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THE CIVIL CODE OF SPAIN

PRELIMINARY TITLE

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CIVIL CODE

PRELIMINARY TITLE.

LAWS, THEIR EFFECT, AND GENERAL RULES FOR THEIR APPLICATION.

ARTICLE 1. Laws shall be binding in the Peninsula, in the adjacent islands, in the Canaries, and in the African territory which is subject to Peninsular legislation, twenty days after their promulgation, if not otherwise provided therein.

The promulgation shall be understood as made on the day of the termination of the publication of the law in the Gazette.

1. See Sec. 11 of Ad. Code of 1917 for rule as to time when acts of legislature take effect.
2. Civil Code took effect Dec. 7, 1889. Mijares v. Nery, 3 Phil. 195.
3. Legislature cannot limit legislative power of subsequent legislatures. Duarte v. Dade, 32 Phil. 36.
4. Change of sovereignty did not repeal laws not political in character. Phil. Govt. v. Monte de Piedad, 35 Phil. 728.
5. See Askay v. Cosalan, 46 Phil. 179.

ART. 2. Ignorance of the law does not excuse any one from compliance therewith.

1. See Sec. 12, Ad. Code of 1917.
2. Ignorance of procedural law is not excuse for failure to take timely appeal. Zulueta v. Zulueta, 1 Phil. 258.
   See also U. S. v. Gray, 8 Phil. 506; U. S. v. Deloso, 11 Phil. 182; U. S. v. Que Quenco, 12 Phil. 450.
3. Knowledge of facts shown by public land records imputable, whether known in fact or not. Legarda et al. v. Saleeby, 31 Phil. 590.

4. Ignorance of the Usury Law affords no relief from the consequences of a usurious contract. Delgado v. Alonso, 44 Phil. 739.

ART. 3. Laws shall not have a retroactive effect unless it is otherwise provided therein.

1. See Arts. 2 and 20, Penal Code.
2. The provisions of the Civil Code cannot prejudicially affect rights acquired prior to its promulgation. Cosio v. Pili, 10 Phil. 72; Sy Joc Lieng v. Sy Quia, 16 Phil. 137.
3. Subsidiary imprisonment cannot be imposed if law providing for it was passed subsequent to the act complained of. U. S. v. Macasaet, 11 Phil. 447.
4. *Quære,* if rule of Art. 22 Penal Code on nonretroactivity of penal laws unless favorable to accused also applies to laws passed by Philippine Commission and Philippine Legislature. U. S. v. Cuna, 12 Phil. 241.
5. Laws have no retroactive effect except in certain cases, as for instance:
   a. When the new law refers to a matter of procedure or is passed for the sake of convenience, and does not affect substantial rights. Aguillon v. Directors of Lands, 17 Phil. 506; Montilla v. Augustinian Corpn., 24 Phil. 220.
   b. When the new act expressly provides that it shall have retroactive effect, and no constitutional question is involved. Gov't of the P. I. v. Standard Oil, 20 Phil. 30.
   c. When a right is first declared in a new law, same may be asserted although the facts giving rise to it took place under the former law. Bona v. Briones, 38 Phil. 276.
   d. In order to establish criminal intention, facts which took place prior to the enactment of the Usury Law may be proved. U. S. v. Tan Quinco Chua, 39 Phil. 552.
6. In case of doubt, legislative intention must be resolved against retroactivity. This rule applied to a new act changing requirements of will. Estate of Jose Riosa, 39 Phil. 23.
7. Laws cannot be given retroactive application if the effect would be to impair the obligation of an existing contract. Asiatic Petroleum Co. v. Llanes, 49 Phil. 466.

8. A statute may not be given retroactive effect unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. Segovia v. Noel, 47 Phil. 543.

ART. 4. Acts performed contrary to law are void, except in cases in which the law itself gives validity to such acts.

Rights granted by law may be waived, provided such waiver be not contrary to public interest or public order, or prejudicial to a third person.

1. See Arts. 45, 62, 65, 101, 646, 652, 655, 1115, 1116, 1263 et seq., Civil Code; Arts. 13, 14, 74, 450, 463, 504, 737, 899, Code of Commerce; Art. 23, Penal Code.
2. An unregistered notarial bill of sale of large cattle does not transfer title. Ramos v. Hijos de I. de La Rama, 15 Phil. 554.
3. Venue of actions may be waived. Manila Railroad v. Att. Gen., 20 Phil. 523.
4. A forged deed is a nullity and conveys no title. Director of Lands v. Addison, 49 Phil. 19.
5. Where two statutes of different dates and of contrary tenor are of equal theoretical application to a particular case, the statute of later date prevails. Herman v. Radio Corporation of the Philippines, 50 Phil. 490.

ART. 5. Laws are repealed only by other subsequent laws, and neither disuse nor any custom or practice to the contrary shall prevail against their observance.

1. See Arts. 12 and 13, Civil Code; Art. 373, Penal Code.
2. If penalty provided in a later act is lighter than that provided in the former act, this former act is deemed repealed at least as to the penalty. U. S. v. Reyes, 10 Phil. 423.
3. The repeal of a penal law does not deprive courts of jurisdiction to punish acts committed prior to its repeal, provided prosecution is started before such repeal. U. S. v. Tonga, 15 Phil. 43; U. S. v. Molina, 17 Phil. 582.
4. Implied repeals not favored:
   a. Ordinance regarding inspection of cattle for slaughter is not incompatible with Act 1147 regarding cattle registration. U. S. v. Chan Tiengco, 25 Phil. 89.

b. Whether an Act of Congress repeals a former Act of Congress depends upon legislative intention. Tan Te v. Bell, 27 Phil. 354.

c. Sec. 622 of the Code of Civil Procedure is not repugnant to Art. 752 of the Civil Code, and they may stand together. Calderon v. Santisimo Rosario, 28 Phil. 164.

d. The compulsory proceedings for registration under the Public Land Act have not been superseded by the compulsory proceedings for registration provided in the Cadastral Act. Gov't of the P. I. v. Binalonan, 32 Phil. 634.

e. An Act of Congress imposing a tax on persons dealing in prohibited drugs does not repeal a prior Act of Congress authorizing the Philippine Legislature to pass acts restricting the importation, etc., of opium. U. S. v. Tan Oco, 34 Phil. 772.

f. The act of the Philippine Legislature fixing