which sum I do hereby acknowledge, hereby transfer to him the mortgage (encumbrance or lease, as the case may be, describing the instrument fully), together with all my rights, powers, titles, and interest therein.

In witness whereof I have hereunto subscribed my name this..... day of....., 19...

Signed by the said C. D., in the presence of .....

C. D., Transferrer.
Accepted, E. F., Transferee.
(No seal).

343 Form of Lease.

I, A. B., being registered as owner, subject, however, to such mortgages and encumbrances as are notified by memorandum underwritten (or endorsed hereon) of that piece of land (describe it) part of ..... Section....., Township of....., range..... (or as the case may be), containing..... acres, more or less (here state rights of way, privileges, if any, intended to be conveyed along with the land, and if the land dealt with contains included in the original grant or certificate of title or lease refer thereto for description and diagram, otherwise set forth the boundaries of metes and bounds), do hereby lease to C. D., of (here insert description), all the said land to be held by him the said C. D., as tenant, for the space of ..... years, from (here state the date and terms), at the yearly rental of ..... dollars, payable (here insert terms of payment of rent), subject to the covenants and powers implied (also set forth any special covenants or modification of implied covenants).

I, C. D. (insert description), do hereby accept this lease of the above described land, to be held by me as tenant, and subject to the conditions, restrictions and covenants above set forth.

Dated this.....day of....., 19...

Signed by above A. B., as lessor, and C. D., as lessee, in the presence of .....

Signature of Lessor (A. B.).
" Lessee (C. D.).
(No. seal).

(Here insert memorandum of mortgages and encumbrances, if any.)

344 Form of Caveat Forbidding Registration or Dealing with Lands.

To the Registrar of ..... District:

Take notice that I, A. B. (insert description), claiming (state the nature of the estate or interest claimed, and the grounds upon which such claim is founded), in (describe the land and refer to certificate of title), forbid the registration of any transfer effecting such land, or the granting of a certificate of title thereto, except subject to the claim herein set forth.

My address is (give in full).

Dated this ..... day of ....., 19...

Signed by the above-named in the presence of .....

(Signature.)

I, the above-named A. B. (or C. D., as agent for the above, as the case may be), of (residence), make oath (or affirm) and say, that all allegations in the above caveat are true in substance and in fact (and if no personal knowledge add "as I have been informed and verily believe").

Sworn before me, etc. } (Signature.)

345 Memorandum of Transfer.

I, A. B., of ....., being registered owner of an estate (state the nature of estate), subject, however, to such encumbrances, liens and interests as are notified by memorandum underwritten (or endorsed hereon), in all that land described, as follows:

do hereby in consideration of the sum of $..... paid to me by E. F., of ....., the receipt of which sum I hereby acknowledge, transfer to the said E. F. all my estate and interest in the said piece of land (when a less estate then describe such estate).

In witness whereof I have hereunto subscribed my name this..... day of .....

Signed in the presence of } A. B.
..... }

CHAPTER XV.

LANDLORD AND TENANT.

346 The relation subsisting between landlord and tenant is that which subsists between the owner of houses and lands and the person to whom he grants the use of them for a specified time for a stipulated consideration called *rent*. In the law books the landlord is called the *lessor* and the tenant the *lessee*. The same class of persons who can contract in regard to notes and bills can contract as regards landlord and tenant; that is, those of the full age of twenty-one years and of sound mind.

In this chapter the law of Landlord and Tenant, as applicable to Ontario, will be given in each section first, but in every case where the other Provinces or Newfoundland differ the change will be given for such Province.

347 Lease is the name given to the contract between landlord and tenant. It may be either oral, or written, or under seal. Oral, verbal and parole all mean the same thing, viz., by word of mouth. In this chapter, *verbal* and *oral* will be the terms employed, as they are in common use.

A lease may be for "life" either of the landlord or the tenant, or it may be for any number of weeks, months or years, or it may be "at will."

It must be remembered that a lease is simply the *agreement*, and not the paper on which it is written. A lease may be either written or only verbal. If written it must be under seal to be valid, that is by Deed.

The lease should state all the conditions and agreements, for oral promises do not avail much in law where there is a written instrument. The tenant might sue the landlord on a separate and distinct verbal agreement that the house should have certain things done by the landlord in consideration of the tenancy being created by the written lease, but it should be in the lease to make it unquestionable.

There must be something of a transfer of possession to create a lease. A person working a farm on shares and having the exclusive possession becomes a tenant; but if he were to work it on shares, each party, for instance, furnishing part of the seed and dividing the profits, both parties being equally in possession, there is no lease, and the owner, in case the laborer had agreed to pay a certain amount of money, could not distrain for it.

348 Term of Lease. In all the Provinces an oral lease for one year and under is valid, and the lessor may bring action and recover the rent though the lessee has not entered.

Oral leases for a term not exceeding three years from the making thereof, when completed by entry and payment of rent, are valid.

But an oral lease, or a writing not under seal, to lease premises for over three years, or for three years from a *future* time, thus making the tenancy last for more than three years from date of making, is void against third parties.

An oral lease, or a lease in writing not under seal (over one year), for a term not exceeding three years, where the tenant has not entered upon the premises, will not support an action to compel the tenant to enter or to pay rent, nor the landlord to give possession. Where the seal is not attached the writing is only an "agreement" for the term specified. But although a verbal agreement to lease cannot be enforced so as to acquire possession or collect rent, still it may be ground upon which an action for damages could be maintained for breach of agreement.

A lease for a term exceeding three years and up to seven must be in writing and under seal, otherwise in Ontario and New Brunswick it would be held a "tenancy at will" only. In British Columbia, Nova Scotia and North-West Territories they must also be registered.

A lease for over seven years must be in writing, under seal and recorded. If not registered a person buying the property without notice of this lease could, by giving six months legal notice, eject the tenant.

A tenancy "from year to year, so long as both shall please," may be terminated at the end of first year by giving six months' notice.

But where it reads "one year certain and so on from year to year," it will be for two years at least and cannot be terminated at end of first year, except by mutual consent.

349 Rent—When Payable. Rent may be payable in any way agreed upon, either in advance or at the end of the term. It might be a monthly tenancy, and yet the rent payable weekly; or a yearly tenancy, with the rent payable monthly or quarterly. Whatever the agreement may be for payment, the tenant has the whole day on which the rent falls due in which to pay it, and no expense can be incurred until the day after the rent is due.

350 Lease by Minors, Idiots, Lunatics, etc. A lease by a minor is not void but voidable. He cannot void it until he becomes of age, neither can the lessee.

Leases to minors are not absolutely void, but may be voided when they come of age. If the rent falls due after they attain their majority and they have not repudiated the lease they will be liable for the rent. During their minority they can contract for necessary lodgings, according to their station in life, and are liable for same.

Idiots and lunatics may also make leases that are necessary, but cannot be made to take a house that is unnecessary if the landlord was aware of their condition and took advantage of it.

In Manitoba a habitual drunkard cannot make a valid lease. In Ontario and the other Provinces if he were so drunk as not to be capable of knowing that he was making a lease, he may void it when he becomes sober or he may ratify it and make it binding.

351 "Joint Tenants" is simply another name for joint owners of a building or other property, and "tenants in common" means owners in common, and are in some respects similar to a partnership. To lease their joint property requires the consent of both, but either one may, without concurrence of the other, give a legal notice to vacate, may also distrain for his share of overdue rent, or may demand a higher rent, or require it to be paid weekly, or monthly, or in advance; of course, in each case, being required to give a legal notice.

352 Farm Rent. In the absence of an express agreement, if a lease of farm or garden terminates otherwise than by the death or bankruptcy of the landlord, the tenant in giving up possession on his own account must leave the growing crops as well. But if the lease were of an uncertain duration and without any fault of the tenant it terminates unexpectedly, then in that case the tenant has the legal right to harvest the crops already sown. But crops sown after a legal notice to quit had been received, or sown when they would not ripen before the expiration of the lease, the tenant would not have a right to harvest and take away. If, however, the landlord agrees to allow a tenant to remain after his lease expires and on the strength of that agreement puts in a crop he will be allowed to reap it.

If a lease of a farm contained no reservation of a crop of wheat growing at the time of executing the lease, the tenant will be entitled to it.

353 Farm on Shares. Whatever the agreement may be will hold, and care should be taken that every detail should be clearly understood as to division of crops from year to year, disposition of straw and manure, use of firewood and timber, etc. For instance, whatever division of crops is agreed upon will continue through the term of the tenancy, so that if the owner finds the seed and takes a specified share it remains the same through each year, although part of the land, and perhaps the larger part, might be a hay crop, which did not need seed after the first year.

A person working a farm on shares and having the exclusive

possession becomes a tenant and subject to the laws of Landlord and Tenant. But if he were to work it on shares and each party furnishing a part of the seed and dividing the profits, both parties thereby being equally in "possession," there is no *lease*, and the owner in case the laborer or tenant had agreed to pay a certain amount in money could not distrain for it.

354 Mortgage and Tenant. If a lease is given prior to a mortgage, the mortgagee takes subject to the lessee; and *vice versa* if the mortgage is given prior to the lease; that is, a lease given after a mortgage was placed on the property, is subject to the mortgage, and if the mortgage falls due and is not paid, the mortgagee can dispossess the tenant and even take the growing crops. Of course, the tenant would have a cause of action against the landlord, but a landlord who had lost the property under a mortgage would not be likely to be in a financial position that the tenant could recover any money from him by way of damages.

355 Tenant's Privileges. The execution of the lease vests the tenant with all the rights incident to possession. He has the exclusive use of the property, and exercises all the rights of the owner for the time being, and may even eject the landlord should he trespass.

He has a right to a legal notice to quit from the landlord if his lease is for an uncertain time, or if he continues in possession and becomes a tenant from "year to year."

Also to the crops that are on the ground if his tenancy is terminated unexpectedly and not through his fault.

Also to sublet the premises or a portion of them to others unless his contract prohibits it.

The tenant, in case of fire, is free from rent until the premises are again made fit for the purposes of the lessee; and no proceedings can be commenced for the recovery of any such rent until the premises are rebuilt or made fit for the purposes of the lessee.

356 Tenant's Obligations and Liabilities. He is liable for payment of the rent agreed upon; also for any voluntary or permissive injury to the property, and for the performance of provisions and agreements in his contract.

A tenant on a farm must, unless otherwise agreed upon, repair fences, and is liable to adjoining landowners for any damage occasioned by non-repair.

In the Short Forms of Lease now in general use throughout the country the term "and to repair," has a very broad meaning; so much so, in fact, that unless modified a tenant may be compelled to rebuild in case of fire. Also the clause, "to leave the premises in good repair," must be modified in the same manner. This is best done in the following, or similar language: "Ordinary wear and tear, and accidents by fire and tempest excepted." A tenant must, even in this case, leave the premises in as good repair as he found them, "ordinary wear and tear excepted." (See Section 363.)

357 Tenant and Taxes. In all ordinary written leases the landlord must pay the taxes, unless an express provision is made to the contrary.

If the tenant is not assessed his goods cannot be seized for taxes and he should not pay them, for if a tenant "voluntarily" pays taxes which he is not obliged to pay he cannot deduct the amount from the rent. But if the tenant is assessed and his name on the collectors' roll his goods are liable and may be seized (although the agreement may be that the landlord is to pay the taxes), in which case he should pay the taxes before seizure and then demand the amount from the landlord, or he may legally deduct it from the rent.

If a tenant agrees to pay taxes and does not do so, the landlord may sue for the amount, and if he wishes to do so he is entitled at the same time to obtain an order from the Court to evict the tenant for non-performance of agreement.

If the landlord agrees to pay taxes or water rates and does not do so, and the tenant is compelled to pay them, he can deduct the amount from the rent.

A covenant in a lease to pay taxes does not include local improvement taxes unless that is specially stated in the lease.

In Ontario a lease for seven years or over, when the land only belongs to the lessor, and made under the Act respecting Short Forms of Leases, containing the covenant to pay taxes and omitting the words "except for local improvements," shall be deemed a covenant by the lessee to pay local improvement taxes. Chap. 12, Sec. 27 of 1901.

358 The Landlord's Covenant. The only covenant the landlord makes is to give the tenant quiet enjoyment. If evicted by another person, who has a prior or better claim to the property, the tenant may recover from the landlord any damages that he may sustain.

The tenant must look after the sanitary conditions of the house before he enters, for he cannot avoid paying rent, even though the house would be unsafe to occupy, unless he had a special guarantee from the landlord that the sanitary conditions were good.

359 Misrepresentation of Landlord. If a house were leased upon the distinct assurance of the landlord that it was in a good sanitary condition, and it subsequently turned out that the landlord's statement was untrue, the tenant could move out and refuse to pay rent. The landlord would also be liable in an action for damages. The same would be true in regard to the assurance of the landlord that there were no vermin in the house if it subsequently turned out to be untrue, the tenant could move out and refuse to pay rent.

360 Frozen Water Pipes. If, instead of the proviso in Section 363, the lease provides that the tenant shall make all repairs, then in that case the tenant would be liable for the repairs to frozen water pipes. But if there is no written agreement or lease then the question of liability for such repairs will depend entirely upon which party was "responsible for the damage" occurring. If the freezing and bursting of the pipes was caused by the improper construction of the house, or by the negligence on the part of the landlord or his agent, and not due to

any act or neglect on the part of the tenant, then the landlord will be liable for the costs of repairs. But if the freezing of the pipes was caused by negligence of the tenant, then he, and not the landlord, will be liable for the repairs. The plumber, however, must look to the party who hired him for the payment of his bill.

361 Tenant Damaging Property. There is an implied covenant in all leases, verbal or written, that the tenant will take reasonable care of the premises and make all breakages good, and deliver the property up at expiration of lease in as good condition, save "ordinary wear and tear," as when he took it. Therefore, if the tenant damages the property the landlord may sue and obtain judgment. He has no lien, however, on the tenant's goods for the damage, and if he were to retain any article for such purpose the tenant could replevy it and recover damages.

Also, if the tenant circulated a false report that the premises were unsanitary, and the landlord thereby suffered loss through failure to sell or lease the property, the tenant would be liable in an action for damages, providing the report was positively untrue and the landlord could prove actual loss thereby.

362 Repairs. The relationship between landlord and tenant does not bind either one to make repairs. It is entirely a matter of *agreement.* If the landlord has not agreed to make repairs he cannot be compelled to do so during the term of the lease. The tenant cannot make the repairs, no matter how much they are needed, and deduct the cost from the rent; and if he moves out in consequence of the bad condition of the premises he must still pay rent until his lease expires, even though the premises are in an unsanitary condition. It must be remembered that everything depends upon the agreement. If there is nothing in the lease (or bargain) binding either party to make repairs, then neither party can compel the other to make them.

363 The Contract to lease and pay rent being entirely separate and distinct from the contract to repair or make improvements, the agreement should be definitely made at first, and either be in writing or witnessed. If in the lease, either verbal or written, the landlord agrees to make repairs or certain repairs, and subsequently refuses or neglects to do so, the tenant should notify the landlord of the repairs to be made, and that in his default in making them within a certain time (give date), he will do so, or cause them to be done. He can then make the repairs, should the landlord fail to do so, within the time named in the notice, and either sue the landlord for the amount or deduct it from the rent. The breach of a covenant to repair also gives the injured party the right of action for the damages sustained.

It must be remembered, however, that in the default of the landlord to make the repairs agreed upon the tenant cannot do them and then deduct the amount from the rent unless he has given the notice and demand mentioned above, or unless it was agreed that he should do so.

If the agreement to repair is conditional on prompt payment of rent, then falling in arrears of rent would relieve the landlord from making the repairs. But if it were not so conditional then the fact of the tenant

falling in arrears of rent would not relieve the landlord from his covenant to repair, but it might give him the right to retake possession.

If the payment of rent is conditional on the landlord making certain repairs then the tenant is relieved from payment of rent until the repairs are completed as per agreement.

Unless the lease requires the tenant to repair he will not be liable for injuries done to the property, which were not caused by his own acts or negligence, or those of his agents.

Persons making repairs can only look to the person who ordered for cost of labor and material used.

Written leases usually contain a proviso that the "tenant shall repair" reasonable wear and tear, accidents by fire, lightning, and tempest only excepted. Such a "proviso" would include the renewing and repairing of plumbing, furnace and pipes, leaking roof and broken door locks, which the tenant cannot be forced to make.

Repairs necessitated by natural decay the landlord is "supposed" to make, also to keep in repair the roof, outside doors and locks; but all breakages are to be made good by the tenant. If, however, there is no agreement, either verbal or written, for the landlord to keep the premises in a fit and proper condition for habitation, or in a healthy condition the tenant cannot compel such repairs to be made even though the house becomes uninhabitable. If the tenant moves out before the expiration of his lease he will still be required to pay rent, unless the landlord "accepts possession" by taking the key, or commencing repairs, or rents the place to another.

The agreement to make repairs by either party would simply be "repairs," and not for a new window, or partition, or any other change in the building itself.

364 Tenant Moving Out. A tenant can move out of premises any time he desires to do so before the tenancy expires if there is no rent due and the landlord cannot stop the goods. But if there is any rent due the landlord can prevent the removal of the goods (except the exemptions) until the arrears of rent are paid. If no rent is yet due the goods cannot be stopped even though the rent might fall due the next day.

But a tenant moving out before the expiration of his lease is still liable for the stipulated rent until the lease expires; unless the landlord accepts the premises, thus releasing him; or unless another tenant, acceptable to the landlord, enters, in which case the first tenant will only be liable for rent until the new tenant takes possession, providing he pays the same rent, if not, the deficiency may be recovered from first tenant. If there is nothing in the lease forbidding the tenant to sub-let, the landlord will be compelled to either accept the new tenant or to receive the premises and free the tenant.

Where the tenant at the request of the landlord gives up possession of the property before the expiration of the lease rent ceases at the time of giving up possession, if there is no agreement fixing a different date.

365 Tenant's Fixtures. The Ontario Statute reads, and the same would apply in all the Provinces: "The lessee may, on or prior to

the expiration of the term, remove and carry away all fixtures, fittings, machinery or other articles upon the premises, which are in the nature of trade or tenant's fixtures, or which were brought upon the premises by the lessee. But he shall make good any damage to the premises occasioned by such removal."

They must be something of a personal character. Anything that is affixed to the freehold so that it cannot be separated without doing serious damage to the freehold becomes a part of it.

Anything that is sunk into the ground, as a well, trees, buildings of stone or brick are the same as the soil itself, and therefore a part of the freehold. But buildings placed on stone boulders, or posts, or plate, are fixtures, and may be removed without injury to the soil.

The machinery of a manufactory is also a fixture, and can be removed. Temporary partitions, counters, shelving, etc., placed in the building by the tenant would be tenant's fixtures and could be removed, but doors and windows, likewise permanent partitions could not be removed as they become part of the building proper.

To determine in all cases what are "fixtures" is one of the most difficult questions in connection with the law of landlord and tenant. Much depends on the agreement, something on the nature and length of the tenancy, and the kind of business carried on by the tenant on the premises, so that what under certain circumstances could be removed as being tenant's fixtures would under different circumstances be a criminal act to remove them. For instance, if a tenant dug a well and put a pump in it and used the same for a year or two, he could not then when moving out take away the pump or fill up the well without becoming liable in an action for damages as "committing waste," unless he had that agreement with the landlord. But if the tenant were engaged in a business that required the well and pump to conduct it, they would then become a part of the machinery and be "trade fixtures." When leaving the premises he could remove the pump, and to save himself from liability for accidents could fill up the well. The preceding illustrations should be sufficient to enable any person to determine what would in each case be a "tenant's fixture" and capable of removal.

Where there is doubt as to whether a certain fixture should be regarded as a fixture or be held as part of the freehold, the presumption is always in favor of the freehold.

It is an axiom in law "that the expression of one thing is an omission of all the rest," and for this reason if anything is mentioned in the lease as a fixture, other things, though of a kindred nature, would be supposed to be omitted intentionally, and therefore remain a part of the freehold.

A tenant claiming anything as a fixture must remove the article promptly or make it known that he claims it, otherwise he waives his right to it.

There are "tenant's fixtures," "landlord's fixtures," "trade fixtures" and "immovable fixtures," but a reasonable regard to the circumstances in each particular case, coupled with a sense of natural justice, will always determine the individual rights involved.

366 Overholding Tenant. The mere fact of a tenant remaining in possession after his lease expires, does not of itself constitute a new tenancy or bind either party to consent to a new term. There must be rent paid, or something else done by which a new tenancy is implied, or the tenant is only liable to pay for the time actually occupied, which is not called rent, but for "use and occupation;" and in such case where the lease has expired and the tenant remains in possession "without paying rent," he need not then give a notice before moving out, but may move at any time, and will be liable to pay "for use and occupation" up to the time of vacating the premises, and possibly for damages, for retaining possession after the tenancy expired, and certainly would be liable for damages if the landlord had demanded possession and could prove that he had suffered loss by such overholding. During this time of overholding the landlord cannot distrain for the usual rent, as there is no tenancy, but he can sue for "use and occupation" and recover what would be a reasonable rent.

In case a tenant wrongfully remains in possession after his right of occupation has expired either by the terms of the lease or by legal notice, the landlord may, after serving a demand in writing for the tenant to go out of possession, apply to the judge of the county court, stating the grounds upon which he claims the right of possession. If the judge after hearing both sides finds the tenant is unlawfully keeping possession, he will order a writ to issue to the sheriff to put the landlord in possession, and the tenant's goods may be set out in the street. But if tenant is found not to be unlawfully holding possession the case will be dismissed.

Any time within three months a judge of the High Court may set aside the finding of the county court judge.

367 New Tenancy by Implication. Where a tenancy for one or more years expires and the tenant remains in possession, paying the same rent without any new agreement being made, it becomes a "yearly tenancy" by implication of law and the presumption is that the terms of the former lease will hold good. Any time afterwards that either party wishes to terminate it the regular six months' notice would be required. A tenancy from "year to year" is ordinarily implied by the payment and acceptance of rent, and such implication can only be prevented by one or the other of the parties interested giving satisfactory proof that it was paid or received by mistake, or upon some condition or agreement.

368 Landlord and other Creditors' Rights. Where there are other creditors, the landlord can only recover, prior to them, for one year's rent. After that he must take his share ratably with the rest.

As far as distress is concerned, where there are no other creditors, he may distrain for six years' rent. After that he has a further remedy by way of action (or suit), and this action may be brought any time within twenty years on a lease under seal, but not on a verbal lease.

Rent cannot be sued or distrained for until it is due, even though the tenant may be leaving the premises. If the tenant were leaving the country, with the intent to defraud, the goods could be attached. (See Section 530.)

If the tenant removes goods fraudulently and clandestinely, to avoid seizure, the landlord may follow for thirty days and distrain; otherwise he must distrain on the premises.

The assignment of a lessee (tenant) cancels the lease. In case of the assignment of the lessee the landlord has preferential claim for rent for one year last previous to, and three months following the execution of such assignment, and thereafter so long as the assignee shall retain possession of the premises.

369 Arrears of Rent. Where rent is in arrears the landlord has several remedies.—He may sue for the amount the same as for any other debt, or he may distrain for the amount due, or he may, after making a demand for payment, enter an action of ejectment, or he may retake possession as per following section. If the premises are not vacant the demand must be made fifteen days at least before entry.

370 Retaking Possession. The laws of Landlord and Tenant universally allow the landlord to retake possession of the premises upon a breach of the covenants, and the Ontario statutes, where the tenant makes default in payment of rent, says: "There shall be implied in every demise an agreement that if the rent, or any part thereof, shall remain unpaid for fifteen days after the day on which the same ought to have been paid, although no formal demand shall have been made therefor, it shall be lawful for the landlord to enter upon the demised premises, or any part thereof, and to repossess and enjoy the same as of his former estate." Of course, where a tenant would be occupying a dwelling-house the landlord could not take possession until he dispossessed the tenant, but for land or for buildings not occupied, peaceable possession could be taken without evicting the tenant. In evicting a tenant it is necessary to procure an order of eviction from a court, and then the sheriff or bailiff may put the tenant's goods on the street, but the landlord cannot himself do so or go on the premises for such purpose. Three things are necessary for the landlord to show in order to procure an order of eviction: (1) That the rent is past due. (2) That a proper demand has been made. (3) That it has not been paid. In all cases where the lease gives the landlord the right to re-enter for non-payment of rent, he may then, upon default, either re-enter, if premises are vacant, or bring an action to evict, where premises are occupied. If there is no agreement, then the landlord must first make a legal demand for the overdue rent before taking proceedings. The demand may be made personally anywhere or on tenant's wife or some other grown up member of the family on the premises.

In Ontario in all cases between landlord and tenant whenever one-half year's rent is in arrears, and the landlord has the right by law to re-enter for non-payment of rent, he may then without any formal demand serve a writ for the recovery of the demised premises. All proceedings shall cease if the tenant any time before trial pays or tenders to the landlord the amount of arrears and costs. If he does not do so, but allows the case to go to trial and the judgment is executed, six months are allowed for equitable relief and if no proceedings are taken either by the tenant, his assigns or a mortgagee within that time all rights are barred.

371 Raising the Rent. The landlord cannot raise the rent merely by giving the tenant a written notice that at such a time the rent will be increased; such notice amounts to nothing. The landlord cannot raise the rent or change the agreement in any other way without the assent of the tenant, any more than the tenant can lower the rent without the landlord's consent. The notice must be to vacate, that is, order the tenant out, thus ending the tenancy. Then after that is done he may give the notice for an advance in rent, or the two notices may be given at the same time. If the tenant then remains in possession after his lease expires he thereby tacitly agrees to pay the higher rent and will be bound to do so.

Also where a lease has expired and the tenant remains in possession without a new agreement, thus becoming a "tenant at will," the landlord may, before receiving any rent, give notice of raising the rent, and the tenant in that case must either accept the terms and pay higher rent or move out. In this case the tenant is not entitled to a notice to vacate because his legal right to occupy the premises has already expired. A notice of raising the rent given previous to, or upon the day of expiry of a lease, need not, of course, be accompanied by a notice to vacate.

Where a landlord makes legal demand for a higher rent before the end of a monthly, quarterly or yearly tenancy, the tenant is not at liberty to move out in consequence; but if he desires to move out instead of paying the higher rent for the next term of tenancy and the landlord does not give his consent to cancel the lease, the tenant must then give the legal notice to terminate his tenancy. (See following section.)

372 Notice to Quit, or to vacate, should be clear and distinct, with no conditions or provisos. If any "provisos" are desired to be stated they may be given in an ordinary letter, which may accompany the notice, but the notice itself must not contain any conditions.

If there is no agreement as to the kind of notice to be given to quit, then the legal notice is required, but if there is an agreement, that will hold. If the agreement says "at any time," or "thirty days," or "three months," etc., then the party giving it is released from giving the "statutory notice."

In case of a yearly tenancy, six clear calendar months' notice must be given to quit, unless there is special agreement fixing a different time.

Renting by the quarter, three months' notice; by the month, one month's notice; by the week, one week's notice.

In New Brunswick and Nova Scotia the yearly tenancy requires only three months' notice; a quarter or month, one month's notice; and a week, one week's notice.

It must be borne in mind that this notice to quit cannot be given at random, but must be given so that the "month," or "quarter," or "six months" will terminate with the termination of the lease. For instance, in case of a monthly tenancy which expires May 1st, the notice to quit should be given not later than March 31st, in order to leave a "clear month." Remember, too, that a "good legal notice" cannot be given two or three months' ahead of time, but must be given before the end of the month to terminate with the end of the succeeding month, as in previous sentence. The same caution must be remembered in regard to a quarterly or a yearly tenancy.

Where property is leased for a definite time, the lease expires at that date, and neither party need give the other notice to terminate it or to vacate. The tenant may then go out, or the landlord may lease the property to another party. But where this first period has been passed and the tenant still remains in possession and pays rent another tenancy is created, and then, after that, when he wishes to vacate, or the landlord desires him to vacate, a legal notice must be given.

In renting property there should be a clear understanding whether it is for a month or year only (in which case no notice to vacate is needed), or whether it is a monthly or yearly tenancy, in which case a legal notice to vacate is necessary, as there is no definite time fixed for the termination of the tenancy, hence the necessity of a notice.

A notice to quit, given either by the landlord or tenant, should be in *writing*. An oral notice is sufficient, but it is better to give the notice in writing, and to keep a copy of it, with memorandum of the date and manner of service indorsed on it. An ordinary letter containing the facts, handed to the other party, or sent by mail, will answer as well as a formal notice, a copy being reserved.

Notice to quit may be given by the agent as well as the principal; but an agent cannot appoint an agent to give notice.

It is always better that the notice to quit should be served personally upon the tenant or landlord (as the case may be), but where this cannot be done it may be served upon the wife, or servant, or grown up child at the residence of the party to be served.

373 Form of Notice by Landlord.

Please take notice that you are hereby required to surrender and deliver up possession of the house and lot known as No. 4 James Street, in the village of Merritton, which you now hold of me; and to remove therefrom on the first day of June next, pursuant to the provisions of the statute relating to the rights and duties of landlord and tenant.

Dated this 29th day of April, 1903. Yours truly,

To WALTER WINTERS
(*Tenant*).

JAMES SMITH
(*Landlord*).

374 Notice to Quit by Tenant.

I hereby give you notice that, on the first day of June next, I shall quit and deliver up possession of the premises I now occupy as tenant, known as house and lot No. 4 James Street, in the village of Merritton.

Dated this 29th day of April, 1903. Yours truly,

To JAMES SMITH
(*Landlord*).

WALTER WINTERS
(*Tenant*).

375 Notice to Quit Not Acted Upon. Upon the expiration of a notice to quit duly given by either party the tenancy ceases, and unless a fresh tenancy be afterwards created the landlord cannot distrain for subsequent rent, notwithstanding the tenant continues in possession for a year or more after the expiration of the notice.

If the tenant does not vacate after a legal notice to that effect the landlord may either evict him under the "Overholding Tenants' Act," or bring an action of ejectment by an ordinary writ of summons, or may double the rent, as he thinks best. If the tenant is evicted he will have to pay the costs as well as arrears of rent. The exemptions cannot be taken for costs.

And where a tenant holds on after the expiration of a notice to quit the landlord is entitled to recover by way of suit, the reasonable damages and costs sustained by him in an action at the suit of a party to whom he had contracted to let the premises.

376 Doubling the Rent or Evicting. If the tenant does not vacate the premises after his lease expires, and demand for rent and notice to quit has been given, the landlord may double the rent by giving the tenant notice in writing to that effect; or the tenant may be evicted under the "Overholding Tenants' Act" by obtaining an order from the County Judge.

In British Columbia if a tenant gives legal notice that he will vacate the premises at a certain date, and then remains in possession without a new agreement, the landlord may collect double the previous rent while he retains possession.

377 Notice Claiming Double Rent.

To W. WINTERS, St. Catharines, Ont.

I hereby give you notice that if you do not deliver up possession of the house and premises situate No. 10 Queen Street, in the city of St. Catharines, on the first day of June next, according to my notice to quit, dated the 25th day of April, I shall claim from you double the yearly value of the premises for so long as you keep possession of them after the expiration of the said notice, according to the statute in that case provided.

Dated the 20th day of May, 1903.

Witness: JAMES SMITH

J. SAUNDERS. (*Landlord*).

378 Distraining for Rent. If a tenant does not pay his rent the landlord may distrain. In this case any person may act as bailiff.

The landlord may distrain for rent the day after it is due, whether it is payable in advance or at the end of the month, quarter, or year, as the case may be, but he cannot issue a distress warrant until he has first demanded payment.

Seizure must be made after sunrise and before sunset. The person seizing cannot break open outside doors, nor open windows to enter. He may raise the latch or turn the key of the door to open it, but he could not put his arm through a hole to unlock the door or to draw a bolt. He could not raise a window, but if he found a window partially raised he could raise it far enough to admit his body. After he once legally gains admission to the building he may then break open any inside doors, (except those of sub-tenants) that are not opened for him.

Distress may be made any time within six months after the expiration of the lease if the landlord still retains his title or interest in

the premises. If he has sold the property he cannot distrain; neither can the new owner; but it may be recovered by suit. Distress may be for any period up to six years' arrears of rent if there are no other creditors interested. In Quebec only five years. In Manitoba only for three months if renting by month or quarterly, or for one year if less frequently than quarterly.

A tenant's goods cannot be seized if they are removed from the premises unless the bailiff saw them being taken away, or unless they have been removed "fraudulently and clandestinely" to prevent seizure for rent. That is, taken away in the night, or in any other secret way to escape seizure. In Quebec such goods may be followed within eight days. In British Columbia the goods may be followed and seized within 30 days unless they have been sold to innocent parties who knew nothing of the fraud.

Taking a promissory note by a landlord from a tenant for the rent will postpone the right of distress until the maturity of the note, and probably would extinguish the right altogether.

Every person who serves a Distress shall immediately give the person whose goods are seized a notice of the distress, giving the amount of rent distrained for, and an inventory of the articles taken, together with a copy of his charges and cost of seizure. If the tenant, after receiving such notice, neglects for five days from date of seizure to pay the rent or replevy the goods the landlord is at liberty to sell the goods for the best price he can get for them, and after payment of rent and cost of sale if there is any surplus it must be paid to the tenant.

Furniture, sewing machines, musical instruments, or other goods purchased on a lien agreement, are liable to seizure for rent if there is not enough other goods to satisfy the claim, but the landlord must pay balance of the lien.

If the landlord distrains, or any other creditor seizes under an execution, the tenant or debtor has the legal right to select and point out the goods and chattels for which he claims exemptions. For instance, there are six chairs named among the exemptions; hence the debtor, instead of taking six common chairs, may select six of the best in the house, and the same all through the list. He must also give up possession immediately or offer to do so.

When a landlord has issued a distress he loses his right by abandoning it or withdrawing it, and cannot make a second seizure of the same goods for the same debt, unless there has been some mistake in the first seizure.

379 Form of Distress Warrant.

To Mr. A. B.,

My Bailiff in this behalf:

I do hereby authorize and require you to distrain the goods and chattels of C. D. (tenant), liable to be distrained for rent, in and upon the ....., now or lately in the tenure and occupation of ....., situate on ....., in the county of ....., for the sum of ..... dollars ..... cents, being the rent for the term of ....., due to me for the same on

the ..... day of ....., in the year of our Lord one thousand..... hundred..... ; and for the said purpose distrain within the time, in the manner, and with the forms prescribed by law, all the said goods and chattels of the said ....., wheresoever they shall be found, which have been carried off the said premises, but are nevertheless liable by law to be seized for the rent aforesaid, and to proceed thereon for the recovery of the said rent as the law directs.

Dated the....day of...., 19... E. F. (*Landlord*).

380 Form of Inventory and Notice.

An Inventory of the several goods and chattels distrained by me, E. F. (or if as Bailiff, say A. B., as bailiff to Mr. E. F.), this..... day of ....., in the year of our Lord, 19.., in the house, outhouse and lands, (as the case may be) of C. D., situate at ....., in the county of ....., (and if as bailiff, say by the authority and on behalf of E. F., your Landlord) for the sum of ..... dollars, being ..... rent due to me (or to the said E. F.) on the ..... day of ....., 19.., and as yet in arrears and unpaid.

1. In the dwelling house :

   Kitchen (name chief articles, but not exempted articles).
   Dining room (name the articles, but not exempted articles).
   Parlor (name the articles, but not exempted articles).

2. On the premises :

   In barn (name articles).

Describe all the articles seized as nearly as can be, according to the place where they are found. And then at the bottom of the Inventory subscribe the following notice to the tenant, and leave the Inventory and notice with him :

Mr. C. D.,

Take notice that I have this day distrained (or that I, as bailiff to E. F., your Landlord, have this day distrained) on the premises above mentioned the several goods and chattels specified in the above Inventory for the sum of ..... dollars, being ..... rents due to me (or to the said E. F.) on the ..... day of ....., 19.., for the said premises ; and that unless you pay the said rent with charges of distraining for the same, or replevy the said goods and chattels within five days from the date hereof, the said goods and chattels will be appraised and sold according to law.

Given under my hand this ..... day of ....., 19...

Witness } E. F. (*Landlord*).
or A. B. (*Bailiff*).

For distraining farm stock or growing crops, the Inventory and notice would be varied by giving number of lot, concession, township, etc., and the disposition made of the crops, etc. Notice of sale must be posted up in three public places.

381 Tenant's Request for Delay.

Mr. A. B.,

I hereby desire you will keep possession of my goods which you have this day distrained for rent due, or alleged to be due, from me to you, in the place where they now are, being in the house number ..... street (name of town), for the space of ..... days from the date hereof, on your undertaking to delay the sale of the said goods and chattels for that time, to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Witness my hand this ..... day of ....., 19...

Witness }
E. F. } C. D.

382 Tenant's Set-off Against Rent. A tenant may set-off against the rent due a debt due to him by the landlord. It may be given either before or after seizure, and may be in the following or similar words:

Take notice that I wish to set-off against rent due by me to you the debt which you owe to me on your promissory note for ..... dated ..... (or for eight months' wages at $20 per month, $160, or as the case may be).

Date. Signature.

In case of such notice the landlord can only distrain for the balance due him after deducting any debt justly due by him to the tenant, and if he distrains for more he will be liable for illegal seizure.

383 Resisting Bailiff. A tenant may resist and prevent the entrance of a bailiff or other person who may come with a landlord's warrant. Any time before the bailiff makes a list of the goods the tenant may retake them from him. After the bailiff makes a list or inventory of the goods seized and delivers it to the tenant, then the goods are said to be "impounded," and resistance must cease. After a bailiff has legally gained admission and is ejected, he may return and demand admission, and then break in if necessary. A bailiff with an execution from a court must not be resisted, but a bailiff with a landlord's warrant has no more authority than the landlord has.

384 Penalty for Illegal Seizures. If a landlord distrains for more than the amount due, the tenant can enter an action and recover treble the amount of over-seizure; and in case of distraining before rent is due the tenant may recover double the amount of goods distrained.

If the landlord were to enter the house after sunset and prevent the removal of the goods this will be illegal, and the tenant may recover the full value of the goods distrained. The landlord must wait until the next day, and then follow the goods if they have been removed. A distress on Sunday is also illegal.

The landlord is not liable for any illegal acts committed by the bailiff unless the acts were authorized or subsequently ratified by him. Therefore, if the bailiff is authorized to seize the tenant's goods and he seizes those of a stranger, or to seize on the premises and he seizes off the premises, or if he breaks into the premises, the bailiff only is liable

Also, if he were to seize and sell the exemptions illegally, the bailiff would be liable.

385 Exemptions from Seizure. The list of exemptions from landlord's warrant or under any execution is given in Section 541.

The goods belonging to third parties, not relatives, as visitors, boarders or lodgers, are also exempt; also goods that may be on the premises for repair, or for any other purpose, if they are not in use by the tenant, also those under lien, or a bill of sale, but not those under a chattel mortgage. But goods claimed by the husband, wife, son, daughter, daughter-in-law, son-in-law of the tenant are not exempt, nor those of other relatives if they live on the premises with the tenant.

Implements of trade, if they are not in actual use, may be distrained upon if there is not sufficient other goods to satisfy the debt. Buildings or fixtures which the tenant has no right to remove cannot be distrained upon, although there may be no other goods on the premises. And in Manitoba goods belonging to such relatives that may have been sold or mortgaged, if still on the premises, are not exempt.

Of course, if tenants foolishly sign a lease in which they agree to waive their right to the exemptions the landlord can then seize them, except in Manitoba where such an agreement would be null and void.

In British Columbia there are no exemptions from a landlord's warrant except those under lien which are liable for only three months' rent.

386 Monthly Tenancy. On a monthly tenancy in Ontario the exemptions only hold against two months' arrears of rent. If the monthly tenant owes for a longer period than two months, the landlord can distrain and sell to recover what is due over the two months, even if it takes all the goods. This is doubtless the intention of the Act, but some of the judges have disagreed as to its meaning, and some of them in effect expunged it altogether and allow the exemptions to hold good, so that it is not clear that a landlord would be safe in distraining the exemptions in such cases.

387 Giving Up Possession. The tenant who claims the benefit of the exemptions in case of a landlord distraining for rent, must give up possession of the premises forthwith, or be ready and offer to do so. The offer must be made to the landlord or his agent, and the person making the seizure is considered his agent for this purpose.

The surrender of the possession in pursuance of the landlord's notice is a termination of the tenancy, and the tenant has the option of paying the rent and costs and moving out, or to take his exemptions and move out without paying the rent or costs. (See Section 541 for list of exemptions, and also previous Section for the monthly tenancy as to exemptions.)

388 Seizing the Exempted Goods. If the tenant neither pays the rent nor gives up possession after being legally notified to vacate, the landlord may give him another written notice similar to the following, after which he can seize and sell the exempted goods to recover the amount of rent due and the costs. The notice must be something like the following:

Take notice, that I claim $..... for rent due to me in respect of the premises which you hold as my tenant, namely: (here briefly describe them, giving the number and street, or lot, concession, etc.); and unless the said rent is paid I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me up possession of the said premises within three days after the service of this notice, I am by law entitled to seize and sell, and I intend to seize and sell, all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

This notice is given under the Act of the Legislature of Ontario respecting the Law of Landlord and Tenant.

Dated this..... day of..... A.D. 19...

To C. D. (*Tenant*). A. B. (*Landlord*).

After giving the above notice, if the tenant still remains in possession, the landlord can seize and sell the last article on the premises belonging to the tenant to recover the amount due, and costs. If the tenant does not wish to lose his exemptions he must take them and move out within the three days.

389 Goods Seized Under Execution and in the custody of a sheriff or bailiff cannot be distrained; but such goods cannot be sold or removed by said officer without the landlord's preference claim of one year's rent being provided for, or so much of arrears of rent for a less period as is due up to the time of seizure.

In Ontario special provision is made when goods are seized under execution from the Division Court, by which the landlord or his agent may deliver to the bailiff a written statement of the terms of the lease, and the amount of rent in arrears, in which case, if it is a weekly tenancy four weeks' rent may be claimed, if there is that much due; and for two terms of payment (if that much due) where the tenancy is for any other term less than a year, but in no case to exceed one year. This notice may be given any time before the return of the execution, even though the goods may have been removed from the premises, and if the goods are sold in less time than ten days the money must remain in court until the expiration of the said ten days to answer the claims of the landlord. If the goods have been sold and paid into court the landlord's notice may be directed to the clerk of the court instead of to the bailiff

In all such cases where the landlord makes claim for rent due the bailiff is empowered to distrain for that much more, including the costs for the additional distress, and in such cases must not sell any part of the goods until after the expiration of at least eight days after making the distress.

390 Boarders and Lodgers. Lodgers are temporary lessees, and are subject to the same laws and have similar privileges in respect to the rooms they occupy as a regular tenant. Their goods are not liable to

seizure for their landlord's rent. Boarders are not liable for damage they may do to the premises through accident, but they are liable if done through negligence, or maliciously, the same as other tenants are.

In case a boarder's or lodger's goods are distrained for rent due by his landlord, he must serve the superior landlord or bailiff, or other person levying the distress, with a written declaration that the tenant has no right of property or beneficial interest in the goods or chattels distrained, or threatened to be distrained, and that they are the property of or in the lawful possession of such boarder or lodger. If he should owe the tenant for board or otherwise, he may state the amount and pay it over to the superior landlord or the bailiff, or enough of it to discharge the landlord's claim, if the boarder should owe that amount. With this declaration must be given an inventory of the articles referred to.

If the superior landlord or bailiff, after receiving this declaration and inventory, and after the boarder or lodger has paid over to him that much money, or offered so to do, still proceeds with the distress, he is guilty of an illegal distress, and the boarder may replevy such goods; and the superior landlord shall also be liable to an action for damages.

Any such payment made by a boarder to the superior landlord is a valid payment on account due from him to the tenant.

If a boarder gets in arrears for board the boarding-house keeper or hotel keeper has a lien on the baggage and goods of such boarder and may retain them until the bill is settled. If the debt remains unsettled for three months the Ontario Statutes provide that the goods may be sold by public auction after giving one week's notice in a public newspaper. A landlord could not thus hold goods for rent unless he has actually distrained them, but a boarding-house keeper may.

391 Expense of Distress for Rent. The Ontario Statutes allow the following expenses if the amount distrained for does not exceed $80:

1. Levying distress under $80, $1.
2. One man keeping possession per day, 75 cents.
3. Appraisement, whether by one appraiser or more, two cents on the dollar for the value of the goods.
4. If any printed advertisement, not to exceed in all, $1.
5. Catalogue, sale and commission, and delivery of goods, five cents on the dollar on the net proceeds of the sale.

When the sum exceeds $80, $1 per day may be charged for the man left in possession of the goods, and the other expenses allowed are about double those mentioned here.

In case of dispute as to costs either party, by giving two days' notice in writing, may have the bill taxed by the clerk of the Division Court where the distress takes place, upon payment of a fee of twenty-five cents. Similar procedure in all the provinces.

The costs are very similar in all the Provinces, and we will, therefore, only give those for Manitoba and British Columbia.

For Manitoba the costs allowed are as follows:

1. Levying distress, $1.
2. Man in possession per day, $1.50.

3. Appraisement, two cents on the dollar on value of goods up to $1,000, and one cent per dollar all over $1,000.

4. All reasonable and necessary disbursements for advertising.

5. Catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to $1,000, and two and one-half per cent. thereafter.

6. Mileage in going to seize, fifteen cents per mile one way.

7. All necessary and reasonable disbursements for removing, and storing goods, and keeping live stock, and any other disbursements which in the opinion of the Judge before whom the question of costs might be brought for decision, would be regarded by him as reasonable and necessary.

No other or greater costs or charges shall be taken from tenant, or the proceeds of the sale, and no charge shall be made except for what is actually done. Any violation of this provision incurs a penalty of treble the amount of the overcharge.

The same charges are allowed for seizure under a chattel mortgage. Goods of boarders and lodgers are exempt. (See Section 390).

For British Columbia the costs allowed for seizure are as follows:

1. Levying distress under $100, $1.50; over $100 and under $300, $1.75; over $300, $2.

2. Man keeping possession per day, $2.

3. Appraisement, two cents on the dollar on value of goods.

4. Catalogue, sale and commission, and delivery of goods, on the net proceeds of sale, if under $100, ten cents on the dollar; if over $100 and under $300, eight cents; and if over $300, six cents on the dollar.

392 Short House Lease.

This Indenture made the fourth day of April, in the year of our Lord one thousand nine hundred and three, in pursuance of the Act respecting Short Forms of Leases, between John Batten, of the Town of Thorold, in the County of Welland, gentleman, hereinafter called the lessor, of the first part, and Leslie McMann, of the same place, merchant, hereinafter called the lessee, of the second part.

WITNESSETH, that in consideration of the yearly rents, covenants and agreements hereinafter respectively reserved and contained on the part of the said lessee, his executors, administrators, and assigns, to be respectively paid, observed and performed, the said lessor hath demised and leased, and by these Presents doth demise and lease unto the said lessee, his executors, and administrators, all that certain tenement or business premises known and described as the Batten Block, No. 120 Front Street, in the Town of Thorold, County of Welland, Province of Ontario, including the basement or cellar, yard and outhouse, together with all other rights and appurtenances thereto belonging, or usually known as part or parcel thereof, or as belonging thereto; TO HAVE AND TO HOLD the said premises for and during the term of three years, to be computed from the fourth day of April, 1903, and from thenceforth next ensuing and fully to be completed and ended.

YIELDING and paying therefor yearly, and every year during the said term hereby granted unto the said lessor, his heirs, executors, administrators, or assigns, the sum of three hundred dollars in lawful money of

Canada, to be paid in even quarterly instalments on the following days and times, that is to say: on the fourth days of July, October, January and April in each and every year during the continuance of the said term, without any deduction, defalcation, or abatement whatsoever, the first of such payments to become due and be made on the fourth day of July next, and the said lessee, his heirs, executors administrators, and assigns, doth covenant, promise and agree to, and with the said lessor, his heirs, executors, administrators or assigns, in manner following, that is to say:

That he, the said lessee, his executors, administrators and assigns, shall and will well and truly pay or cause to be paid to the said lessor, his heirs, executors administrators or assigns, the said yearly rent hereby reserved at the time and in the manner hereinbefore appointed for payment;

And to pay taxes, except for local improvement;

And to repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted;

And to keep up fences;

And that the said lessor may enter and view state of repair, and that the said lessee will repair, according to notice in writing, reasonable wear and tear and damage by fire, lightning and tempest excepted;

And will not assign or sublet without leave;

And that he will leave the premises in good repair, reasonable wear and tear and damage by fire, lightning and tempest only excepted;

Provided that the said lessee may remove his fixtures.

Provided that in the event of fire, lightning or tempest, rent shall cease until the premises are rebuilt or made fit for the purposes of the lessee.

Proviso for re-entry by the lessor on non-payment of rent, or non-performance of covenants.

The said lessor covenants with the said lessee for quiet enjoyment.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals.

Signed sealed, and delivered in the presence of ADAM YOUNG. } JOHN BATTEN. LESLIE MCMANN.

393 Farm Lease.

In a Farm lease other clauses are usually inserted, similar to the following, defining particularly how the land is to be tilled, crops to be raised, disposition of straw, which parties using this form may insert:

AND that the said lessee will, during the said term, cultivate, till, manure and employ such part of said demised premises as is now, or shall hereafter be brought under cultivation, in a good husband-like and proper manner, so as not to impoverish or injure the soil, and plough said land in each year during said term (seven) inches deep and at the end of said term will leave the land so manured as aforesaid. AND will crop the same during the said term by a regular rotation of crops in a proper, farmer-like manner, so as not to impoverish or injure the soil of the said land, and will use his best and earnest endeavors to rid said land of all docks, wild mustard, red roots, Canada thistles and other noxious weeds. AND will preserve all orchard and fruit trees (if any) on the said premises from waste, damage or destruction. AND will

spend, use and employ, in a husband-like manner, upon the said premises, all the straw and manure which shall grow, arise, renew or be made thereupon. AND will allow any incoming tenant to plough the said land after harvest in the last year of the said term, and to have stabling for two horses and bedroom for one man. AND will leave at least ten acres seeded down with timothy and clover seed.

AND shall not nor will during the said term cut any standing timber upon the said lands, except for rails or for buildings upon the said demised premises, or for firewood upon the premises, and shall not allow any timber to be removed from off the said premises. AND ALSO, shall and will, at the cost and charges of the said lessee, well and sufficiently repair, and keep repaired, the buildings, fences and gates erected now, or that may be erected, upon the said premises.

CHAPTER XVI.

PARTNERSHIP.

394 Partnership is a contract between two or more persons, not an incorporated company, who join together for the purpose of conducting a certain business, with an understanding to participate in certain proportions in the profits or losses accruing.

They may join their money, goods, labor and skill, or any or all of them. Firm, Company, House, and Co-partnership are all synonymous terms used to represent a partnership business.

They are formed by agreement of the parties, either expressed or implied. The expressed may be either oral, written, or under seal. The test of partnership is "a common fund" and "a community of profits." In any case where parties are associated in business, if it is necessary to prove the existence of a partnership about all that is needful to do is to prove that there is "a common fund" for the parties associated, and "a community of profits," and it would be difficult for such parties to establish the fact that there was not a partnership.

Partnership may be formed for commercial enterprises, manufacturing and mining in all the Provinces and Newfoundland, but not for banking, railway construction, or insurance.

In N. W. Territories and British Columbia no general partnership can now be carried on composed of more than twenty persons without registering as a Company. In Newfoundland the number is ten, but the other Provinces have no such limitations.

In Quebec every trader, whether alone or in partnership, must register in the office of the prothonotary within sixty days from commencement of business or after marriage, stating whether he is in community of property or separate.

395 There are Three Classes of General Partners:

1. Dorment, silent or sleeping partner; that is one who has an interest in the business, but whose name does not appear. He is represented in the firm name by "& Co."

2. Ostensible partner is one who lends his name to the firm for the sake of its reputation, but who has no financial interest in the business.

3. Actual partner is one who has both an interest and whose name appears in the firm name.

As to their respective liability to the public general partners are all equally liable.

396 General Partnership. There are two classes of partnerships: 1. A general partnership, in which case the members are not only jointly liable for the debts and liabilities of the firm, but each member is also personally liable for all the debts of the firm if the partnership assets are not sufficient to pay them in full. See following section for Limited partnerships.

397 Limited Partnership is composed of one or more persons called general partners, who conduct the business, and one or more persons who contribute in actual cash payments a specific sum as capital to the common stock, who are called special or limited partners. Such special partners are not liable for the debts of the partnership business beyond the amounts they contributed to the capital.

This Special or Limited partner must not have anything whatever to do with the management of the business, and take no part in the work. He may give counsel to the firm, examine the state and progress of the business, but if he takes any part in its management he makes himself a general partner, and thus liable for all the debts of the firm.

His name must not appear in the firm name by his knowledge or he becomes a General partner.

A continuation of the business beyond the time fixed for the Limited partnership without being filed again as at first, or a removal from the location of the business without being certified to and registered as at first, it becomes a General partnership.

Also, if there is any alteration in the names of the partners, or in the capital, or anything differing from the original certificate, it is deemed a dissolution; and if not filed again as at first, it becomes a General partnership.

Such Special partner cannot withdraw his stock in the shape of dividends, profits, interest or otherwise during the continuance of the partnership, and if he does he is bound to replace it so as to keep his stock intact. But any such partner may receive his share of the dividends or lawful interest on the sum contributed by him to the capital if the payment of such interest does not reduce the original amount of the capital.

There can be no dissolution of such partnership previous to the time mentioned in the certificate until a notice has been filed in the office where the original certificate was recorded, and in Ontario it must also be published once each week for three consecutive weeks in a local newspaper where such business is conducted and for the same time in the *Ontario Gazette*.

In cases of insolvency Special partners do not rank as creditors until the claims of all others have been satisfied, neither are they personally liable for the debts of the firm beyond the amount of capital they invested.

Limited partnership is not deemed to be formed until the certificate is filed. If business is done before filing it is deemed a General partnership and all are individually liable.

Every renewal of a Limited partnership is required to be filed exactly the same as at first, otherwise it becomes General.

398 Partnership Agreement. A large number of partnerships are formed simply by a verbal agreement, and thus a wide opportunity left for future disagreements, much friction, and frequently a waste of money in the courts.

Properly, every partnership agreement should be reduced to writing, and should contain:

1. The names in full of each member, and their place of residence.
2. The nature of the business to be conducted.
3. The place where it is to be conducted.
4. The amount of capital that each partner invests.
5. What partners are General, and which are Special or Limited, if any.
6. If any partner makes no cash investment, but whose experience, or skill, etc., is his investment, that should also be inserted.
7. The date of commencement and duration of the partnership, if it is for a definite period.
8. If a division of work is agreed upon between the partners, such as for one partner only to sign all orders for goods, accept all drafts, issue the notes, etc., it should be clearly revealed in the agreement.
9. Provision for settlement in case of the death or retirement of a partner.

Besides these, there are various other things which could profitably be embodied in the agreement, such as that neither should be a candidate for a municipal office or an active political partisan without the consent of the firm; also, that neither partner should indorse paper for others, or become bail for any person, without consent of the firm, or to engage in any other business that would require investment and possibly incur loss. Also, a provision for winding-up the business in case of a dissolution, or disagreement, etc.

If no limit is fixed it is a "partnership at will" and may be dissolved by any one of the partners by notice to all the others of his renunciation. But such renunciation must be in good faith and not made at a time unfavorable to the partnership. If the articles of co-partnership were by Deed a notice in writing is sufficient.

399 Form of Articles of Partnership. The following may serve as a guide:

Articles of Agreement made the tenth day of September, in the year of our Lord one thousand nine hundred and three.

BETWEEN George Carlisle, John Adams and Charles Andrews, all of the City of Hamilton, in the County of Wentworth, Province of Ontario.

WHEREAS the said parties hereto respectively are desirous of entering into a Co-partnership, in the business of the Manufacture and Sale of Furniture, at Hamilton aforesaid, for the term, and subject to the stipulations hereinafter expressed.

NOW, THEREFORE, THESE PRESENTS WITNESS, that each of them the said parties hereto, respectively, for himself, his heirs, executors and administrators, hereby covenants, with the other of them, his executors and administrators, in manner following, that is to say :

1. That the said parties hereto, respectively, shall henceforth be, and continue partners together in the said business of the Manufacture and Sale of Furniture, for the full term of Five Years, to be computed from the tenth day of September, one thousand nine hundred and three, if the said partners shall so long live, subject to the provisions hereinafter contained for determining the said partnership.

2. That the said business shall be carried on under the firm name of the Hamilton Furniture Co.

3. That the said partners shall invest capital as follows : George Carlisle, two thousand dollars, cash ; John Adams, fifteen hundred dollars, cash ; and Charles Andrews, nine hundred dollars and tools and machinery valued at two thousand dollars.

4. That the said partners shall be entitled to a salary in lieu of services, as follows : George Carlisle, as foreman of factory, twenty dollars per week ; John Adams, as bookkeeper, twenty dollars per week ; and Charles Andrews, as salesman in the store, fifteen dollars per week.

5. That the said partners shall furthermore be entitled to share the profits of the said business in the proportion following, that is to say : According to the respective investment at commencement for the first year, and according to the net credit of each at the beginning of each subsequent year :

AND that all losses in the said business for any year shall be borne by them in the same proportion (unless the same shall be occasioned by the wilful neglect or default of either of the said partners, in which case the same shall be made good by the partner through whose neglect the same shall arise).

6. That the said partners shall each be at liberty, from time to time during the said Partnership, to draw out of the said business, for private use, any sum or sums not exceeding for each, the sum of three hundred dollars per annum in excess of salary, such sums to be duly charged to each of them, respectively, and no greater amount to be drawn by either of the said partners except by mutual consent ; and interest at five per cent. per annum shall be charged to each partner for such withdrawal from the date of withdrawal until it is repaid, or until next annual settlement.

7. That all rent, taxes, salaries, wages and other outgoing expenses incurred in respect of the said business, shall be paid and borne out of the profits of the said business.

8. That the said partners shall keep, or cause to be kept, proper and correct books of account of all the partnership moneys received and paid, and all business transacted on partnership account, and of all other matters of which accounts ought to be kept, according to the usual and regular course of the said business, which said books shall be open to the inspection of all the partners, or their legal representatives. A general balance or statement of the said accounts, stock in trade and business and of accounts between the said partners, shall be made and taken on the first day of March in each year of the said term, and oftener if required.

9. That the said partners shall be true and just to each other in all matters of the said co-partnership, and shall at all times, during the continuance thereof, diligently and faithfully employ themselves, respectively, in the conduct and concerns of the said business, and devote their whole time exclusively thereto, and neither of them shall transact or be engaged in any other business or trade whatsoever : And the said partners, or either of them, during the continuance of the said co-partnership, shall not, either in the name of the said partnership or individually in their own names, draw or accept any bill or bills, promissory note or notes, or become bail or surety for any person or persons, or knowingly or wilfully do, commit or permit any act, matter or thing by which, or by means of which, the said partnership moneys or effects shall be seized, attached or taken in execution ; and in case either partner shall fail or make default in the performances of any of the agreements of articles of the said partnership, in so far as the same is or are to be observed by him, then the other partner shall represent in writing to such partner offending, in what he may be so in default ; and in case the same shall not be rectified by a time to be specified for that purpose by the partner so representing, the said partnership shall

thereupon at once, or at any other time to be so specified as aforesaid by the partners offended against, be dissolved and determined accordingly.

10. That in case either of the said partners shall die before the expiration of the term of the said co-partnership, then the surviving partners shall, within the six calendar months after such decease, settle and adjust with the representative or representatives of such deceased partner, all accounts, matters and things relating to the said co-partnership, and that the said survivors shall continue to carry on thenceforth, for their sole benefit, the co-partnership business.

IN WITNESS THEREOF the said parties hereto have hereunto set their hands and seals.

Signed, Sealed and Delivered
In the presence of
W. SWEETMAN.

GEORGE CARLISLE.
JOHN ADAMS.
CHARLES ANDREWS.

400 Registration of Partnership. Every General partnership must be registered or filed within a definite time, which varies some in the different Provinces, or be liable to a heavy penalty, and every Limited partnership must be registered immediately or it is deemed only a General partnership and the Special partners liable for debts equally with the General. Actions against partners in trade who have not registered may be brought against any one without naming the others on the writ or the said co-partnership firm.

In Ontario Limited partnership must be filed at the office of the Clerk of the County Court before commencing business; and a General partnership at the County Registry Office where the business is carried on within six months after the partnership is formed. The penalty for not registering is $100, one-half to go to the prosecutor and the other to the Crown. The fee for registering Limited partnership is 25c., and 50c. for General.

In Manitoba General partnership must be filed within six months. For the Eastern Judicial District they are filed at the office of the Clerk of the Court of Queen's Bench, and for the Western Judicial District with the Deputy Clerk of the Crown and Pleas. The fee for filing is $1. Limited partnership to be filed in the office of the Judicial District in which the principal place of business is situated, and if the principal place of business is not in a Land Titles district then it must also be filed in the office of the Registrar of the registration district in which it is situated. Fee for filing, $1.

In British Columbia General partnership must be registered within three months with the Registrar of the County Court. Fee for filing, $1, if not over 200 words, and 20 cents for every 100 words thereafter. Limited partnership certificate must be signed before a notary public and filed in the office of the Registrar of the County in which the principal place of business is situate. Fee for filing, $2.

In North-West Territories General partnership must be registered within six months in the office of the Registration Clerk of the registration district for registration of chattel mortgages in which the business is to be conducted. Fee for filing, 50c.

The certificate for Limited partnership must be signed before a notary public, who will certify the same, and then filed in the office of the Deputy Clerk of the Supreme Court where the principal place of business is situate. Fee, 25c.

In New Brunswick, both General and Special partnerships must be registered before commencing business. Fee for former, 25c.; for latter, 50c. Limited partnerships must be filed in the office of the Registrar of Deeds of the county in which the principal place of business is situate, and when there are places of business in different counties, then a certified copy of the certificate must be filed in each such county. A copy of the certificate must be published in a newspaper published in the county where principal place of business is situate.

In Nova Scotia the certificate to be filed in the office of the Registrar of Deeds within three months. The fee is 25c. if not over two hundred words.

The penalty for failure to register for each partner is no tless than $20, nor more than $100. The certificate for Limited partnership must be acknowledged by the parties signing it before a Judge of the Supreme Court or a Justice of the Peace and then filed, after being certified, in the office of the Registrar of Deeds in the county in which the principal place of business is situate. At the same time and place must be filed an affidavit by one or more of either the General or Limited parties declaring that the sums specified in the certificate had in good faith been paid. As soon as such partnership is registered it shall be published at least six weeks in the *Royal Gazette* and one other newspaper published at Halifax, and by handbills posted up in some public places in the township where the business is carried on.

In Quebec, both General and Limited partnership the declaration must be filed with the Prothonotary of the district and the Registrar of the County in which the principal place of business is situate within sixty days after formation of the partnership. Failure to comply incurs a penalty of $200.

In Newfoundland the certificate must be acknowledged before a notary public who shall certify whether it was made in Newfoundland or abroad. The certificate is then filed in the office of the Colonial Secretary. When there are places of business in different districts a copy of the certificate certified by the Colonial Secretary must be recorded in the office of the Registrar of Deeds for such districts. At same time of filing certificate an affidavit of one or more of the partners must be made that the sums specified in the certificate had been in good faith actually paid. The terms of the partnership must also be published at least in six consecutive issues of the *Royal Gazette* after registration, and in one or two other papers as the Colonial Secretary shall designate. If not so registered and so published the partnership shall be deemed a General partnership. The form of certificate is similar to the one shown in this book for Limited partnerships. For affidavit of newspaper publishers as to publication and other forms, see Consolidated Statutes, Chap. 88.

401 Form for Registration, for General partnership.

PROVINCE OF ONTARIO, } We, James Smith and James Robinson, of
County of Wellington. } the City of Guelph, County of Wellington, Province of Ontario, hereby certify:

1. That we have carried on and intend to carry on the trade and business of Carriage Building and General Blacksmithing at Guelph, in partnership, under the name and firm of Smith & Robinson.

2. That the said partnership has subsisted since the 15th day of May, 1903.

3. That we are and have been since the said day the only members of the said partnership.

Witness our hands at Guelph, this 2nd day of June, 1903.

JAMES SMITH.
JAMES ROBINSON.

The above form of declaration is identical in all the Provinces as provided by statute, simply change the name of Province when used in other provinces.

402 Form for Registration of Limited partnership.

Province of ....
County of ....

We, the undersigned, do hereby certify that we have entered into co-partnership under the style or firm of (B. D. & Co.), as (Grocers and Commission Merchants), which firm consists of (A. B.), usually residing at ...., and (C. D.), residing usually at ...., as General partners; and (E. F.), residing usually at ...., and (G. H.), residing usually at ...., as Special partners, the said (E. F.) having contributed $4,000, and the said (G. H.) $8,000, to capital stock of the said partnership.

The said partnership commenced on the .... day of ...., 19.., and terminates on the .... day of ...., 19..

Dated this .... day of ...., 19..

Signed in the presence of T. M., *Notary Public.*

A. B.
C. D.
E. F.
G. H.

The certificate for a Limited partnership must be signed before a notary public, who shall duly certify the same. If any false statement is made in such certificate all the members shall become liable as General partners.

403 Partnership Capital. The capital a partner contributes to the partnersnip may be in cash, real estate, personal property, or secret process of manufacture, a patent right, copyright, labor, skill, or time in management, good-will of an established business, etc., and in each case be subject to the same liabilities, and possess equal privileges.

404 The Firm Name. There are no restrictions placed upon the choice of a Firm name for a partnership, as in case of a stock company.

Any individual who wishes to add "& Co." to his name, or to use any special name other than his own may do so by registering a declaration to that effect, the same as though a number of persons were united, and he is liable to the same penalty if he does not register.

In signing any documents the firm name should always be used without the least variation. In many cases the partners would not be liable if the name of the firm is varied, nor if the person signing is not acting within the scope of his authority.

405 Non-Trading Firms. Firms that are not trading firms, such as a law firm, do not come under the partnership laws, neither can they give a note as a firm. They may all sign it, but it is only as a joint and several note, the same as though they were not associated personally.

406 Church Trustees may be held personally liable if they sign their names to any document for church purposes, as there is no Act of Parliament giving them power to act as such, or authority to bind others whom they may chance to represent; but this does not apply to mortgages on property of the church congregation.

The same is true of the officers of the various social and benevolent associations.

407 Powers and Limitations of Partners. Each general partner, unless prohibited in the articles of co-partnership, becomes a general agent of the firm and has power to act for the firm.

He may bind the firm in all matters that come within the limits of the business undertaken by the firm. For instance: If a firm were engaged in the grocery business a partner could bind a firm in such transactions as would properly belong to the grocery trade; but he could not for anything pertaining to a coal business, or in real estate, etc.

Each partner can act for the firm unless he is prohibited in the partnership agreement. He may receive payments of bills and accounts, compromise with a debtor, or represent the firm in a suit at court, or borrow money necessary to carry on the firm's business.

He may make a note or accept a draft for the firm in the regular course of business, if the partnership agreement does not prohibit him, or do any other act he deems necessary in the interest of the firm.

If a bill or note is signed by one of the firm the firm can be held liable, providing that two things can be proved, viz., that it was for the firm purposes, and that the person signing it had proper authority to do so.

A promissory note or acceptance bearing the firm name signed by a partner, although not given for firm purposes, will be collected if it passes before maturity into the hands of an innocent holder for value.

A partner not invested with the right, and binding his co-partners, renders himself liable to them.

One partner cannot bind the firm by an instrument under seal unless he has been empowered by an instrument under seal to do so.

A Partner Cannot Sue the Firm, as that would be in reality suing himself, for the firm does not exist without him. If, however, he has a a private debt or claim against the firm which the firm will not pay he may assign it to a third party and they may sue.

One member of a firm has no right to sign the firm name for purposes of suretyship or on private account. He must not employ the property of the firm for his own private use. He must not pledge the credit of the firm for his own personal benefit. He must not give a firm note in payment of a private debt. He should not issue a firm cheque in payment of a private account, unless he makes the cheque payable to his own order, and then indorses it before delivery.

In general, he must not do anything contrary to the partnership agreement or anything prejudical to the interests of the firm.

408 Partner Selling His Interest. A partner cannot sell his interest without the consent of his associates. If he should sell without such consent it voids the partnership agreement and a dissolution must

take place. The remaining partners may accept the new member, but it makes a new partnership even though no other change may be made in the articles of agreement, and must be registered again.

409 Retiring Partner. Where no fixed time has been agreed upon a partner may determine the partnership at any time by giving a reasonable notice of his intention so to do to all the other partners. Where the partnership was formed by Deed, a notice in writing, signed by the partner giving it, is sufficient for the purpose.

A retiring partner from a partnership firm, in order to protect himself from the future liabilities of the firm, must, in addition to the advertisements already mentioned, register a declaration of the dissolution at the office where the partnership is registered. (See Section 415 for form.)

This, of course does not free him from previous liabilities thus incurred while he was a member. Nothing but a release from the individual creditors can free him from the past liabilities.

410 Insolvent Partnership. A partnership firm becoming insolvent, the entire partnership property would be taken first to satisfy the firm debts. If this did not satisfy the claims, then the private property of all or any of the general partners would, subject to priority of the partner's private creditors, be taken to satisfy the debts.

The Special or Limited partner in such case would only be liable to the amount of interest he has in the business. If he had previously withdrawn part of his capital, and had not effected a new registration, he would still be liable for the amount withdrawn.

411 Suits against Partners. Actions against the business of a partnership, both General and Limited, must be brought against the general partners in the same manner as if there were no special partner.

The partnership property cannot be seized for the private debt of a partner contracted either before or after the partnership was formed. The court, or judge in chambers may order that such partner's interest may be charged for the payment of the debt, and may also appoint a receiver to receive such partner's share of the profits to apply on the debt. But such receiver cannot interfere in the management of the business, and cannot compel the partners to show him the books. The other partners are at liberty to redeem such partner's interest that is charged, and in case a sale of the interest is ordered they may purchase it.

412 Dissolution of Partnership. The following are among the things that call for a dissolution of partnership:

1. Insolvency of one of the partners in his private business.
2. Insanity of one of the partners.
3. Death of one of the partners.
4. Mutual consent.
5. Marriage of a female partner in some of the provinces.

The above events do not necessitate a dissolution, but they are a sufficient cause, and if any of the firm should demand a dissolution it must be complied with.

They are also dissolved by expiration of time, by the completion of the work for which they were formed, or by a decree of the court.

In the case of a dissolution, notice must be given to the public in the following manner:

For persons whose business is confined to any one Province, notice would be given in the *Official Gazette.*

For persons whose business extends to other provinces, notice must be given in the *Canada Gazette.*

It is also customary to give notice in the local press and to send circulars to each individual firm with whom business has been done.

In all cases it is also necessary when dissolution takes place before the term of partnership expires that a declaration of dissolution be filed in the office where the certificate of partnership was filed at its formation. (See Section 400.)

In Nova Scotia, besides the filing of the declaration of dissolution as here stated, it is necessary to advertise it in four weeks' issue of the *Royal Gazette,* and four weeks in a newspaper where the business is located.

Newfoundland also requires the publication in the *Gazette,* and one other paper for four weeks, besides filing the declaration of dissolution in office of Colonial Secretary.

413 Dissolution by Decree of Court. Sometimes partners fail to agree and by continual quarrelling or pulling in opposite directions the business of the partnership suffers. If they cannot agree on a dissolution they may apply to a competent court and obtain an order for dissolution. The following would be grounds upon which such an order may be obtained:

1. Fraudulent conduct by a partner.
2. Violation of the articles of partnership.
3. Unreasonable exclusion of partner from sharing in the management of the business.
4. Quarrelling to an extent to render it impossible to properly and successfully carry on the business of the firm.
5. Inability of the partner to act, on account of permanent illness, or being otherwise disabled.
6. Intemperance or immorality of a partner that would have the effect of injuring the business or impairing the credit of the firm.

414 Form of Dissolution by Agreement may be endorsed on back of the partnership deed or agreement:

We, the undersigned, do hereby mutually agree that the partnership heretofore subsisting between us, as Furniture Manufacturers, under the within Articles of Co-Partnership, be and the same is hereby dissolved, except for the purposes of the final liquidation and settlement of the business thereof; and upon such settlement wholly to cease and determine.

In witness whereof, we have hereunto set our hands and seals this .....day of....., A.D. 1903.

Signed, Sealed and Delivered in the presence of LEONARD SPEDDING.

GEORGE CARLISLE. (L.S.)
JOHN ADAMS. (L.S.)
CHARLES ANDREWS. (L.S.)

415 Registration of Dissolution.

A notice of a disolution of a partnership is required to be recorded in the same office in which the certificate of Partnership was filed at its formation. The following is a statutory form provided by the various Provinces:

PROVINCE OF ONTARIO: } I, James Robinson, formerly a member of
County of Lincoln. } the firm carrying on the business of Carriage Building and General Blacksmithing at Guelph, County of Wellington, under the style of Smith & Robinson, do hereby certify that the said partnership was, on the 2nd day of September, dissolved.

Witness my hand at Guelph, this the third day of September, 1903.

JAMES ROBINSON.

The pronoun "we" may be used instead of "I" at the beginning of above declaration and all partners sign it if desired to do so, or as many of them as wish. The above form would be suitable for a retiring partner to register if the other members of the firm did not file a declaration of dissolution.

416 Notice to Public of Dissolution in newspaper or *Gazette*.

Notice is hereby given that the co-partnership heretofore subsisting between the undersigned as General Merchants, under the firm name of Dell, Austin & Co., at Brantford, Ont., has been this day dissolved by mutual consent. All debts due to the said partnership are to be paid to W. A. Dell at his office, 106 Main street, and all partnership debts to be paid by him.

WM. A. DELL.
Brantford, June 20th, 1903. E. AUSTIN.
P. DE WITT.

If the business were intended to be continued by merely a change of partners the following addition to the notice would answer:

Notice is hereby given that the co-partnership heretofore subsisting between the undersigned as General Merchants, under the firm name of Dell, Austin & Co., at Brantford, Ont., has been this day dissolved by mutual consent. The business will hereafter be carried on by W. A. Dell and E. Austin, by whom all debts of the old firm will be paid and to whom all outstanding accounts due the old firm are to be paid.

WM. A. DELL.
Brantford, June 20th, 1903. E. AUSTIN.
P. DE WITT.

417 Business After Dissolution. After dissolution no partner has a right to sign the firm's name without a power of attorney. If a note has to be given the only alternative is for each partner to sign his name separately.

A partner, after dissolution, has power to demand that the assets be used exclusively to pay off the firm's liabilities before anything can be appropriated by the partners.

CHAPTER XVII.

JOINT STOCK COMPANIES.

418 A joint stock company is an association of individuals possessing corporate powers, enabling them to transact business as a single individual.

There are two methods by which corporations are constituted in Canada: (1) By Special Act of Parliament. (2) By Letters Patent issued under the Companies Act. It is the latter only that will be dealt with in this chapter.

The incorporation of a joint stock company may be effected either under Dominion or Provincial authority. Banking, railway, telegraph, telephone, and insurance companies cannot obtain a charter under the Companies Act, but must be incorporated by Special Act, as the powers they seek are so extensive that special legislation is necessary to determine their limit and safeguard public interest.

In the North-West Territories, British Columbia and Newfoundland joint stock companies are formed by Registration instead of Letters Patent, and they will therefore be treated separately at the end of this chapter.

419 Advantages of Incorporation. Among the advantages of incorporation the three following are of chief importance: (1) A larger number of persons, including employees, may become financially interested in the business than would be possible in any other way. (2) Ample capital may be secured and, if desired, largely from small investors. (3) And, lastly, the limited liability of shareholders. If the business does not prove successful no one need lose more money than the stock he subscribed for, thus differing entirely from an individual business or a general partnership.

420 Prospectus. In cases where capital is desired from the public outside the parties immediately interested in the formation of the company, a Prospectus is usually issued. This, however, is only a business circular to solicit shareholders and may take any form the judgment of the promoters suggest. It should contain for its heading the name of the company, and set forth the prospective advantages and gains truthfully, as there is stringent legislation against misrepresentation in the "Prospectus." The names of the provisional directors and chief stockholders would always be deemed good drawing cards, and the document would naturally close with a blank form of application for shares.

In the North-West Territories the prospectus must state the date upon which it was issued, and it must be signed by every director or his duly authorized agent, and be filed with the registrar on or before the date of its issue. The prospectus must also state on its face that it has been so filed. In default of these requirements every officer and agent who is a party to its issue shall be liable to a penalty of $25 for every day during which such default continues. For contents of such prospectus, see Section 56, Chap. 20, of the Ordinances for 1901.

421 How to Form a Company. About the first step taken either by the solicitor, or any person doing the official correspondence, is to communicate with the Secretary of State, Ottawa, or with the Provincial Secretary, as the case may be, concerning the formation of the company, who will forward a copy of the Act together with the necessary instructions and also a blank petition for the signatures of the applicants. This is always necessary, as the regulations are liable to be changed by Order-in-Council, and it saves time to get the information direct from the Government at the time, and also because the blank forms cannot be obtained from any other source.

If the business of the Company is intended to extend to more than one Province, as for instance, a steamship line between Toronto and Montreal, then the charter should be taken from the Dominion Government and the application should be addressed to

The Honorable
The Secretary of State,
Ottawa, Canada.

But if the business would be confined to the one Province, as a mercantile firm or manufactory, then the charter would be obtained from the Provincial Government and the application addressed to

The Honorable
The Provincial Secretary,
Toronto, Ont.

Or Winnipeg, or Halifax, or as the case may be,

The next thing to be done is to open a Stock Book, which gives the name of the Company, the amount of capital, the number of shares and the amount of each share. In this book the subscribers enter their names and the number of shares they wish to take; when the proportional amount of stock has been taken and the required amount paid in, application may be made for Letters Patent.

In Ontario the stock book must now be made in duplicate, and one of the duplicates deposited in the office of the Provincial Secretary.

422 Advertising in the Official Gazette. Before the application can be made for incorporation under the Dominion Act, the applicants must give at least one month's previous notice in the *Canada Gazette* of their intention to apply for the same.

Ontario does not require the notice in the *Gazette* except in special cases where the Department directs that it be given.

Quebec, Nova Scotia and Manitoba one month's notice in the official *Gazette*; New Brunswick, two weeks' notice in *Royal Gazette*; and North-West Territories, one notice in the official *Gazette*, and in three consecutive weekly issues of a newspaper published at or nearest to the chief place of business for the company.

In the North-West Territories the petition must be forwarded not later than two months after publishing the notice in the official *Gazette*, and all the other Provinces within one month.

423 The Petition. The Government furnishes the blank printed forms of Petition and full instructions for signatures. After being filled

out according to instructions it is forwarded to the Secretary of State, or the Provincial Secretary, as the case may be, accompanied by the government fee, affidavits and copy of advertisement, where advertisement is required.

The Petition for all the Provinces is nearly identical and requires the following information: The name, residence and occupation of each applicant in full; the proposed corporate name of the company; its object or nature of business; amount of capital; number of shares; its chief place of business; the names of its first or Provisional Directors; and the amount each applicant or petitioner subscribed for in the Memorandum of Agreement and Stock Book.

In Quebec and N. W. Territories the government does not furnish the blank forms for the Petition and affidavit, etc., but the forms used in the other Provinces are suitable and will serve as guides.

The Dominion Act requires that before application can be made one-half the proposed capital must be subscribed and at least ten per cent. paid in. If it is a loan company the capital stock must not be less than $100,000, and ten per cent. paid in. The amount thus paid in must be deposited in some chartered Bank to the credit of the Receiver-General, and the certificate of deposit for the same must accompany the Petition. The deposit will be returned after the Letters Patent is signed. The Dominion Act requires that the Petition be signed by not less than five persons.

In Ontario the Petition must be signed by no less than five persons who are 21 years of age. Manitoba requires five signatures. North-West Territories not less than three, British Columbia five or more; Quebec, Nova Scotia and New Brunswick, not less than five, and Newfoundland not less than three.

Upon receipt of the Petition, with the fees, if charter is granted, notice will be given by the Department in the official *Gazette* of the Letters Patent, when the parties therein named and their successors become a body corporate and politic by the name mentioned in the same.

424 The name of the company must not be the same or even similar to that of any other company, whether incorporated or not, and must not be objectionable in any other way. The word "Royal" cannot be used as part of the name without a special license from the Home Office.

425 Place of Business. All the Provinces and Newfoundland require every limited company, whether by Letters Patent or by registration, to have a registered place of business within the Province or Territory to which all communications may be addressed. A penalty is attached for not having such head office, and in the N. W. Territories and British Columbia it is $25 for each day the company carries on business without such registered office.

426 The Government Fee in all the Provinces may vary at different times. It runs from $10 to $500, according to the nature of the company and the amount of capital stock. The government fee is liable to be changed by Order-in-Council at any time, we will here only give those for Dominion charter.

The Dominion Act requires following fees:

1.	When proposed capital is			$1,000,000 or upwards			$500
2.	"	"	"	500,000	but less than	$1,000,000	300
3.	"	"	"	200,000	"	" 500,000	250
4.	"	"	"	100,000	"	" 200,000	200
5.	"	"	"	40,000	"	" 100,000	150
6.	"	"	"	40,000	or less		100

In Ontario the fees have been changed, so that the lowest fee now is $100, where the capital is $40,000 or less, except for cheese and butter companies, which are $10; educational and cemetery companies, not having gain for their object, $10, and athletic associations, $50.

In the N. W. Territories the lowest fee is $10, where the capital does not exceed $10,000, and the same amount where the number of members does not exceed ten in a company not divided into shares.

427 Extra Provincial Companies, that is, those incorporated in any other Province of the Dominion or in another country, need not obtain fresh Letters Patent, but must secure a license or register in the Provinces in which they wish to establish branch places of business. They must also make the required government returns annually. If they neglect to register they are liable to heavy penalty. In the N. W. Territories the penalty is $25 per day while such neglect continues.

428 Supplementary Letters Patent are required when:

1. The company would desire to change its corporate name.
2. To obtain further powers.
3. To either increase or to decrease its capital stock.
4. To subdivide its existing shares.

In the N. W. Territories the company may by a special resolution and with the approval of the Registrar change its name. A company divided into shares may increase its capital, or a company not divided into shares may increase the number of its members by resolution, but notice of such changes must be forwarded to the Registrar within fifteen days or the company will be liable to a penalty of $25 for each day of such default, and every manager, director or officer of the company who authorizes, or knowingly permits such neglect to notify the Registrar is liable to the same penalty.

They may also reduce their capital by resolution of the company, but must have an order from the Supreme Court for such action.

429 Board of Directors. The provisional directors named in the Letters Patent manage the affairs of the company until the first general meeting of its members. The Ontario Act requires the provisional directors, by registered letter, to call the first general meeting within two months after date of the Letters Patent for the election of directors and the further organization of the company, enactment of by-laws, etc. If the directors do not call such meeting within two months then any three or more of the shareholders have power to call such meeting. They are elected annually by the stockholders, and during their term they have the whole management of the business. No person can be a

director unless he holds stock absolutely in his own right and is not in arrears on any call on stock. Election of directors must be by ballot.

The provisional board of directors in Ontario, New Brunswick and Manitoba must not be less than three, and must be petitioners and shareholders in their own name.

In North-West Territories and Quebec, not less than three nor more than nine; Nova Scotia, not less than three nor more than fifteen.

Quebec requires that a majority of the first directors be British subjects and residents of Canada. The Dominion Act requires the provisional directors to be not less than three nor more than fifteen, and a majority to be residents of Canada.

The board of directors continue to hold office until their successors are duly elected at a general meeting of shareholders.

Directors cannot vote or act by proxy.

430 Books to be Kept. The law requires certain books to be kept, giving the names of the stockholders and the shares owned by each, the amount paid in on stock, the names and addresses of the directors.

They are as follows:

1. A book containing copy of Letters Patent.
2. A register of shareholders, present and past.
3. A register of directors.
4. A register of transfers of stock.
5. The stock ledger, giving number of shares held by each stockholder.
6. A minute book containing proceedings of all meetings.
7. And, lastly, books of account containing a full record of all the company's business.

All these books are to be at the head office of the company, and open for inspection by shareholders and creditors at all reasonable hours on business days.

431 Capital Stock of a company is that which has been subscribed. It may be all paid up or only partially paid. It may be common stock or "preferred stock." The common stock entitles its holders to share *pro rata* in the profits of the business. Preference stock is that which is issued entitling its holder to a certain rate of dividend out of the net profits in priority to the holders of common stock. Watered stock is that which is issued, generally to previous stockholders, as fully paid up, when only a part or none of it has been paid. Such stock is always issued to defraud the public in some way.

432 Unpaid Stock. Stock that has been subscribed for but not paid up stands as a resource, and is a security to the public, and if the company becomes insolvent each stockholder would have to pay up the balance of his unpaid shares, but no more. Creditors cannot sue the shareholders until they have failed to recover from the company property.

433 Transfer of Stock. Shares in a stock company are personal property. They may be sold or transferred if they have been paid up.

If they are not paid up they can only be sold by the consent of the directors.

434 Shares are supposed to be paid in cash. The Dominion and Ontario Acts require that if not paid in cash evidence of the transfer of property must be given the Department and receive its approval. Fully paid-up stock may be transferred almost as freely as a promissory note, except where the "certificate of stock" places some restriction on its transfer, which, of course, must be complied with. Shares not fully paid up can only be transferred where the directors are willing to accept the transferee, and a record of the transaction made in the company's books.

435 Shareholders in a company are not like partners in a partnership business. They may contract with the company the same as any other person, sue and execute their judgments against the company's goods, and in case of winding up they rank with the other creditors.

They have, however, no right to the property of the company nor to the profits until a dividend has been declared. In conducting company business they can only work through the company. They cannot be expelled from the company nor deprived of their right to vote by either the officers, or directors and the other shareholders combined.

If the business is carried on when the number of shareholders is less than the number required by statute to sign the petition, for a period of six months, the members individually become liable for company debts if they know the number has been so reduced. They may free themselves from personal liability by serving a written protest upon the company, and by registered letter notifying the Provincial Secretary of such protest and the facts upon which it is based. If company refuses to increase the number of members to the required number its charter may be revoked.

436 Voting. The person whose name is on the register for shares has a vote for each share he holds. An absent person may vote by proxy, and a person holding shares in trust for another person may vote on them if his name stands on the register as holding such shares in trust. A chairman may vote on his own shares and also has a casting vote in case of a tie. Directors can only legally vote at the meeting, and cannot elsewhere give separate assent to proceedings.

437 Dividends can only be paid out of the profits. If there has not been a profit over the running expenses, no dividend can be declared, for if the officers were to declare a dividend out of the capital, they would make themselves personally liable for the amount of dividend in case the company went into liquidation. Dividends that might be declared by the directors after the transfer of any shares are payable to the purchaser, whether the transfer has yet been registered or not, and no matter when the dividend was earned. It is a matter wholly in the hands of the directors whether to declare a dividend or not, or to use the profits for an extension of business, and the courts will

not interfere in such matters unless it is evident they have acted in bad faith, or positive neglect of duty.

438 Liability of Directors. The Dominion Act, also Ontario, British Columbia and Newfoundland make every Director of the company, if he knowingly permits the neglect of using the word "Limited," as given in section 442, liable to a like penalty. And in all the Provinces if they pay dividends out of stock, they are personally liable to creditors for the amount, or if they make loans to shareholders.

In Ontario, Quebec, and Manitoba, Directors are liable to laborers and apprentices for one year's wages, in North-West Territories for six months' wages, providing it has been sued for within one year after due, and the execution against the company has been returned unsatisfied; and providing also the Director has been sued for the same within one year from the time when he ceased to be such Director.

Under the Dominion Act, and in Nova Scotia and North-West Territories, Directors are liable for six months' wages; but New Brunswick, Prince Edward Island and British Columbia do not directly make Directors liable for wages. Also for annual statement, as in next section. Also if they pay dividends when the company is actually insolvent, they are personally liable to creditors for the amount. If any Director present when such dividend is declared does forthwith, or any Director then absent, within twenty-four hours after he becomes aware thereof and is able to do so, enters on the minutes of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper as near as possible to the office or chief place of business of the company, he may thereby, but not otherwise, exonerate himself from liability.

Managing Directors and officers in signing notes, accepting drafts, etc., if they do not use the name of the company with the word "Limited" they render themselves personally liable for the amount, and the company liable to a fine.

Also personally liable for knowingly permitting the using of a seal without the word "Limited" on it.

All the Provinces make the Directors liable for false statements in Prospectuses, for malfeasance in office, for false reports of the condition of the business; and some of the Provinces if they fail to make the required returns to Government make the Directors and officers responsible for the neglect liable to a penalty as well as the company.

Directors act in the double capacity of agents and trustees for the company, and must therefore act within their authority to bind the company. The public have opportunity to know, and the law presumes them to know the powers of companies, so that acts of the Directors where they exceed their authority are voidable and may be repudiated by the company. Directors are forbidden by law to have any pecuniary interest in any contract with the company, and must not purchase property from the company, even under execution or foreclosure sale. If they do they are deemed trustees for the company and must turn it over to the company when repaid the price. Every Director should obtain a copy of the Act under which the company is incorporated.

439 Annual Statement. The Government each year furnishes the company with blank forms to be filled in by the officers of the company, giving detailed information on company affairs, the stockholders, transfers, etc., one copy of which to be forwarded to the Government and the other to be posted up in the head office of the company before a certain day named.

If this is not done by the proper date the company, in nearly all the Provinces, incurs a penalty of $20 a day for every day during which the default continues. In North-West Territories the penalty is $25 per day. And every director, manager or secretary of the company who knowingly or wilfully permits such default incurs the like penalty.

In Ontario a fee is now required to be sent with the annual statement to Provincial Secretary, ranging from $2.00 to $5.00, according to amount of capital; and also with every by-law of the company required to be filed in the Provincial Secretary's office.

440 Limited Liability. In stock companies a shareholder is only liable to creditors to the amount of stock he has subscribed for. This is the great distinctive feature of joint stock companies. The company may be wrecked by bad management and subscribers lose the amount of the stock they purchased, but there their loss stops, creditors cannot touch their private business nor enter their homes to seize and sell. It is very much safer than a general partnership.

441 Double Liability applies only to chartered banks. A stockholder in a chartered bank is liable to creditors for double the amount of stock he subscribed for. That is, in case the bank fails he is required to pay the whole of his stock, and then another sum of same amount, if necessary, to pay the bank's liabilities.

442 Use of Word "Limited." The Dominion Act requires that every incorporated company shall keep painted or affixed its name with the word "Limited" after the name on the outside of their office or place of business in legible letters, also on its seal, and invoices, receipts, notes, drafts, cheques, indorsements, advertisements, letter heads and wherever the name appears. Penalty for neglect to so use it is $20 per day.

The Ontario Act as now amended does not require the name to be on the outside of the place of business, but if it is used the name must be in legible characters and the word "Limited" in its unabbreviated form as the last word. "Limited" as the last word of the name must also be on its seal, appear in all advertisements, on invoices, written contracts, in the signature to cheques, notes, drafts, indorsements, leases, money orders, and wherever the name of the company appears. In cases where the words "Company," "Club," "Association," or similar words, form part of the name the word "Limited" may be abbreviated, as "Ltd.," but where such words do not form part of the corporate name, then the word "Limited" must appear in full and in same size of letters as the rest of the name. Marking packing boxes, etc., the word "Limited" need not be used, as that is not deemed an advertisement.

For neglect to so use the word every company, director, manager and employee responsible for the default shall incur a penalty not exceeding $10 for each offence, and for a second conviction of this offence

a penalty not exceeding $100. Prosecutions must be commenced within six months.

In British Columbia, N. W. Territories and Newfoundland the penalty is $25 per day for neglect to place company name with the word "Limited" on the front of their place of business, as well as on the invoices, advertisements, etc.

443 In British Columbia, N. W. Territories and Newfoundland stock companies are formed by Registration instead of by Letters Patent; as in the other provinces. In British Columbia and N. W. Territories no company consisting of more than twenty persons, and in Newfoundland ten persons, can carry on business within the scope of the Stock Companies' Act for the purposes of gain unless registered as a stock company, or unless working under some other Act or Letters Patent. The remainder of this chapter applies to British Columbia, Newfoundland and N. W. Territories. The new N. W. Territories Act is chap. 20 of 1901.

444 Memorandum of Association. To form a company any five or more persons, twenty-one years of age, may subscribe their names to the memorandum of association, and forward the same with the necessary affidavits, Government fee, etc., to the Registrar of Joint Stock Companies, and thus become an incorporated company either with or without limited liability, according to the articles of association.

If any incorporated company carries on business when the number of members is less than five for a period of six months thereafter, every member that is cognizant of that fact becomes personally liable for debts contracted during such period, the same as in a General partnership.

In Newfoundland any three or more persons may subscribe their names to a memorandum of association and register as a company. Fee for registering when capital does not exceed $10,000 is $10, and when it is $25,000, a fee of $25.

In Newfoundland correspondence is addressed to

The Honorable The Colonial Secretary,
St. John.

445 Liability Limited to Unpaid Shares. Where the liability is to be limited to the amount unpaid on the shares, the memorandum of association must contain:

1. The name of the proposed company, with the addition of the word "Limited" as the last word of the name.
2. The place where the registered office of the company is to be located.
3. The objects for which the company is to be established.
4. The time for its continuance, if for a fixed time.
5. A declaration that the liability of the members is to be limited.
6. The amount of capital, divided into shares of fixed amount.

No subscriber can take less than one share.

446 Mining Companies restricted to mining operations may have in their Memorandum of Association a provision that the shareholders shall not be liable beyond what they have paid on their shares. (See Sec. 56 of the Companies' Act, 1897, for B. C.)

447 Liability Limited by Guarantee. Where the liability of members is to be limited to the amount they respectively undertake to contribute to the assets in the event of the company being wound-up, the Memorandum of Association must contain: (1) The name of the proposed company, with the addition of the words "Limited by Guarantee" as the last words of the name. (2) Place of head office. (3) Object. (4) A declaration that each member undertakes to contribute to the assets of the company a sum not exceeding a specified amount in case the company is wound up while he is a member, or within one year afterwards, in settlement of liabilities contracted before the time at which he ceased to be a member.

448 Unlimited Liability. In companies where there is no limit placed on the liability of members (general partnership) the memorandum of association, besides giving the proposed name of the company, place of business, and object, must also be signed by each subscriber in the presence of, and be attested by, at least one witness. This, when registered, binds the company and the members, their heirs, executors and administrators, to observe all its conditions, as though it were an instrument under seal. This is the same for the other forms of company as well.

449 Articles of Association. The memorandum of association may in case of companies limited by shares, and shall in case of a company limited by guarantee, or an unlimited company be accompanied by Articles of Association prescribing the regulations by which the company is to be conducted. The articles of association are to be printed and signed by each subscriber in the presence of, and attested by at least one witness, and when registered bind the company, the members, their heirs, executors and administrators to the conditions.

In the N. W. Territories it is required that the articles of association be written in separate paragraphs numbered arithmetically. In case of a company with the capital divided into shares it must state the amount of capital with which the company proposes to be registered, and in case of a company whose capital is not divided into shares it must state the number of members with which the company proposes to be registered.

450 Features Same as Other Provinces. For name, see Sec. 424. Stock, 431 and 432. Annual statement for those divided into shares, 439. Books to be kept, 430. Those limited by shares or guarantees to have full name on outside of building, etc., 442. Dividends, 437; Liability of Directors, 438; Prospectus, 420.

CHAPTER XVIII.

WILLS.

451 A Will is a written instrument left by a person in which he gives directions for the disposal of his property after his death. A person to make a valid will must be of the age of twenty-one years, of sound mind and free from constraint or any undue influence. In Newfoundland a person seventeen years of age may make a valid will. (For married women see Sec. 365.) The lawyer's toast, "Here's to the man who writes his own will," should not be forgotten by laymen. Not everyone is fit to write a will; some lawyers are not fit. A will should not be the last act of a man's life. No wonder that so many of them are broken in the courts; dictated under intense excitement, drawn in haste, they do not represent the deliberate judgment of the testator or meet the requirements of natural justice.

Soldiers in service and sailors at sea may dispose of their effects by simply signing a written statement of how they wish their personal property to be disposed of. But soldiers in barracks are not included in this special provision.

A person can only leave one will, but may leave several codicils to it, hence every will and codicil should be dated. If two or more wills were left by the testator and neither one dated, neither one would have any effect, and there would be an intestacy.

Alterations in a will would not affect its validity, but to take effect as part of the will they must be initialled on the margin of the will by both the testator and the witnesses as evidence that they were made before the will was signed, or they might be referred to in a separate memorandum in another part of the will, and attested as previously mentioned.

In the interpretation of wills regard will always be had to the circumstances existing at the time the will is made, and to the evident intention of the testator. If there is any discrepancy between the various clauses of the will, what was written last will hold over the first written.

A father is not compelled to will any portion of his property to the children, but in Ontario and the other Provinces which give the wife a right of dower, he cannot deprive her of her life interest in one-third his real estate.

452 Changing of Wills. When a person makes a will, and then living several years longer, it often becomes necessary to make a new will on account of the many changes having taken place, in which case it is better to burn the old one.

A will is revoked by the testator afterwards marrying, unless the will states that it was made in anticipation of marriage, or where the husband or wife elects by instrument in writing to take under the will, or where it is made in the exercise of a power of appointment, and the

property would not in the absence of such appointment pass to the testator's heir, executor, or next of kin.

453 Codicil. When only a few minor changes might be desired to be made in a will, sometimes, instead of making a new will, it is as well simply to make a codicil to the will. Such a codicil should set forth clearly:

1. That it is a codicil, and describe accurately the will it belongs to.
2. It should be signed and witnessed the same as a will, but using the word "codicil" in place where "will" is used.
3. If it gives a legacy to one who already had a bequest, it should state whether this is a second bequest or merely a confirmation of the one already given.
4. If advances had been made during lifetime to a child on account of legacy, such amount should be noted in the codicil.
5. If there has been a change in the property, either by the acquisition of more or the disposal of any part of the former, the codicil should regulate the bequests accordingly.

454 Charitable Bequests. According to the Statutes of Ontario, any charitable bequests for churches, educational institutions, etc., if not made at least six months before the decease of the testator, may be set aside by the courts.

455 Preventing Litigation. Sometimes in making a will the testator adds a clause that in the event of any person commencing proceedings to break the will, such person shall not receive any portion whatever, even though they had been mentioned in the will to receive a legacy.

456 Who may Draw a Will. The testator may write his own will if he desires to do so, and every man should be able to write his will. In all the Provinces except Quebec any person who can write clearly the desires of the testator may be employed, but prudence would dictate that none but a person of experience and ability should be entrusted with so important a matter.

In Quebec there are three forms of wills:

1. The notarial will, which must be made before two notaries, or one notary and two witnesses. It need not be probated, but the notary grants authentic copies.
2. The English form, which any person can write, but must be signed in the presence of at least two witnesses. It must be probated.

The holograph will, which is one wholly written by the testator. It needs no witness, but must be probated.

457 Requisites of a Valid Will. It should contain:

1. The name in full of the testator, his occupation and residence.
2. The plainest of language should be used and a separate paragraph for each bequest.
3. It should plainly state that this is his last will and testament.
4. That it revokes all former wills and bequests.
5. It should provide how debts and expenses are to be paid.

6. A clear and definite statement of how the property is to be divided, and full particulars of each bequest. Where all the property of the testator is left to one person it is not necessary to specify the property in detail.

7. It should give the Christian names in full of all the legatees, and if there are more than one person of the same name, the occupation and residence should be given so a mistake would be impossible.

8. Executors should be appointed who have been previously consulted.

9. It should be properly dated, and the signature of testator witnessed by at least two persons not pecuniarily interested in the will; that is, those who are not legatees.

10. The testator should sign at the foot of the will in the presence of the two witnesses. If the testator is unable to write his name it may be signed by some other person for him, but in his presence or by his direction. Or he may sign by making his mark or having his hand guided while making his mark, providing he understands the meaning of what is being done and assents to it.

11. The two witnesses must not only be both present together and see the testator sign the will, but they must sign it themselves as witnesses in the presence of each other, as well as in presence of the testator.

12. The witnesses may be minors if old enough to understand what they are doing, and to give evidence in court if necessary. An executor could also be a witness. If a legatee or devisee were a witness it would not invalidate the will, but it would void the bequest to such witness or to a husband or wife of the witness unless there were two other witnesses.

The death or subsequent incapacity of either or both the witnesses before the death of the testator would not invalidate the will.

13. A devise or bequest to a wife should state clearly whether it is in lieu of dower or not in those Provinces where dower is allowed, or she may be entitled to claim both.

14. No seal is necessary to a will, though sometimes a seal is attached.

15. Witnesses should take notice to the mental and physical condition of the testator, so as to satisfy themselves that he understands what he is doing and is competent to make a will.

458 Residuary Clause. Where there is a residuary clause in a will every lapsed legacy or bequest, and every other legacy which on any ground fails to take effect, will fall under the control of that clause and pass to the residuary legatee.

459 When Wills Take Effect. Wills do not take effect until after the testator's death, and all gifts and legacies become "vested" at the same time, whatever the interest may be. If such person should die before obtaining possession of the bequest or legacy he could dispose of it by will, or if no will were left it would go to his heirs, and if such person were married the husband or wife would take same interest as though the property were actually in possession.

In buying property that has descended by will its wording must be carefully noted. For instance, a farm left to a son with a clause in the will stating that in the event of the son dying childless, or before the mother, the property shall revert to the mother, or go to other members of the family, such person might live many years and marry, but dying without leaving children, or before the mother, as the case may be, the wife would have no dower in such lands, and if he had sold the property his deed would be invalid.

460 Probating Wills. After the decease of the testator, as soon as convenient or becoming, the will should be read in the presence of the parties interested, and then proved in the Surrogate Court.

Executors may perform the duties imposed upon them by the will without probating it, but it is better to probate every will, as that constitutes an authoritative declaration by the Surrogate Court that the will is valid. It also clothes the executor with the legal authority to administer the affairs of the estate and enter the courts if necessary.

In Ontario probate with will annexed will not issue until seven days after death of deceased and no administration until 14 days after death of deceased unless under the direction of the judge.

Wills bequeathing real estate should be registered as well as probated, so that the titles of the devises may be more easily traced. The will, of course, carries the title to the property without registering, but by registering the title is completed in the Registry Office and also guards against inconvenience from a possible loss of the will. They must be probated first before they can be registered. With lands under the Torrens system registration is essential.

Probating and registering wills furnish evidence of their validity, but neither one can prevent an action from being taken to cancel them.

461 Devisee or Legatee is the one who receives property under the will. A legacy to a friend who dies before the testator, lapses.

A legacy to the testator's child who may have children, will go to those children if the legatee die before the testator.

A legacy to a witness is void unless there are two other competent witnesses.

A pecuniary legatee, who is also a debtor to the testator, must account for the debt on payment of his legacy. If the debt has been outlawed it would be optional with the executor whether to deduct it from the legacy or not, except in Quebec, where the debt would be cancelled as well as the right of action barred.

Legacies not paid at maturity can be sued for the same as any other debt, and interest collected from time when legacy was payable.

An annuity or rent charge payable out of land should be registered and is as binding as a mortgage.

Legacies in Ontario outlaw in ten years from the time when the right to receive the same accrued, unless in the meantime part had been paid or a written acknowledgment had been given by the party liable for payment. (For other Provinces see Sec. 244.) Interest on legacies outlaw in six years from the time it was due, Quebec five years.

Money or property left in trust with a trustee or executor for the legatee never outlaws.

Money left under a will may be attached for debts unless it is left in trust to an executor, guardian or trustee to be paid the legatee only, for his maintenance, when it cannot be touched except upon a special order from the court, or money left to a married woman under "restraint from anticipating."

462 Executor is the person named in the will as the one who is to carry out its provisions and look after the property until its distribution among the heirs. Therefore persons of probity and business ability should be selected. A minor could be appointed, but he would not be allowed to enter upon his office until he was twenty-one years of age, and during that time the estate would be administered by the minor's guardian or by one appointed by the Surrogate Court.

An executor may be a legatee, or a creditor, or a debtor. It was formerly the rule that if a debtor were appointed executor his debt was forgiven, but that is no longer the case.

An executor may enter at once upon the work of carrying out the provisions of the will, as soon as it has been publicly read, before being proved. There is no law, however, compelling the executors to read the will to the heirs. If they do not do so, a copy of the will may be obtained from the Surrogate office, and if they have not probated it they may be compelled to produce it by some of the heirs applying to the Surrogate Court for letters of administration.

An executor may be appointed guardian as well, and if not so appointed by the will and there are minor children who have no guardian he may apply to the Surrogate Court to be appointed guardian.

An executor appointed by will dying, his executor may continue to administer the estate; but if the deceased executor had been appointed by the Surrogate Court, then another executor would have to be appointed to take his place either by the Surrogate or High Court.

Executors who cannot agree as to the management of the estate, either one or all may apply to the court for instruction. The court may then either direct what shall be done or may itself assume the administration of the estate, in which case the executors are freed from future liability. In all cases where executors need advice they may apply to the court.

Executors cannot act by proxy except in merely clerical work, neither can they employ solicitors to do what they should do themselves.

463 Executor's Notice to Creditors. The following form of notice executors may use in a local newspaper or the official *Gazette*:

Re estate of ....., deceased.

Notice is hereby given, pursuant to Chapter 129, Section 38, R.S.O. (or similar for other provinces), that all persons having claims against the estate of ....., late of the Township of ....., County of ..... (yeoman, or as case may be), who died on or about the .... of ...., 19.., are required to deliver their claims and full particulars of such claims to ...., of the town of ...., Executor, on or before the .... day of ...., 19... And that after the said .... day of 19.., I will

distribute the assets of the said deceased among the parties entitled thereto, having regard only to the claims of which I shall have received notice.

A. D., *Executor.*

464 Discharge of Executors. An executor, who is believed by the heirs to be acting unwisely or unjustly, may be compelled to show his books before the County Judge by any of the heirs who is twenty-one years of age.

An executor that is found to be wasting the estate or committing acts of injustice against the heirs, may be removed by proceedings in the Surrogate Court.

Also, where an executor, or one having a life estate in property, becomes insane the heirs or any person interested in the estate as "reversionist" may apply to the court for an order for the administration of the estate and the court will take the property out of the hands of the executor or tenant for life.

465 Remuneration of Executors. The expenses of executors are a charge upon the estate, and the Judge of the Surrogate Court will allow them an equitable percentage of the proceeds of estate or trust funds to recompense them for their time and labor. The executor should put in an itemized bill of his expenses, and the percentage he deems he is entitled to, usually five per cent. There is no fixed tariff of fees for executors, but the Judge when passing the accounts has power either to increase or diminish the amount charged as seems to him equitable in each particular case. Or the executor or administrator may apply to the Judge of the High Court or to a Master to determine the amount of compensation.

466 Intestacy is where a person dies without leaving a will. In such case if property is left, unless the heirs can agree among themselves as to the division of the property, it must be distributed according to the Statutes of the Province in which the property is situate. (See "Inheritance," Section 471.) Also if the intestate left money in a bank or other debts due it is necessary for some person to be appointed administrator, to draw the money or to collect the debts. (See following section.)

467 Administrator is the one appointed by the Surrogate Court or Court of Probate to settle the affairs of the estate of a person who dies without making a will. In Newfoundland the Supreme Court grants letters of administration.

The regulations in each of the Provinces concerning the settlement of estates vary considerably, as also do the Succession Duties, hence it is advisable for a person acting as executor or administrator to either consult a lawyer, or take full instruction from the office where wills are probated.

Where a man, unmarried, dies without leaving a will, the father or mother, if living, and if they be dead, the eldest brother, is entitled to administer, or the next nearest of kin.

But a person dying intestate and leaving real and personal property it is not compulsory for any of the heirs to take out letters of adminis-

tration. If the heirs can all agree as to the distribution of the property among themselves they can draw up an agreement to that effect which, being signed by all and sealed, will bind all to abide by it.

The property may then be divided according to that agreement, and if land is to be sold, the widow and heirs all joining in the deed give a good title. Or they may agree in the same way to appoint one as a trustee to distribute the estate according to the statutes, or in any other way agreed upon, and it will meet all the requirements of the law as well as would be done by the appointment of an administrator, and without cost.

But heirs, unfortunately, cannot always thus settle their affairs, when it becomes necessary for one or more to apply for letters of administration. Any of the "next of kin" are entitled to administer, but if they do not apply for letters of administration any other interested party or a creditor may do so.

An administrator's duties are precisely the same as those of an executor, so are his liabilities. An administrator must, however, give a bond for the due performance of his trust, while an executor usually need not do so.

In case a will is made, but no executor appointed in it, the administrator must carry out its provisions the same as an executor would do.

As soon as an administrator is duly appointed he will take possession of the property and divide it according to the Statutes. A child, husband, wife, or any other person who may chance to be in possession, has no more authority over the property than others, unless they have a valid lease, in which case they may hold it until the lease expires, unless sooner terminated by mutual consent.

Where an intestate dies leaving property and there are no known heirs, a creditor (if any) may apply for letters of administration. The Attorney-General is the proper person to take charge of such estates, who will attempt to discover heirs.

In cases where no will is found, or persons claiming to have the will do not read it, any of the heirs or next of kin may apply to the Surrogate Court for letters of administration, and to secure an order for the production of any supposed will, and to examine witnesses therewith.

468 Distributing the Estate. Executors must remember that legatees are not required to demand payment, but it is the executors' duty to pay the legacies to the rightful persons. Moneys due legatees who cannot be found must either be retained, or safely invested, or paid into court in order to free themselves from personal liability.

Executors must also remember that they are to pay the legacies and the debts of the testator only. If the same person were executor for both husband and wife he must not mix the money of the two estates; for debts, funeral expenses, and legacies of each must be paid out of the proper estate.

Personal property of the deceased is the proper fund out of which debts are to be paid and not out of real estate. If that is not sufficient then any other property that has not been "specifically bequeathed" to any person should be resorted to, then after that the property "specifically bequeathed" is available.

Money from an insurance policy is payable according to its terms, and does not become part of the estate unless it has been included in the will. If not mentioned in the will the executors have nothing to do with it. Whether mentioned in the will or not it is free from all claims of creditors if payable to wife or children or other preferred beneficiaries.

Executor may mortgage an estate for necessary improvements, but not to himself. He could subsequently buy the mortgage and have it assigned to him and hold it as security for the money and interest.

Executors may provide for the education of the minor children and pay necessary expenses out of the estate.

They may also erect a suitable monument to deceased according to his station in life, and pay for the same out of the estate.

Creditors not yet having judgment may sue the acting executor or administrator if their claims are not paid, whether the will has been probated or not.

Executors of a deceased member of a partnership firm do not become partners, and cannot interfere with the partnership business. The deceased partner's interest must be ascertained and paid over by the surviving partners, and if this cannot be done satisfactorily to the executors, the executors may enter action for the partnership business to be wound-up and the assets converted into cash and divided as per partnership agreement.

Where a will is made and any portion of the property of deceased was not disposed of in the will it falls to the heirs as though no will had been made, and the executors must divide it among them according to law and without regard to the bequests in the will.

Property bequeathed in trust to executors to pay over the income to a certain person for a term of years or for life is a separate trust, and must be kept separate from the rest of the estate, and must not be used for payment of debts except in the event that there is not sufficient other property.

Where there is a deficiency of assets to pay debts it shall be distributed *pro rata*, without preference, among them all. A debt due an executor has no preference over others, neither has a judgment.

Property in another province or country must be managed according to the laws of that province or country, no matter where the testator lived. Also, where there is doubt as to certain legacies to whom to pay, the executors may pay the money into court and in that way free themselves from liability.

Executors are to endeavor to collect in all debts within a reasonable time or become personally liable for any loss that occurs, especially those debts standing out upon personal security. To allow a debt to outlaw would be deemed culpable neglect, and the executors would by law be required to make it good.

469 Widow's Dower. For the widow's right of dower in the different Provinces see Section 295.

In Ontario, New Brunswick, Nova Scotia and Prince Edward Island, the husband cannot sell his real estate during his life time, nor will it at his death so as to deprive the widow of her one-third interest unless she joins in the instrument and thus bars her right. In each Province

where dower is allowed it is always optional with the widow to accept the provisions made for her in the will, or to take her dower instead, but she cannot take both unless the will gives evidence that the bequest was not in lieu of dower. The intention of the testator must always govern.

In Ontario, where a husband goes away and is not heard from for seven years he is presumed to be dead, and if the widow wishes to take her dower out of his real estate she must commence her action some time within ten years, that is seventeen years from the time he went away, otherwise her right of dower will be barred by statute. The same provision holds in the other Provinces, allowing dower, but the time in the others is twenty years. The right of dower in Ontario is barred after ten years from husband's death; for other Provinces see Sec. 245.

Widow has no dower in lands in which the husband had a life interest only; neither has she in purely mining property, or in lands disposed of by the husband while they were yet in a state of nature (wild lands), or in such state at his death.

Agreements not to bar dower are enforcible in British Columbia, where dower is not absolute.

470 Form of Will. The following form covering various kinds of bequests may be found useful.

I, William Smith, of the City of Toronto, in the County of York, merchant, being of sound and disposing mind and memory, do make and publish this my last will and testament, hereby revoking all former wills by me at any time heretofore made.

1st. I hereby appoint my wife, Harriett Amelia, my son Clarence, and William King, all of the City of Toronto, in the County of York, to be my co-executors of this my last will, directing my said executors to pay all my debts, funeral and testamentary expenses out of my estate as soon as conveniently may be after my decease.

2nd. After the payment of my said debts, funeral and testamentary expenses, I give, devise and bequeath all my real and personal estate which I may now or hereafter be possessed of or interested in, in the manner following; that is to say:

3rd. I give, devise and bequeath to my beloved wife, Harriett Amelia (in lieu of dower), all that my freehold with buildings and appurtenances thereto belonging, known as lot number six, in the second Concession of the Township of Ancaster, County of Wentworth, and Province of Ontario, containing by admeasurement one hundred acres, be the same more or less, for her sole use during her natural life, and upon her decease to my children and their heirs, respectively, share and share alike.

4th. I also devise and bequeath to my said wife all that freehold messuage or tenements in which I now reside, known as Lot No. 36 Howland Avenue, in the city of Toronto, with the garden, outbuildings and appurtenances thereto belonging, together with all my household furniture, plate, china, and chattels of every description being in and on the premises, for her own use absolutely; also I bequeath unto my said wife the sum of two thousand dollars now deposited in my name in the Traders' Bank at Toronto.

5th. I give, devise and bequeath to my son, Charles Edmund, the farm known as the Walnut Grove Place, being Lot No. 8, in the first Concession of the Township of York, in the County of York, together with all the crops, stock and utensils which may be thereon at the time of my decease; and also the property in the city of Toronto, Ont., known as the Arlington Block, being Lot No. 18, on the north side of King Street, subject to a legacy of five hundred dollars to be paid to my nephew, John Alexander Smith, in two equal annual instalments of two hundred and fifty dollars each without interest, the first payment to become due and payable when he becomes twenty-one years of age, said legacy to be the first charge on the said property.

6th. I give and bequeath to my daughter Grace, wife of James D. Allan, fifty shares in the capital stock of the Provincial Natural Gas Company, which stand in my name on the books of said company; also two thousand dollars in cash, payable out of my funds in the Traders' Bank.

7th. I give and bequeath my gold watch, with chain guard and appendage, to my brother, James Edwin, for his own use.

8th. I give and bequeath to my niece, Alice Matilda Krafft, as a specific legacy, my fifty shares, numbered 101 to 150, both inclusive, in the Toronto Street Railway Company.

9th. I give and bequeath to my nephew, John Alexander Smith, aforesaid, a legacy of five hundred dollars hereinbefore provided for. But in case my said nephew, John Alexander Smith, shall die under the age of twenty-one years, then I direct that the said $500 shall go to my sister Abigail Jane for her absolute use and benefit.

All the residue of my estate both personal and real not hereinbefore disposed of I give, devise and bequeath unto my son Clarence, his heirs and assigns forever.

In witness whereof I have hereunto set my hand and seal this tenth day of June, in the year of our Lord one thousand nine hundred and three.

Signed, Published and Declared by the said William Smith, the testator, as and for his *Last Will and Testament*, in the presence of us, both present together at the same time, and in his presence, at his request, and in the presence of each other, have hereunto subscribed our names as witnesses to the due execution thereof.

WILLIAM SMITH. ❋

CHARLES SUMMERS.
F. W. WILLIAMS.

Some might prefer the following beginning for the will:

In the name of God. Amen.

I, ..., of the Township of ....., in the County of ....., farmer (or, as the occupation may be), considering the uncertainty of human life and having property, both real and personal, do make, publish and declare this Instrument of Writing my last Will and Testament, in words following:

Referring to a life of three score years and ten, the stated life of man, and with it health, peace and a large portion of comfort and its attendant blessings, the Lord of all the earth hath permitted me to enjoy, I would here render thanks to Almighty God for His kind dealings and extended mercy to me, trusting and ever praying that the residue of my days may be an entire submission to His Divine will, and for the future, hoping and believing in salvation through the merits and mediation of Christ my Redeemer, the Saviour of the world; my worldly possessions I would also at this time arrange, and will and order as follows:

471 The Laws of Inheritance are very similar in all the Provinces, but where there are variations they will be specially mentioned in the following *résumé:*

If there are children from two husbands or two wives they share equally.

A posthumous child inherits equally with the others.

A posthumous child for whom no provision is made in a will takes a like share with the others as though there were no will made, and each of the others must abate enough to make up the amount.

Children of half blood share equally with children of whole blood.

Heirs of deceased children take their parents' share.

Children of a deceased nephew or niece are excluded. No collaterals are admitted after brothers' and sisters' children.

Illegitimate children, that is, those borne before marriage, do not inherit from the father.

An adopted child does not share with children of deceased.

Second or third wife surviving her husband takes the same share that the first wife would have taken.

A devise to widow in bar of dower has priority over other legacies.

(1) Where a will is made the wife may choose between taking what the husband leaves her in the will or her dower in his real estate in those Provinces where dower is allowed. (Manitoba and N. W. Territories have no dower, but wife takes her share absolutely.) And the wife would be entitled to her dower even if the judgments against the husband should take the balance and deprive the other heirs of their legacies.

She may also in case the husband dies without leaving a will elect whether she will take dower or a distributive share.

The husband also entitled to curtesy may by deed elect whether he will take curtesy or a distributive share. In Ontario he must do so within six months from the wife's death.

(2) If the husband die without leaving a will, then in all the Provinces and Newfoundland the wife takes one-third and the remaining two-thirds go to the children in equal degree. If any of the children are dead their descendants take what would have come to them. For wife, see also previous sub-section.

(3) If the wife is dead then all goes to the children.

(4) If there is a wife, but no children, then in British Columbia, New Brunswick and Nova Scotia, one-half goes to the widow and the other half to the natural heirs of deceased. In Manitoba and N. W.

Territories the widow gets all, and in Ontario she receives $1,000 out of the estate, and then one-half the remainder, the balance going to the natural heirs of deceased. If the estate, after paying expenses, does not exceed $1,000, the widow takes all.

(5.) A wife having separate property in her own name and dying without leaving a will the husband takes one-third of the real estate as tenant by curtesy, and one-third the personal property, the other two-thirds going to the children. If there are no children then one-half goes to the husband and the remainder to the natural heirs of the deceased. If the husband is dead, then all goes to the children.

New Brunswick, however, makes a slight change. If a wife die leaving children by a former husband, the surviving husband takes one-third and the other two-thirds go to the children of both husbands equally; but if there are children of the surviving husband only, then he takes one-half and the other goes to the children, and if no children the husband takes all the personal property.

(6.) If an unmarried man or woman die without leaving a will, in Ontario, the father, mother and surviving brothers and sisters share equally. If parents are dead then the surviving brothers and sisters come next; if there are no parents, or brothers or sisters, then the grandparents, if living, get all; if there are no grandparents, then nieces and nephews, uncles and aunts equally.

In Nova Scotia and Prince Edward Island the whole amount would go to the father, if living; if no father, then to the mother, brothers and sisters equally, and to descendants of deceased brothers and sisters.

In N. W. Territories since June 12th, 1901, a person dying leaving no wife or children or father the mother inherits all.

In British Columbia, also, it would go to the father, unless the inheritance came to deceased from the mother, then it would go to her if living. If she were dead it would go to the father during life, and then revert to the heirs of the mother. If no father, mother, brother or sister, then to the brothers and sisters of the father; if none, or no descendants, then to the brothers and sisters of the mother and their descendants.

472 Succession Duties. In Ontario succession duties do not apply to any estate that does not exceed $10,000 or an estate that does not exceed $100,000, which passes to parents, husband, wife, child, grandchild, daughter-in-law, or son-in-law, or to charitable and religious purposes.

Property exceeding $100,000 and passing to such persons a tax of $2.50 on each $100 is levied; when it exceeds $200,000 and so passes, $5 on every $100. When property exceeds $10,000, and does not pass to such estates 10 per cent. on value; when it passes to grandparents, uncles or aunts, brothers and sisters, nephews and nieces, $5 on every $100. When the property bequeathed to any one person does not exceed $200 it is exempt.

In Manitoba the Act does not apply to any estate which, after payment of debts, does not exceed $4,000, nor to property passing to husband, wife, father, mother, child, grandchild, daughter-in-law, or son-in-law of deceased which does not exceed $25,000.

In British Columbia the Act does not apply to any estate not exceeding $5,000, nor to property passing to husband, wife, father, mother, child, grandchild, daughter-in-law, or son-in-law of the deceased which does not exceed $25,000.

In New Brunswick the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or to property bequeathed to religious, charitable or educational institutions, or to property passing to father, mother, husband, wife, child, daughter-in-law, or son-in-law, which does not exceed $50,000.

In Nova Scotia the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $5,000, or to property passing to father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased where the property value does not exceed $25,000.

In Prince Edward Island the Act does not apply to any estate which, after payment of debts and expenses of administration, does not exceed $3,000, nor to property passing to father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law of deceased where the property does not exceed $10,000.

In Quebec, if the estate passing to husband or wife, or to father or mother, or to father or mother-in-law, or to son or daughter-in-law, and does not exceed $3,000, it is exempt. If it exceeds $3,000 then it is one-half per cent. on the excess up to $5,000, and if it exceeds $5,000 it is one per cent. on all over $3,000 up to $10,000, and so on until it reaches three per cent. for excess of $3,000 up to $200,000 and over.

If the property passes to brother or sister, or to nieces or nephews it is three per cent.

If it passes to uncles or aunts or their descendants it is five per cent.

If to brother or sister of grandparents or their descendents it is six per cent. If to any other collateral it is eight per cent. If to stranger it is ten per cent.

CHAPTER XIX.

MARRIED WOMEN'S PROPERTY RIGHTS.

473 An unmarried woman, either as spinster or a widow, is as free to contract as a man in all the Provinces, Newfoundland and England.

474 Holding Property. A married woman now in all the Canadian Provinces (except Quebec), Newfoundland and England, may contract in regard to her own property just as freely as a man. She can buy and sell, sue and be sued in her own name, and her separate estate only be liable for her debts and contracts.

A married woman has the same remedies for the protection of her separate estate against her husband that she has against other parties.

In any proceeding concerning their property, the husband and wife are competent to give evidence against each other.

She now not only holds all her separate estate of both personal and real property free from the control, debts and obligations of her husband, but also entirely free from any estate therein by her husband during her lifetime. Even though she may not possess any separate estate at the time she enters into such contract she may still incur the liability, and bind whatever property she may thereafter acquire except such property as she is "restrained from anticipating." (See Section 484.)

In Quebec there is sufficient variation to make it advisable to give the main features separately. In this Province married women may be either in community of property with their husbands or separate as to property. If in community the husband has the administration of it, but at his death or a dissolution by order of the court she takes half the common property. Husband can only will his own half.

Immovable property belonging to her before marriage or bequeathed to her by parents or ancestors does not become part of the community, but is hers absolutely. The rents and incomes from such real estate belong to the community. But in the absence of separation of property wife cannot hold movable property in her own name, except what may be willed or bequeathed to her by third parties to be her own private property.

But when separate as to property she has the control of it, and may dispose of her movable property, but cannot sell or transfer her real estate or bank stock without the authorization of her husband, or upon his refusal, an order from the court. Separation as to property may be obtained either by antenuptial contract or by order of court. She can administer her separate estate and transact her business in her own name. If she becomes a trader she must register her intention of carrying on such business. And if she is not separate as to property her goods would be liable for her husband's debts; also if she has no separate estate either by marriage contract or a judgment of the court the husband would be liable for her debts. She cannot bind herself as surety for her husband. When possessing separate property is required to contribute in proportion to means toward expenses of household and education of the children by her.

475 Earnings of Married Women. In all the Provinces every married women is now entitled to hold as separate property and to dispose of, as separate property, the wages, earnings or money acquired in any employment or trade in which she is engaged, or any income from any literary or artistic skill or other source of income (in which her husband has no proprietary interest) entirely free from her husband's control and debts, except Prince Edward Island.

476 Gifts to Wife of personal property, or from wife to husband are perfectly legal if not done to defraud creditors; but in cases where there is a remote possibility of third parties being interested during the life of such article, if it is of value, it is better to do it by bill of sale, then there is no difficulty in the matter of proof, and there might be if

it were a mere verbal gift, as well as being open to suspicion if the claim has to be defended in the courts. The form of Bill of Sale shown in Section 304 could easily be changed to suit the circumstances, and it is not necessary that a printed blank should be used.

477 Disposing of Her Real Estate. In all the Provinces except Nova Scotia and Quebec, she may not only hold her own real estate entirely free from her husband's control and debts, but she may dispose of it during her lifetime without her husband's consent or signature and will it at her decease. A married woman may also sell her separate property direct to her husband, or the husband direct to the wife without making the transfer through a third party.

In Newfoundland and England the law is the same in each particular.

In Nova Scotia the wife cannot deed away real estate or dower in real estate without her husband joining in the deed. She may dispose of her real estate by will if the husband gives his consent in writing. If she makes her will without his consent in writing he may then elect whether to accept the provisions of the will or to take his tenancy by curtesy in her real estate.

In Manitoba she cannot will it away from her children, but may make any distribution of it among them she desires.

In New Brunswick she can only sell or will her real estate subject to the husband's right of curtesy.

See Section 474 for Quebec.

478 Engaging in Business. In all the Provinces, Newfoundland and England a married woman may engage in business as freely as though unmarried, and enjoy the profits accruing from same entirely free from the control or interest of her husband, and the husband be entirely free from liability for her debts.

In Nova Scotia to engage in business separately from her husband the consent of the husband must be filed in the office for the Registry of Deeds of the county or district where the wife resides and carries on business. She must also file with the Clerk of the Municipality a certificate setting forth the following facts: 1. Her name. 2. Name of husband. 3. Place of business, giving street and number where possible. If wife fails to file such consent and certificate the husband may do so. If neither one does then wife's property is liable for husband's debts, and husband is liable for wife's contracts. If any change takes place in the business, or removal to other premises a new certificate must be filed.

In Prince Edward Island to engage in separate business in her own name she needs a protection order, so as to bind her estate only and free her husband from her debts.

In Manitoba she may engage in business in her own name as freely as though unmarried; but if she engages her husband on a weekly salary to manage it exclusively, she taking no part, the profits of the business may be taken to satisfy the judgment creditors of the husband. But if the business is in her own name, and with her own capital and she helps to manage, then nothing can be touched for husband's debts.

479 Wife's Investments. In all the Provinces (except Quebec), Newfoundland and England, any shares or stock in any Bank, Stock or Loan Company, or any debentures standing in the name of a woman married are deemed her own separate property, unless otherwise shown; and she has a right to all dividends and profits arising therefrom, and to transfer the same without the concurrence of her husband.

But if a married woman should purchase such shares or stocks with her husband's money, without his consent, the husband may procure an order from the court to have such investments and dividends thereof transferred to him.

If, also, a married woman made such investments with her husband's money, to defraud his creditors, such investments may be followed by the creditors and taken to satisfy their claims.

She is also entitled to hold as her own separate property all her own earnings, wages, or income from any literary or artistic skill, and to dispose of the same as her own property.

In Prince Edward Island she is not entitled to her own earnings during marriage without a protection order.

480 Wife's Liability. A married woman is liable to the extent of her property after her marriage for the debts she contracted before marriage, and for all contracts entered into or wrongs committed before marriage, and all sums recovered against her for such contracts or cost incurred therefor are payable out of her separate estate. If she is a trader she is subject to the bankruptcy or insolvency laws the same as a man would be. If she lends money to her husband it becomes an asset of his, and in case of his insolvency, in most of cases, she would only take her dividend after the other creditors for valuable consideration had been settled with.

481 The Husband's Liability. The husband is liable for the debts of his wife contracted and for all contracts entered into and wrongs committed by her before marriage, and for wrongs committed by her after marriage to the extent of the property he has come into possession of through his wife.

A husband and wife may be sued jointly in respect of any such debt or liability contracted or incurred by the wife, as mentioned in previous paragraph, but if the plaintiff fails to establish the husband's liability in respect to the property he may have acquired through his wife, the husband will obtain judgment for the costs of defence, whatever may be the result of the action against the wife. If the plaintiff succeeds in establishing the husband's liability, he will obtain joint judgment against the husband personally, and against the wife as to her separate property, and if the husband's liability does not extend to the amount of the claim or damages, the residue will be against the wife's separate estate.

482 Wife not Liable for Family Debt. For instance, a wife keeping boarders and buying goods on credit for the general family expense does not render her separate estate liable for the debts. The husband and the husband's property only are liable. If the merchant wishes to render the wife liable he must make the contract with her by having her purchase in her own name, or to guarantee the payment.

A married woman, however, engaged in business in her own name, any goods which her husband orders and she accepts are chargeable against her, the husband being merely an agent.

483 Mortgage and Wife's Property. The husband cannot mortgage any goods that belong to the wife, obtained either by purchase with her own money, or gifts from other persons. The wife need not sign a chattel mortgage unless she owns part of the goods, and desires to mortgage them.

484 What a Wife Cannot Mortgage. A wife indorsing or signing notes with her husband or entering into any other contract renders liable whatever property she has in possession at the time, or may acquire afterwards except such property as she is "restrained from anticipating." Property *restrained from anticipation* usually comes to a married woman under the "terms" of a will, and while she gets the income from it, the principal cannot be dealt with by her in any way. Such restraint must be clearly expressed in the instrument. It will not be implied by law. Such property cannot be considered an asset by her; that is to say, she cannot mortgage, or by ordinary contract bind it, nor will the law construe it as an asset or allow it to be seized in execution or otherwise.

In New Brunswick the Supreme Court in Equity may, by her consent, if it believes it for her benefit, give order to bind her interest in any property even though restrained from anticipating.

Newfoundland allows such property to be liable for law costs in suits brought by herself or next friend on her behalf.

485 Order of Protection. Any married woman having a decree for alimony against her husband, or being for any legal cause separated from him, either through his cruelty, insanity, imprisonment in the Provincial Penitentiary or in gaol for a criminal offense; or whose husband, through habitual drinking or profligacy, neglects or refuses to support her, may obtain an order of protection, entitling her to the earnings of her minor children, entirely free from the debts and obligations of her husband and from under his control.

When the married woman resides in a town or city where there is a Stipendiary or Police Magistrate, the order would be obtained from him, but when there is no such officer where she resides then the order would be given by the County Judge.

Order of Protection may also be procured for her own earnings and for the purpose of engaging in trade in those Provinces where such orders are required.

486 Dower. See Section 295.

487 Dying Intestate. See Section 471 for Laws of Inheritance.

488 Husband and Wife. The civil relationships are the same between husband and wife as between other persons in community. The one may steal from or defraud the other, or be guilty of criminal acts toward each other. In all cases the injured party has the same redress they would have against other persons for similar acts. The

husband cannot sell the wife's property or that of the children which comes to them personally by gift or otherwise. Husband cannot sell or mortgage wife's furniture, silverware, or any other goods or property belonging solely to her by gift or otherwise, unless she signs the mortgage or assents to the sale.

An agreement, or contract entered into by the wife with and for the husband through *duress* (force) or undue influence may be set aside the same as concerning other parties, but she must act promptly in repudiating it as soon as free from the influence.

Where a husband, through drink, violence, abusive language, or other vicious conduct renders it impossible for the wife to live with him in safety and honor she can leave him, and such conduct is sufficient ground to sustain an action for alimony. Wives are foolish to be maltreated by either beating or starving by a drunken, worthless, vicious or vagabond of a husband when our laws and courts have thrown around them such ample protection.

489 Business Relationship between husband and wife.

If a husband makes improvements on wife's property and she dies intestate he has no claim on the estate for their value unless there was a written agreement between them that he was to be paid for such improvements or to have an interest in the property to that extent; and *vice versa* if the wife uses her money in improving husband's property under similar circumstances.

Where husband and wife are living separate, and the husband wishes to mortgage or sell his real estate without the wife's signature he may obtain an order from the court under following circumstances: (1) If the wife is insane and confined in an asylum. (2) If separate from her husband under such circumstances as disentitle her to alimony. But in both cases while the husband may sell or mortgage his land "freed and discharged from any claim of his wife for dower therein," still the court will also provide a method by which the wife will be secured the *value* of her dower. If the wife were living separate under circumstances where her conduct disentitle her to dower then no provision would be made by the court to reserve its *value* to her.

Wife having means and the husband none, and being a helpless invalid, she would be compelled to supply him with the necessaries of life.

A husband advertising in a newspaper that he will not be responsible for goods purchased by his wife on his credit after the date of such advertisement (or for her contracts) is not necessarily free from such liability. The wife is presumed to be competent to purchase necessaries for herself and family, and if she has been in the habit of so purchasing from merchants on her husband's credit, the notice in the newspapers will not relieve the husband from liability unless he can show that the merchant had knowledge of such advertisement before the goods were purchased. The courts have ruled that "notice given in a newspaper not to trust the wife (with goods purchased on the credit of her husband) is of no effect in cases where dealers have not had knowledge of it."

A husband deserting his wife if he have means or an income the wife may choose between taking an action for "Alimony" against him; or she

may take proceedings before a Police Magistrate or two Justices of the Peace under the "Deserted Wives Maintenance Act" and procure an order not exceeding $5 per week for support of herself and children.

For a wife to recover a judgment for Alimony three things must be proven to the satisfaction of the court: (1) A legal marriage. (2) The need of the wife. (3) The desertion by the husband or his refusal to support her. Therefore a lawful wife who is in need, not having independent means of support, and where husband deserts her, or refuses to support her, may obtain a decree from the court for alimony which will fix a sum in proportion to the property and means of the husband.

The custody of the younger children when husband and wife separate is entirely in the discretion of the court before whom application may be made, having regard to the welfare of the children. After hearing the facts of the case, if the court or judge is of the opinion that either the mother or the father would be a more suitable custodian of the children they will be given to such parent, without regard to age or sex. The Ontario Statute says: "The court may make such order as the court or judge sees fit regarding the custody of the infant and the right of access thereto by either parent, having regard to the welfare of the infant and to the conduct of the parents, and to the wishes of the mother as well as of the father."

As a general rule, however, if the wife is deemed a suitable guardian she will be given the custody of children under seven years of age, and the husband, if he is deemed a proper guardian, those over that age.

CHAPTER XX.

MECHANICS' AND WAGE-EARNERS' LIEN ACT.

490 Nature of Lien. According to the provisions of the above statute unless he signs an express agreement to the contrary, every person who performs any labor, or who furnishes any material to be used in the construction of any building, bridge, fence or anything, in fact, from a cistern to a railroad, for any owner, contractor, or subcontractor, has a lien upon the property thus erected, and upon the land occupied thereby for the price of such work or material.

In case property upon which a lien is given burns down covered by insurance the insurance money takes the place of the property and shall be subject to the liens the same as though the property were sold to enforce a lien.

In British Columbia for contracts of over $500 the owner must file in the County Court Registry the particulars of the improvements to be done or building erected, the nature of his interest in the land, name and residence of the contractor and the contract price.

491 Limit of Lien. The lien whether claimed by the contractor, sub-contractor or other person, cannot make the owner liable for more than the sum justly owing by the owner to the contractor (which includes the wages or material for which the contractor is liable to those under him). In Manitoba and British Columbia the claim or combined claim must not be less than $20 to be a first lien on the property.

In Newfoundland wages for twelve days have a lien on buildings, etc., and for railways and mines for thirty days.

492 Landlord and Lien. In case where work is done for a tenant the building is holding for the lien, but the real estate itself cannot be held liable except by consent of the owner of the freehold. In Ontario it is required that the owner of the freehold must give his written consent at the time of registering the lien.

The British Columbia statutes state that the owner of the land is deemed to have authorized the erection of the building unless within three days after he has knowledge of the construction of the building or repairs he posts up a notice in some conspicious place upon the premises that he will not be responsible for the same.

493 Mortgage and Lien. In case where the land upon which the work is done or material furnished is encumbered by a prior mortgage or other charge, and the selling of such land is increased by such work or placing of material, the lien shall rank upon such increased value in priority to the mortgage.

494 What a Lien May Include. A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein. Each lien must, however, be verified by affidavit.

495 Protecting Owners. Each of the Provinces requires the owner as the work progresses to retain a certain percentage of the money due the contractor for thirty days after completion or abandonment of the work, with which to satisfy lien claims. He is not liable for any greater sum than this for any liens of which he has not, before making payment, received notice in writing.

In Ontario and Manitoba, when contract does not exceed $15,000, the percentage is 20 per cent.; when it exceeds that sum, 15 per cent.

North-West Territories, 10 per cent.

In New Brunswick and Nova Scotia, 15 per cent. if contract does not exceed $1,000; 12½ per cent. if over $1,000 and under $5,000; and 10 per cent. on all other sums.

In British Columbia on contracts of over $500 the owner is required to be furnished with the receipted pay-roll, giving names of laborers, amount due and paid. He must retain amounts due laborers, and no payment made in the absence of such pay-roll is valid against lien holders. Owners are liable for six weeks' wages to laborers, even if there is not that much yet due the contractor. A copy of the pay-roll must also be posted up in the works on the first legal day after pay day from twelve noon to one o'clock p.m.

In Newfoundland owner may retain 10 per cent. for thirty days.

496 Registration of Liens. A claim for a lien may be recorded in the Registry Office, or Land Titles Office for the district in which the land is situated, and in British Columbia in office of the nearest county court registry in the county where the work is done. It shall state:

1. The name and residence (1) of the person claiming lien, (2) of the owner of the property to be charged, (3) of the person for whom the work was performed, or material furnished; also, the time within which the work was to be done, or materials furnished.

2. A short description of the work done, or materials furnished.

3. The sum claimed to be due, or to become due.

4. A description of the land (number of lot, etc.), to be charged sufficient for the purpose of registration.

5. The date of expiry of the period of credit (if any) agreed for payment of work or material.

Every claim must be verified by affidavit.

A lien, when registered, becomes an encumbrance against the property. The fee for registering a lien for wages is about twenty-five cents. If several persons join in one claim, a further fee of ten cents is charged for every person after the first. In Newfoundland twenty-five cents for each person after the first.

In Ontario and Manitoba the Act states that for wages up to thirty days it is not necessary to register the lien, and third parties must inquire concerning wages due if they would be safe.

497 Time for Registering Liens. A claim for a lien by a contractor or sub-contractor may be registered before or during the contract, or within thirty days after its completion.

A claim for lien for materials may be registered before or during the furnishing thereof, or within thirty days after furnishing or placing the last of the material.

A claim for lien for services, wages or work may be registered any time during the performance of the service or work, or within thirty days after the completion of the service or the last day's work for which the lien is claimed.

Every lien not registered within the time mentioned here ceases at the expiration of that time, unless action has been brought to realize the claim and a certificate thereof duly registered.

Thirty days is the time allowed within which to register the lien for Ontario, Manitoba and North-West Territories; and thirty-one days for British Columbia.

In Ontario, where a building is under the supervision of an architect or engineer, upon whose certificate payments are to be made, the claim for a lien may be registered as stated in this section, or within seven days after said architect, engineer or other person has given his final certificate, or has, upon application by the contractor, refused a final certificate.

498 When Liens Cease. Every lien which has been duly registered absolutely ceases to exist after ninety days from the time when the work or service ended, or the materials were furnished, or the expiry of the period of credit, unless in the meantime an action to realize the

claim under the provisions of this Act has been instituted and a certificate thereof duly registered.

499 Priority of Lienholders. Liens have priority over all judgments, executions, assignments, or garnishments issued after such lien arises, and over all payments made on account of the sale of the property or a mortgage thereon after notice in writing of such lien to the person making such payments, or after the registration of the lien.

Among the lienholders themselves each *class* shall share the proceeds recovered *pro rata*, according to their several classes and rights.

500 Priority for Wages. Every mechanic or laborer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other classes of liens to the extent of the amount of the percentage reserved from the contract price. In British Columbia the priority is for six weeks' wages. All such mechanics or laborers share *pro rata* in the sum recovered. Wage-earners may also enforce a lien before the contract is completed.

In case of a contractor or sub-contractor making default in finishing his contract, the percentage due such contractor or sub-contractor for work done or materials furnished at the time when the lien is claimed by wage-earners cannot be used for any other purpose, or for payment of damages for the non-fulfilment of the contract to the prejudice of the wage-earners.

Every device by any owner, contractor or subcontractor to defeat the priority thus given to wage-earners for their wages is null and void.

501 Transfer of Lien. A lienholder may assign his right of a lien by an instrument in writing. A lienholder dying, his right of lien passes to his personal representative.

502 Discharge of Lien. A lien may be discharged by a receipt signed by the claiment or his agent, duly authorized in writing acknowledging payment and verified by affidavit and registered. The fee for registering the discharge is the same as for registering the claim.

503 Vacating a Lien. Upon payment into Court or receiving sufficient security, or upon other grounds, the Court or Judge may vacate the registration of the lien.

504 Lienholders Demanding Terms of Contract, etc. If the owner or his agent refuse to give information concerning the terms of the contract, or knowingly falsely state the terms, or the amount due and unpaid thereon when demanded by a lienholder who suffers any loss thereby shall be liable to him in an action to the amount of such loss.

505 Mode of Enforcing a Lien. It is not necessary to issue a writ of summons, but merely to file in the proper office a statement of the claim verified by affidavit.

Any number of lienholders having a claim on the same property may join in the action.

An action brought by any lienholder is deemed to be brought on behalf of all the other lienholders on the property in question.

In Ontario an action to enforce a lien may be tried by a Judge of the

High Court, or by the Master in Ordinary, a Local Master of the High Court, or Official Referee, or a Judge of the County Court.

In British Columbia the proceedings are in the County Court Registry in which the lien was filed.

In Manitoba, in King's Bench.

In North-West Territories, in Supreme Court.

In New Brunswick, County Court.

In Nova Scotia, under $200 may be in County Court, over that in Supreme Court.

506 Cost of Entering Action. In Ontario and most of the Provinces, wage earners have nothing to pay, and the cost to others is only nominal.

507 Payments to Defeat Lien Claims. No payments made for the purpose of defeating a claim for a lien are legal.

508 Contracts to Waive Remedies Void. Every agreement, verbal or written, expressed or implied, by which any workman, laborer, servant, mechanic, or other person employed in any kind of manual labor waives the application of the various Acts which provides remedies for the recovery of wages by such employee, is void.

This section in Ontario, Manitoba and most of the other Provinces would not apply to any foreman, manager, officer or other person whose wages are more than $3 a day.

509 Removing Property Affected by Lien. During the continuance of a lien none of the property affected by a lien can be removed to the prejudice of the lien; and the attempt at such removal may be restrained on application to the High Court, or to a judge or other officer having power to try an action to realize a lien, the amount of costs to be at the discretion of the Court or Judge.

510 Form for Claim of Lien. A. B. (name of claimant), of (residence of claimant), under the Mechanics' and Wage-earners' Lien Act, claims a lien upon the estate of (name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect to the following work (service or materials); that is to say, (give a short description of the work done or materials furnished), which work (or service) was (or is to be) done (or materials were furnished) for (name and residence of person upon whose credit the work was done or materials furnished), on or before the ..... day of .....

The amount claimed as due (or to become due) is the sum of $....

The following is the description of the land to be charged: (give number of lot, street, or concession, etc., sufficient for the purpose of registration).

When credit has been given, insert: The said work was done (or materials furnished) on credit, and the period of credit agreed to expired (or will expire) on the .....day of ....., 19....

Dated at ....., this ..... day of ....., A.D. 19....

(Signature of claimant.)

511 Laborers on Public Works. In Ontario in case any contractor or sub-contractor for any public work makes default in payment of wages of any foreman, workman, or laborer, or for a team employed on the work, the claim for wages must be filed in the office of the member of the Executive Council who let the contract not later than two months after the claim became due, and payment will be made to the extent of any securities or moneys for securing performance of the contract in the hands of the Crown at the time of filing the claim. Similar provision is made in all the Provinces.

512 Lien on Articles Repaired. Every mechanic or other person who has bestowed labor, money or material upon any chattel, as a wagon, organ, etc., has a lien upon it for the amount of his claim, and may hold it until it is paid. He must keep the article in his possession to retain the lien. The property must also be cared for as though it were in a warehouse. In Ontario, if the amount due is not paid within three months from the time it should have been paid, he may sell it by auction on giving one week's notice in a local newspaper, stating the name of the person indebted, the amount of the debt, a description of the article to be sold, time and place of sale, name of auctioneer. A like notice in writing must be left at the last known place of residence of the owner, if a resident of that municipality. After payment of debt, costs, etc., the balance of proceeds of sale must be paid over to the debtor if applied for.

In British Columbia, two weeks' notice must be given in the newspaper, and a notice of the results of the sale sent to the debtor.

In New Brunswick, the advertising is to be done by posters put up in three or four public places instead of by the newspapers.

A mechanic repairing an article covered by chattel mortgage or a conditional sales lien has first claim while he retains the article in his possession, and if the article should not sell for more than enough to cover his bill and costs of sale he takes it all.

513 Thresher's Lien in North-West Territories. Any person threshing grain has a lien upon such grain to the amount due, and may take enough of the grain, at the market value at the nearest market available, to cover the debt after deducting 2½ cents a bushel for each ten miles for drawing same to the nearest market. The grain must be taken at the time the threshing is done or within sixty days thereafter, otherwise the lien is lost.

Any person who threshes grain shall, whenever required by the Commissioners of Agriculture, send returns to the department, and in default of so doing is liable to a penalty of $25.

514 Woodman's Lien for Wages. This Act applies to the Districts of Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay, Rainy River and Provisional County of Haliburton in the Province of Ontario.

Workmen includes cooks, blacksmiths, and other artisans, as well as other workmen.

Laborers in connection with logs or timber, whether for domestic use or for export, have a first lien for the amount due over all other claims except those due the Crown.

And all contracts made by any workmen, mechanic, or any person performing manual labor to waive the application of this Act are void. This, however, does not apply to managers and foremen receiving more than $3.00 per day.

515 Statement of Claim. The statement of claim must be in writing and verified by affidavit, and then filed in the office of the Clerk of the District Court of the District in which the labor was performed.

In cases where the timber or logs got out are run down the streams into the Georgian Bay, Lake Huron, Lake Superior, Lake of the Woods, Rainy Lake, Rainy River or Nipigon River the claim may either be filed in the office of the District Court where the labor was performed, or in the office of the Clerk of the District Court of the District where the drive terminates or reaches the waters of said lakes and bays. For the District of Muskoka the statement of lien would be filed at Bracebridge, for Haliburton with the clerk of the County Court of the County Victoria, for Manitoulin filed in office of the deputy clerk of the District Court at Gore Bay.

Any number of lien holders may join in proceedings, or may assign their claims to other persons. Only one claim might be filed, but such claim must include particular statements of the several claims with affidavit of each claimant, or several claims may be filed and only one attachment be issued on behalf of all the persons so joining.

516 When Lien should be Filed. In cases of a contractor cutting or taking out logs or timber for export under a license of the Crown the claim must be filed on or before September 1st next following the performance of the labor.

In all other cases if the labor is performed between October 1st and April 1st next thereafter the statement must be filed not later than the 20th of April. For labor performed after April 1st and before October 1st the claim must be filed within twenty days after the last day of such service.

The lien expires unless suit to enforce it is commenced within thirty days after filing the statement, or thirty days after the expiry of the time of credit, if credit be given.

517 Court to Enforce Lien. A lien to the amount of $200 may be enforced by suit in the Division Court, and if over $200, then in the proper District Court where the statement of lien is filed.

If no dispute note is filed within 14 days after service of the writ judgment may be given by default.

In cases where the logs or timber are about to be removed from the Province, or the person indebted for the amount is about to abscond from the Province, or the logs are about to be sawn with other timber, so that the same could not be identified, the lien holder may, if the claim is not less than $10, have attachment issued immediately against such logs or timber. If claim is not over $200, the writ would issue from the Division Court, but if over $200, then from the District Court. Unlawful or malicious detention of logs or timber would incur a liability for whatever loss or damage was occasioned through such proceedings.

518 Illegal Payments. Payments made or offered to any person for wages by cheque, order, I.O.U., bill of exchange or promissory note, drawn upon or payable in any place outside of Ontario are illegal, and the person violating this provision is liable upon summary conviction before a stipendiary magistrate or Justice of the Peace to a penalty of not less than $5 nor more than $20.

519 Form of Statement of Claim.

I, A. B. (name of claimant), of (state residence of claimant), (if claim made as assignee then say "as assignee of," giving name and address of assignor), under the Woodman's Lien for Wages Act claim a lien upon certain logs or timber of (here state the name and residence of the owner of the logs or timber upon which the lien is claimed if known), upon the logs and timber composed of (state the kind of logs and timber such as pine, sawlogs, cedar or other posts, or railway ties, shingles, bolts or staves, etc., also where situate at time of filing the statement), in respect of the following work, that is to say (here a short description of the work done for which the lien is claimed), which work was done for (here state the name and address of the person upon whose credit the work was done) between the ..... day of ..... and the..... day of ....., at ..... (per month or day as the case may be).

The amount claimed as due (or to become due) is the sum of ..... (when credit has been given, "the said work was done on credit and the period of credit will expire on the ..... day of .....").

Dated at ....., this ..... day of ....., A.D. 19..

Signature of claimant.

520 Copyright. In Canada a copyright may be obtained by the author or publisher of any book, picture, drawing, map, chart, etc., which holds for 28 years from the date of copyright, and renewal for 14 years by author, the widow or children. The fee is $1 for registration and 50 cents for a certificate of registration, which is forwarded to the author. Three copies of the work must be forwarded to the Department of Agriculture, except in case of a painting or sculpture, etc., a written description will do instead of three copies. Every article copyrighted must contain a notice of the copyright. Any person who inserts such notice without having a copyright, is liable to a penalty of $300. An infringement of a copyright incurs a heavy penalty and the confiscation of the works. To secure a copyright write to

The Honorable the Minister of Agriculture,
(Copyright Branch), Ottawa,

who will forward a copy of the Copyright Act and full information, so that any person of ordinary intelligence may do all the correspondence. No postage is required, as the letters go free.

In Newfoundland only two copies are required, and correspondence is with the Colonial Secretary, St. John. Fee, $1.

521 Trade Marks. A *general* trade-mark, such as "Pure Gold," which a merchant or manufacturer uses to distinguish his goods of various kinds from those of others, may be registered for $30. There is no limit to its duration.

A *specific* trade-mark, which is only used for one kind of goods, as "B.B.B." (Burdock Blood Bitters), may be registered for $25, and stands for 25 years, and renewable.

Industrial designs, as letter heads, labels, etc., may be registered for $5, which secures it exclusively for five years, and an extension of five years $2. A copy of the Act may be obtained from the Minister of Agriculture (Trade-mark Branch). In Newfoundland the fee is $20.

522 Patentright. Nearly any article or machine that is new and useful may be patented. For full information write to *The Commissioner of Patents, Ottawa, Canada*, who will forward a copy of the Act.

The fees for the various periods are as follows: 18 years, $60; 12 years, $40; 6 years, $20; fee for a further term of 12 years, $40; for 6 years, $20; for lodging a *caveat*, $5; fees to register a judgment, $4; to register an assignment, $2; attaching a disclaimer to a patent, $2.

For Newfoundland the fee is $25, and the period 14 years. Address the *Colonial Secretary*.

CHAPTER XXI.

INSOLVENT DEBTORS.

523 Insolvent Debtors. We have no Bankruptcy Act in Canada by which an insolvent debtor can be forced to make assignment for the benefit of his creditors, and which will give him a release from further prosecution. But all the Provinces and Newfoundland have enacted very fair and equitable insolvency laws, which prevent insolvent traders from either fraudulently disposing of their assets, or settling with certain creditors to the prejudice of others. They all force the debtor either to leave the country or to do business in future in his wife's or some other person's name, except in Newfoundland.

In case a debtor who is practically insolvent and yet refuses to make an assignment for the general benefit of creditors, an action may be brought by one creditor on behalf of himself and all other creditors, when both the real and personal property may be sold under execution and the proceeds ratably distributed among the execution creditors and those who prove and file their claims within the time provided in each Province. The law costs of a person suing in such case would be paid in full before any distribution would be made among the creditors.

In Quebec, any creditor having an unsecured claim overdue for $200 or upwards may demand the debtor to file with the court judicial abandonment of his estate for the benefit of his creditors, and if this is not done within two days, or the debt paid, and the abandonment actually made within four days the debtor may be arrested.

524 Assignment. In Ontario and all the other Provinces except Quebec, if the debtor consents or desires to make an assignment it may

be made to the sheriff of the county or to an official assignee or to any other resident of the Province which a majority of the creditors having a claim of $100 and upwards assent to. The creditors may also make as many subsequent changes as they find necessary. An assignee may resign, so may an inspector, but a sheriff cannot refuse to complete the work of assignee of an insolvent, for that is part of his official duties, and in case of his death there would be no change, as his deputy or successor would complete the winding-up of the estate.

The assignment need not be in any precise form. It is sufficient to say, "All my personal property, real estate, credits and effects which may be seized and sold under execution" or similar words. The statutory exemptions from seizure under an execution or landlord's warrant are also reserved to the debtor who makes an assignment of his other property for the benefit of his creditors.

Any person claiming to rank as a creditor in the estate assigned must furnish to the assignee particulars of his claims proved by affidavit and such vouchers as the nature of the claim admits of.

A claim not yet due will also be included.

A wife who advanced money to her husband that was used in the business would rank as a creditor if he assigned. The husband, also, if he advanced money to his wife, who was engaged in business in her own name and on her own account separate from him, would rank as a creditor if she assigned.

525 Advertising the Assignment. In all the Provinces when an assignment is made it must be advertised in the official *Gazette* and in some local newspaper. The assignment must also be registered. If these public notices are not given, both the assignor and the assignee are liable to heavy penalties.

In Ontario the notice of the assignment must be published at least once in the *Ontario Gazette* and not less than twice in a newspaper having a general circulation in the county in which the property is situated, and if it does not appear in the first number of the *Gazette* and in such other local newspaper issued after five days from the execution of the assignment the assignor shall be liable to a penalty of $25.00 for each day that shall pass after the issue of such papers in which the notice should have appeared until it is published; and the assignee shall be liable to a similar penalty for each day that shall pass after the expiration of five days from the delivery of the assignment to him or of his assent thereto.

A copy of the assignment together with an affidavit of a witness must be registered within five days after the execution of the assignment in the office of the clerk of the County Court where the assignor resides, if a resident of the county, and if not a resident of the Province then in the county where the property so assigned is situate.

In Manitoba it must also be advertised at least once in the *Manitoba Gazette* and not less than twice in a local newspaper, and a copy of the assignment together with an affidavit of a witness of its execution be filed in the office of the clerk of the County Court where the assignor lives within ten days after its execution if a resident of

Manitoba, and if not a resident then in the Judicial Division where the personal property is located. If the assignment is not thus advertised or registered within the ten days after its execution the assignor is liable to a penalty of $20 in either case for every day of such neglect, and the assignee is also liable to same penalty in either case if not done within ten days of the assignment to him and his assent thereto.

In British Columbia the assignment must be advertised in one issue of the *B. C. Gazette*, and in one issue of a local newspaper in the county in which the assignment is registered, within ten days after the date of the assignment, giving the date of the assignment, name, residence and occupation of the assignor and of assignee. The assignment must be registered, together with the affidavit of the witness, within twenty-one days from its date, in the office of the County Court Register. The fee is $2.00. If the assignment is not so advertised and so registered within the time named the assignor is liable to a penalty of $10 for each day of such neglect, and the assignee is liable to similar penalty if the assignment is not advertised and registered within 21 days after the delivery of the assignment to him or his assent thereto.

Similar rigid requirements exist in all the Provinces and for that reason it is safer to make the assignment to the sheriff; or, if made to another person, the Provincial statutes should be carefully examined and followed in detail. Every Justice of the Peace has the statutes and information can be obtained by any person desiring it who might be contemplating an assignment.

526 Form of Notice to be published, or one similar.

NOTICE TO CREDITORS.

Notice is hereby given, that , of the town of , in the County of (hardware merchant, or as the case may be), has made an assignment to me in trust for his creditors.

A meeting of the said creditors will be held at my office at the Town of , on (Wednesday) the day of , 19 , at 2 o'clock, p.m. (or as case may be), to receive statement of affairs, appointment of inspectors, and for giving direction for the disposal of the assets, etc.

Creditors are requested to file their claims, duly verified, with me on or before the day of such meeting, after which date I shall proceed to distribute the assets of the estate, having regard only to those claims of which I shall then have received notice.

A. B., *Assignee.*

527 Priority of Claims. In distributing the assets of an insolvent the first thing to be paid is taxes; second, rent for one year; third, salaries for three months; in Quebec, wages for servants for one year and clerks, three months; fourth, mortgages; fifth, general creditors.

As to the priority of creditors to the effects of a partnership firm, the partnership creditors come first for all partnership effects, and individual creditors first for all individual property; after this the remainder is ratably divided.

In case the assignment is that of the lessee the landlord would have preference claim for rent for one year last previous to, and three months following the execution of such assignment and thereafter as long as the assignee shall retain possession of the premises.

528 Fraudulent Preference. Every gift, conveyance, assignment or transfer of any property, real or personal, made by a person at a time when he is unable to pay his debts in full, shall, as against his creditors to the extent that they are hindered, delayed or prejudiced, be considered a fraudulent preference and utterly void. Therefore any chattel mortgage given on the eve of making an assignment, either forced or voluntary, could be set aside by an action brought for that purpose. It would be valid as between the parties themselves, but not as to creditors.

Simply being in debt when a man transfers any of his property, either to a creditor, wife or relative, does not make the transfer fraudulent so long as he is still able to pay his debts in full. "Fraudulent intention" must be shown by the creditors before a sale or transfer of real or personal property can be cancelled. A large payment to one creditor or transfer of certain property just on the eve of assignment for the benefit of creditors, would have the appearance of a fraudulent intention to defraud other creditors and would be set aside if assailed.

Transfer of real or personal property by a person when solvent or before going into business cannot be set aside if the person subsequently becomes insolvent, unless it can be shown by the creditors that it was part of a scheme to defraud.

Goods may also be brought into a dealer's place of business in the regular way right up to the time he may be forced to make an assignment without having any taint of fraud in the transaction on the dealer's part, unless he was questioned by the wholesale house concerning his financial condition and misrepresented that position.

In Ontario a chattel mortgage or other transfer of property given within 60 days of insolvency may be set aside, but an overdue debt of not less than $40, must be due a creditor before he can take legal proceedings to set aside a sale or gift or assignment, neither can he combine his claim with another creditor so as to make it large enough, and then take proceedings.

In Quebec suit to set aside a fraudulent conveyance may be brought any time within one year from the time when the creditor discovered the fraudulent transaction, and the party may be made to restore the property or its value for the benefit of the creditors.

In Manitoba action must be brought within 60 days to set aside such fraudulent preference.

In Newfoundland such transfer made by a debtor within two months of his declared insolvency is null and void if the party receiving same had knowledge of the insolvency.

In British Columbia all payments made within ten days of assignment on account of a pre-existent debt are void except wages, not exceeding three months' tax and water rates.

529 Creditors' Relief Act. In the Small Debts Courts in all the Provinces, such as the Division Court in Ontario, executions from them may be executed and the money realized by the bailiff paid over to the creditor at once without regard to other creditors.

But under the provisions of the Creditors' Relief Act such priority among execution creditors has been abolished in all the Provinces when the execution issues from any of the higher courts. As the Act is almost *verbatim* in all the Provinces except Quebec and Newfoundland, the following will doubtless be a sufficient guide:

In Ontario when the sheriff levies money from an execution from a County or a High Court he is required to retain it for 30 days and to enter the particulars of the execution in a book kept for that purpose, which is open for public inspection. All other creditors whose writs or certificates of execution are in his hands at that time, or are placed with him within one month from such entry, share ratably in the distribution of the money realized.

A creditor having a judgment from the Division Court may file with the sheriff a memorandum of his judgment and costs under the seal of the clerk of said court, which will entitle him to share in the distribution.

Creditors who have not obtained judgment may file their claims according to the provisions of the Act and share in the distribution.

In British Columbia the procedure is the same for money realized on writs from the Supreme and County Courts.

In the N. W. Territories the sheriff must retain the money for two months, and then ratably distribute it among the creditors who have delivered their writs to him, unless the judge orders a longer time.

In Manitoba the sheriff holds the money three months, and then ratably distributes it among execution creditors.

In New Brunswick where the sheriff levies under an execution for $200, or upwards, it must be ratably divided as stated above.

In Newfoundland, either a debtor or a creditor may, by petition addressed to the Supreme Court or to a Supreme Court Judge, simply stating that the debtor is unable to pay his creditors 100 cents in the dollar. If the debtor is the petitioner he must attach to the petition a schedule of all his assets and liabilities. If it is by a creditor he must also attach such schedule, if he is able, and if not he must give a statement of facts sufficient to satisfy the court or judge that an order for hearing should be made. After the hearing, if the debtor is declared insolvent, the estate may be vested in a trustee for distribution among the creditors, and after the estate is thus wound-up the court or judge may give the debtor a certificate of discharge.

Two-thirds of the creditors in number and value may also agree, and upon confirmation by the judge, give the debtor a final discharge.

530 Absconding Debtors. The goods of a debtor moving out of the place, but not out of the country, cannot be stopped by a creditor unless under an execution.

In case of a person being indebted to a sufficient sum, which varies in the different Provinces, and absconds from the Province, leaving effects liable to seizure under an execution, or attempts to remove such

personal property either out of the Province or from one county to another, or keeps concealed to avoid service of process, the creditor, by making affidavit to that effect, may procure a warrant to attach such of the goods as are liable to seizure for debt. Care must be taken, however, not to seize the exemptions or to stop their removal or there would be a case for damages.

In Ontario, if the debt is not less than $4 nor more than $100, the writ of attachment may be obtained from the Clerk of the Division Court, but over that amount from the Judge of the County Court. In Quebec attachment is allowed if the debt is $5 or upward.

In British Columbia, if the debt exceeds $100, the writ may issue from the County Court if within its jurisdiction, if not, then from the Supreme Court.

In Manitoba, if the debt is not less than $10 nor more than $250, the writ may issue from the County Court, over that from King's Bench. In case of absconding from the Province the debtor loses his exemptions unless the family has been left and are in need of such goods. Then the exemptions will be in the option of the judge.

In North-West Territories, if the amount of debt exceeds $50, a writ may issue, and if absconding debtor leaves no wife or family no property is exempt.

In New Brunswick, for a sum of $40 and upwards, writs may issue by a Judge of the Supreme Court, and also from County Court when the debt is within its jurisdiction.

In Nova Scotia, if the sum is $80 and upwards, the writ may issue from the Supreme Court, or the County Court if debt is from $20 to $400.

Prince Edward Island, if debt is $33, and Newfoundland, if $20, the goods may be attached before judgment.

A debtor leaving Canada and going into the United States may be followed and suit brought in the American court. *The Canadian law prevails in the case,* but the "homestead exemptions" over there are so numerous that in the majority of cases nothing could be recovered.

Also, a judgment obtained in any of the courts in any of the Provinces of the Dominion of Canada may be sued upon in any of the States. It would be necessary to obtain an exemplification of the judgment from the court where the same is entered, under the seal of that court, and then sue upon it in the proper court of the State where the debtor resides or is domiciled.

531 Arrest of Debtors. The *fiction* is that no one in Canada can be arrested for debt, but it is only true because other names are used for the cause of arrest—fraud, absconding debtor, contempt of court, etc.

All the Provinces allow an absconding debtor to be arrested and held for bail, also imprisonment for fraudulent assignments, obtaining goods under false pretenses, and for contempt of court.

In Ontario, Manitoba and British Columbia absconding debtor can only be arrested and held for bail by a person having a claim against him for $100 or upwards.

In Quebec, if absconding from Quebec and Ontario and debt is $50 or upward.

In New Brunswick in liquidated claims, if over $20, writ for arrest may be obtained from the Supreme and County Court before judgment, but for a sum not certain an order from a judge must be obtained.

Nova Scotia's lowest sum allowing arrest is $20, when writ may issue from County Court, and from Supreme Court if debt is $80 and upwards.

Prince Edward Island, if debt is $32, writ may issue from the Supreme Court.

Newfoundland, if debt is $50, absconding debtor may be arrested.

CHAPTER XXII.

COLLECTION OF ACCOUNTS.

532 Entering Cases in Court. Merchants and others who have accounts they find it necessary to sue, can enter their own cases in the Small Debts Courts, or the Division Court of Ontario as well as any solicitor would do for them.

The plaintiff, when entering action, must leave with the clerk, by post or otherwise, a simple statement in writing (with as many copies as there are defendants) of the cause of action. If an account, it may be in the usual form of an account; in case of a note, a copy; and of any other written instrument, a concise statement of it giving its purport. Must also give his post-office address, and full name and post-office address of the defendant. Where a layman is thus entering the cases for suit, the clerk of the court will always give the information that may be needed. As a matter of fact, there is nothing to do but to put in the accounts as above stated and pay the fee for the summons.

In Ontario, if the account is under $10, the cost right through to judgment will be only $1.25 for clerk's fees, or $1.65 including the bailiff's fees for service of summons, exclusive of his mileage.

When the amount exceeds $10, the cost increases according to the amount of the bill, but in no case will much exceed $2.50.

Actions may be taken in the Division Court in following cases:

1. All personal actions where the amount claimed does not exceed $60; and in personal actions up to $100, if the parties consent thereto in writing.

2. In liquidated money claims, that is, notes and written instruments, up to $200.

3. In unliquidated claims and demands of debt as accounts, and for breach of contract, up to $100.

4. Absconding debtors, where claim is not less than $4 nor more than $200.

5. For replevin if value does not exceed $60.

533 Small Debts Courts. The fees for the inferior or Small Debts Courts in all the provinces are about the same as those given above for Ontario, and the process for entering cases and for defence similar, therefore the following two sections, together with the preceding one, will give the general information desired.

If the debtor puts in a defence and the case comes to trial it would be better in the most of cases to employ a lawyer to conduct the case at court, but up to that point there is nothing in these petty cases of debt for a lawyer to do. If the case goes to court, however, it is better to have a lawyer, for judges do not like clients to handle their own case.

534 Defences. When any person is served with a summons they should not let the few Latin words in it scare them. The summons will always state the number of days in which a defence must be entered or judgment may be given by default. If the defendant has anything to gain by defending the suit, he has the right to set up any one or more of several pleas against the claim made against him.

In cases where the debt is outlawed and the defendant intends to take the benefit of the Statute of Limitations, he must state in his dispute note that the claim is barred by statute, as it is over six years old (or as the case may be), otherwise judgment will be given against him by some judges.

535 Statement of Defence. The statement of defence is called a "Dispute note," of which the following will serve as a guide to those unfamiliar with the forms; the name of court and Province, of course, may be changed to suit. It may be sent by post, or delivered personally to the clerk.

No.....

IN THE [No.] DIVISION COURT OF [Name],

Between [give name], Plaintiff,

and [give name], Defendant.

Take notice, I dispute the Plaintiff's Claim in this cause. [Here may be specified the grounds of defence, statutory or otherwise.]

Dated this ..... day of ....., A.D. 19..

[Signature]

To the Clerk of the said court, and to the said Plaintiff.

In setting out the grounds of defence state them shortly and distinctly, using a separate paragraph for each separate defence you intend to make, if more than one, as follows:

1. That the plaintiff owes you a debt, which you claim should be set off against it, or

2. That you have performed your part of the contract, or

3. That you have offered to perform it, but that the other party refused to accept it, or

4. That you have a counter-claim as an offset to part or to the whole claim of the other, or

5. That the claim had become outlawed, as it was more than six years old, or

6. That you were under 21 years of age when the debt claimed was contracted, or

7. That you do not owe the debt claimed, or

8. That performance was impossible. (1) Through the acts of God, as lightning, tornadoes, inundations, or death. (2) By public enemies, as an invading army.

536 Garnishment. All the Provinces allow money due a debtor while yet in the hands of a third party to be attached or garnisheed, but they all exempt a certain amount due wage earners.

Salaries of officials under Dominion Government, salaries of judges, pensions, and teachers' superannuation allowances, and moneys deposited in Post-office Savings Bank are exempt from garnishment by creditors, or seizure in case of insolvency

According to a judgment delivered by Judge Morrison, April 28th, 1903, in Toronto, the salary of an alderman can not be garnisheed for debt because it is not a debt by the city due the alderman within the meaning of the Act, but merely a statutory obligation arising out of the city by-laws to pay the remuneration, hence not garnishable. No doubt the same will hold good in all the Provinces.

Money due a mechanic as contract price of work instead of for wages is not exempt.

(1) In Ontario garnishee order may issue either before or after judgment from Clerk of the Division Court, but money in the hands of a third party due a mechanic, workman, laborer, servant, clerk, or employee for wages cannot be garnisheed unless the sum due the mechanic, etc., exceeds $25, and then only to the extent of the excess. In case, however, where the debt was contracted for board or lodging, and in the opinion of the Judge the exemption of $25 is not necessary for the maintenance of the debtor's family, then the amount to be secured by the garnishee will be in the option of the Judge.

A single man with no one depending on him for support has no amount reserved to him by law against a garnishee. Neither have other classes of people who are not wage-earners, nor Provincial civil servants.

The garnishee summons costs $2 on sums up to $10, right through to judgment; from $10 to $20 it will run up to $4, and similar amounts in the other Provinces.

(2) In Manitoba summons may issue either before or after judgment. Amount reserved wage-earners, except Provincial civil servants, is $25.

(3) In N. W. Territories garnishee order may issue from Clerk of the Supreme Court, either before or after judgment. Amount reserved wage-earners, except permanent employees of the Government, is $25.

In Nova Scotia order may issue after judgment. Amount reserved wage-earners, whether married or single, is $40.

(4) In New Brunswick order issues after judgment. Amount reserved wage-earners is $20.

(5) In P. E. Island, order may issue either before or after judgment. Amount reserved wage-earners is one-half of the wages due.

(6) In British Columbia garnishee order may issue both before and

after judgment from either the County or Supreme Court or Small Debts Courts, according to jurisdiction.

Amount reserved from the Small Debts Courts to wage-earners is $30 per month for a married man or one on whom others are depending, and $20 for a single man with no one depending on him. Chap. 55, Sec. 34, R. S. of B. C.

When garnishee order issues from the County or Supreme Court, the amount reserved wage-earners is $40 per month. Chap. 52, Sec. 107, R. S. of B. C.

The exemption does not apply if the debt is for board or lodging and the Judge or Magistrate does not deem such sum necessary for the support of the debtor and his family.

(7) In Quebec, if the amount claimed exceeds $5, may be attached before or after judgment.

537 Judgment is the decree of a court delivered after a case has been decided. In Ontario and nearly all the Provinces executions may issue any time after judgment within six years without an order from the court, but after that an order from a Judge is necessary. (For time when judgments outlaw, see Section 242.) For the number of days after judgment before execution may issue for the different courts in the various provinces see following Section:

538 Execution. If the judgment or amount of damage is not paid within the time specified in the judgment, an execution may be obtained to seize and sell the debtor's property to recover the amount of the judgment and costs. The laws of each Province, however, exempt from seizure under an execution sufficient property to enable the debtor to continue his regular avocation. (See Exemptions.)

In Ontario, in the County and High Courts executions may issue immediately upon judgment, and bind both goods and lands from the date of delivery of execution to the sheriff, and any transfer or mortgage made thereafter and before seizure would be void; but executions from the Division Court do not bind the goods until after actual seizure. Executions require to be renewed every three years.

In the North-West Territories they may issue immediately after judgment, and expire in two years unless renewed. They bind the goods from the time the writ is delivered to the sheriff, except those transferred to a *bona-fide* purchaser for value without notice.

In British Columbia executions against goods issue forthwith after judgment in the Supreme and County courts and take priority from the time they are delivered to the sheriff.

In Manitoba, in the King's Bench may issue forthwith after judgment, or any time within six years, without an order from a Judge, but after six years leave must be obtained. In County Court six days after judgment, or forthwith on Judge's order. Sheriff holds money for three months to be ratably divided among execution creditors.

In Quebec executions both against goods and lands cannot issue sooner than 15 days after judgment, except in cases where attachment is permitted.

In New Brunswick, Nova Scotia and Prince Edward Island, both in

Supreme and County Courts, may issue forthwith, unless an appeal is pending, and any time thereafter for 20 years. They bind goods and chattels of the debtor from the time they are given to the sheriff against all persons except *bona fide* purchasers.

In Newfoundland, in the District Courts executions may issue immediately after judgment; in Supreme Court, in cases for payment of money or recovery of land, may issue forthwith, but in all other cases in 14 days. Must be renewed every year.

539 Executions Binding Land. In all the Provinces executions may bind the lands of the judgment debtor. Executions against goods cannot be filed against lands until an attempt to recover against the goods has failed, and the execution been returned marked "No good."

In Ontario all executions issued from the County and High Courts bind both goods and lands from the date of delivery of execution to the Sheriff. Land, however, cannot be sold before one year from time the writ is delivered to the Sheriff. In the Division Court executions of $40 and upward may issue directed to the Sheriff, in which case they also bind lands of the debtor the same as those from the High and County Courts. Division Court judgments of $40 and upwards, that have been returned marked "No good," and all County and High Court judgments may be recorded in the Land Titles Office, the same as other instruments affecting land.

The Act says the sheriff shall not send certificates of execution to the Land Titles Office unless upon written request of the plaintiff or his solicitor. Lands against which an execution has been recorded cannot be sold until one year after the writ of execution has been filed, and then only by giving three months' notice of sale. These entries in the Land Titles Office must be renewed every four years in order to continue to bind the land.

In British Columbia judgments registered in any Registration District, that Registrar is required to forward notice in writing to all other Registrars in the Province, and from the delivery of such notice the judgment binds all the property of the judgment debtor in the Province. Priority of registration creates priority of claim. To be kept good they must be renewed every two years.

When an assignment or cancellation of a judgment is registered, notice is also sent by the Registrar to all the other Registrars of the Province. Fee for registering a certificate of judgment is $2 and for a cancellation 50c.

In Manitoba judgments issued from the County Court for a sum exceeding $40 may be recorded in the Land Titles Office. They must be renewed every two years.

In the North-West Territories judgments for $50 and upwards may be registered against lands. They bind from the time of the receipt of the writ by the Sheriff, but the land cannot be sold within less than twelve months thereafter.

In Nova Scotia judgments from the Supreme and County Court may be recorded against lands, and execution may issue any time within six years without an order from the court.

In New Brunswick judgments in the Supreme and County Courts may be registered and bind lands in that county for five years, when they may be renewed.

In Prince Edward Island judgments issuing from the Supreme Court bind lands of the judgment debtor from time of entry of judgment, providing a minute has been filed with the judgment, but lands cannot be sold until after six months from issue of statute execution. Those from the County Court only bind after a levy has been made.

540 Judgment Summons. In case there is not property found with which to satisfy the judgment claim, most of the Provinces permit the creditor in suits before the small debts or inferior courts to have the debtor summoned before the court to be examined on oath as to the disposition he may have made of his property. Every such summons should be obeyed, for the person not making his appearance, at such time as directed in his summons, before the court, to be examined on oath as to the disposition he may have made of his property, may be imprisoned for contempt of court.

After such hearing before the Judge, the latter may order a weekly or monthly payment, and if the sum is not paid the debtor may also be imprisoned for contempt of court. If circumstances should arise afterwards by which this amount cannot be paid, the debtor should go to a lawyer and have a statement prepared to bring the matter before the Judge to have his first order set aside or changed.

No other judgment will be enforced against a debtor while he is paying off in this way one judgment.

The debtor may also be imprisoned if he refuses to answer questions, or to produce papers and books required by the court, or for a fraudulent disposition of his goods.

The judgment debtor being summoned to appear before the Judge to be examined is like any other witness and if he demands it must be paid both mileage and his day's fees.

In Ontario the Division Court Act provides that in case of mortgages where the principal or interest is sued for separately in the Division Court the Judge cannot commit the debtor to gaol on a judgment summons in any case where it could not be done on a judgment recovered in a higher court, that is for fraud only. The same would hold in the other Provinces.

The Ontario Act is further amended by taking from the Judge the authority to commit to gaol for non-payment of the sum ordered to be paid altogether, or by instalments, if it can be shown that such payments would have deprived the debtor or his family of the means of living. The Act now virtually allows commitment to gaol only in cases where there is some element of fraud. Commitment may then be for 40 days, instead of 30, as previously limited.

In Ontario judgment summons only issue out of the Division Court; cost of summons and hearing the case is $2.50.

Quebec, Prince Edward Island and North-West Territories do not use the judgment summons process except for examination.

In Manitoba the limit of imprisonment is 40 days.

541 Exemptions. All the Provinces reserve a reasonable amount of property exempt from seizure under any execution, a landlord's warrant in most cases, and distress by mortgagee for arrears of interest.

Where the debtor has more of any kind of property or articles than are exempt he is entitled to make choice of the part he wishes to retain. The bailiff or officer making the seizure has no legal authority to interfere in the selection.

All the chattels so exempt from seizure as against a debtor, after his death, or in case he should abscond, leaving his family behind, the widow or family, should there be no widow, are entitled to.

Tenants in signing a lease for property should be careful that it does not contain an agreement to waive their right to the exemptions the statutes reserve from seizure, for such Shylock forms of leases are frequently used.

In Manitoba such agreement would be null and void, but it would be binding in all the other Provinces and in such cases the landlord would seize and sell all the exemptions.

In Ontario the following chattels are exempt from seizure under any writ or from distress by landlord or mortgagee for arrears of interest or for landlord's tax :

1. The bed, bedding and bedsteads, including a cradle, in ordinary use by the debtor and his family.

2. The necessary and ordinary wearing apparel of the debtor and his family.

3. One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, one shovel, one coal scuttle, one lamp, one table, six chairs, one washstand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one broom, 12 knives, 12 forks, 12 plates, 12 teacups, 12 saucers, one sugar basin, one milk jug, one teapot, 12 spoons, two pails, one washtub, one scrubbing brush, one blacking brush, one wash board, three smoothing irons, all spinning wheels, one weaving loom in domestic use, one sewing machine and attachments, thirty volumes of books, one axe, one saw, one gun, six traps and such fishing nets as are in common use. The articles in this sub-division not exceeding in value $150.

4. All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the debtor and his family for 30 days and not exceeding in value the sum of $40.

5. One cow, 6 sheep, 4 hogs and 12 hens, in all not exceeding in value $75, and food therefor for 30 days, and one dog.

6. Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $100.

7. Bees reared and kept in hives to the extent of 15 hives.

The debtor may, in lieu of keeping the tools and implements mentioned in section 6, elect to receive the proceeds of their sale in cash up to $100, in which case the officer executing the writ would pay over to the debtor $100 if those goods sold for that much, net, and this amount the creditor could not seize.

None of the articles enumerated in sub-sections 3, 4, 5, 6 and 7 are exempt from seizures in satisfaction of a debt contracted for that identical article.

For tenants renting by the month see Section 886.

In Manitoba. (*a*) The bed and bedding in common use for the debtor and his family, and also his household furnishings, not exceeding in value $500.

(*b*) The necessary and ordinary wearing apparel of the debtor and his family.

(*c*) Twelve volumes of books, the books of a professional man, one axe, one saw, one gun, 6 traps.

(*d*) The necessary food for the debtor and his family for 30 days.

(*e*) Six cows, 3 oxen or 3 horses or mules over four years of age, 10 sheep, 10 pigs, 50 fowls, and food for the same for 11 months. The horses to be exempt must be such as are used by the debtor in earning his living.

(*f*) The tools, agricultural implements and necessaries used by the debtor in the practice of his trade, profession or occupation to the value of $500.

(*g*) The articles and furniture necessary to the performance of religious service.

(*h*) The land upon which the debtor or his family actually resides or cultivates, either wholly or in part, or which he uses for grazing or other purposes to the extent of 160 acres.

(*i*) The house, barns, stables and fences on the debtor's farm.

(*j*) All the necessary seeds of various varieties or roots for the proper seeding and cultivation of 80 acres.

(*k*) The actual residence or home of any person other than a farmer, providing the same does not exceed the value of $1,500. If it is worth more it may be sold providing $1,500 out of the proceeds is paid over to the debtor.

None of the property in this list is exempt if the debt is for the same article.

The exemptions do not hold against debts due municipalities for seed grain.

Every agreement, even in writing and under seal, whereby a person waives or abandons his right or privilege of exemption is absolutely null and void by statute.

Growing crops cannot be seized and sold until they are harvested.

In British Columbia. No exemptions against sale for tax or distress for rent, except lodgers' goods, and a limit of three months' rent against goods sold to the tenant under the Conditional Sales Act.

(*a*) The homestead, so registered according to the laws of the Province, if not exceeding in value $2,500, is absolutely exempt from seizure or sale by any process at law or equity.

If it exceeds in value $2,500, then the excess only is subject to seizure and sale.

Personal property to the value of $500 is exempt. None of such property is exempt if the debt was contracted for that identical article.

The fee for the registration of land as a "homestead" is $5. This does not include the registering of the title, but simply the homestead.

In North-West Territories the following property is exempt from seizure under writs of execution:

1. The necessary and ordinary clothing of the debtor and his family.
2. The furniture and household furnishings belonging to the debtor and his family to the value of $500.
3. The necessary food for the defendant's family during six months, which may include grain and flour, or vegetables and meat, either prepared for use or on foot.
4. Six cows, three oxen, horses or mules, or any three of them, six sheep, three pigs and fifty domestic fowls, besides the animals the defendant may have chosen to keep for food purposes, and food for the same for the months of November, December, January, February, March and April or for such of those months as may follow the date of seizure, providing such seizure be made between the 1st of August and the 30th day of April next ensuing.
5. The harness necessary for three animals, one waggon or two carts, one mower or cradle and scythe, one breaking plow, one cross plow, one set harrows, one horse rake, one sewing machine, one reaper or binder, one set sleighs and one seed drill.
6. The books of a professional man.
7. The tools and necessary instruments used by the defendant in the practice of his trade or profession to the value of $200.
8. Seed grain sufficient to seed all his land under cultivation, not exceeding 80 acres at the rate of two bushels per acre, defendant to have choice of seed, and 14 bushels of potatoes.
9. The homestead of the defendant, provided the same be not more than 160 acres; in case it be more, the surplus may be sold subject to any lien or encumbrance thereon.
10. The house and buildings occupied by the defendant and also the lot or lots on which the same are situate to the extent of $1,500.

No article is exempt from seizure, except for the food, clothing and bedding of the defendant and his family, if the debt is for that specific article.

In New Brunswick, the exemptions from seizure under execution are the following:

The wearing apparel, bedding, kitchen utensils and tools of trade or calling to the value of $100.

In Nova Scotia the following articles are exempt from seizure under any writ of execution:

1. The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family.
2. One stove and pipes therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk jug, one teapot, six spoons, one spinning wheel and one weaving loom if in ordinary domestic use, 10 volumes of religious books,

one water bucket, one axe, one saw, and such fishing nets as are in common use, the value of such not to exceed $20.

3. All necessary fuel, meat, fish, flour and vegetables actually provided for family use and not more than sufficient for the ordinary consumption of the debtor and his family for 30 days and not exceeding in value $40.

4. One cow, two sheep and one hog and food therefor for 30 days.

5. Tools and implements of, or chattels ordinarily used in the debtor's occupation to the value of $30.

None of the articles enumerated in sections 2, 3, 4 and 5 are exempt from seizure in satisfaction of a debt contracted for that identical article.

Quebec:

1. The bed, bedding and bedsteads in use by the debtor and family.

2. The ordinary wearing apparel of the debtor and his family.

3. Two stoves, pipes and other accessories, household effects to the value of $50, fifty volumes books, family portraits and sewing machine.

4. Fuel and food sufficient for the debtor and his family for three months.

5. One span of plow horses, or one yoke of oxen: one horse, one summer vehicle and one winter vehicle, and the harness used by a carter or driver for earning his livelihood; one cow, two pigs, four sheep and the wool from such sheep, cloth manufactured from such wool, and hay and other fodder for food for such animals, and the following agricultural implements: One plow, one harrow, one working sleigh, one tumbrel, one hay cart with its wheels, and the harness necessary for farming purposes.

6. Tools and implements used in trade to the value of $200, and bees to extent of fifteen hives; and books relating to his profession, art or trade to value of $200.

7. Books of account, titles of debt and other papers in possession of the debtor are exempt. Also sacred vessels used for religious worship, alimentary allowances granted by a court, sums of money bequeathed upon condition of their being exempt from seizure, money or pensions given as alimony, wages and salaries not yet due, pay and pensions of persons belonging to the army and navy, salaries of school teachers and emoluments of clergymen due for actual services, salaries of public officers, and provincial civil servants to the extent of two-thirds or four-fifths, according to salary; wages of workmen and laborers to the extent of three-fourths.

In Newfoundland the exemptions from attachment or execution are:

1. Goods of lodgers and boarders.

2. The common law exemptions, as fixtures, wild animals, goods delivered to a person in the way of trade, things in actual use, and goods in the custody of the law.

3. The tools and implements of trade, fishing skiff or punt, the necessary cooking apparatus, bedding and wearing apparel of himself and family.

542 Interest. The legal rate of interest in Canada is now five per cent., but we have no usury law. A note drawn where nothing is said about interest will not draw interest until maturity, but if not paid at maturity it will then commence to draw five per cent. A note drawing a higher rate than five per cent., if not paid at maturity will drop to five, and a note drawing a lower rate than five, if not paid at maturity will rise to five per cent.

If the rate is over or under five per cent., and it is desired that it should remain at that rate after maturity also, a clause must be added like the following: "With interest at (the rate desired) until maturity, and thereafter at the same rate until paid."

Any rate of interest that a man agrees to pay and is written in the note, mortgage or other instrument, will be collected, provided that if the rate of interest agreed to be paid per day, week, month, or any period less than a year exceed five per cent. *per annum* no more than five per cent. can be recovered, unless the contract states the yearly rate of interest to which such other rate is equivalent. This paragraph does not apply to mortgages on real estate.

Compound interest cannot be collected unless it is agreed in the contract to be paid.

Book Accounts differ from Notes. A book account overdue will not draw interest, unless the merchant has it printed on his invoices and bills he gives with the goods that interest will be charged after a certain date. Then it can only be five per cent., unless the debtor is willing to pay more. Simply having eight or ten per cent., as the case might be, printed on the invoices does not make the charge legal, and the debtor may refuse to pay anything over five.

Judgments also draw five per cent. interest. Chartered banks are allowed seven per cent., and collect it; but there is no penalty if they charge more.

In Newfoundland the legal rate is still six per cent.

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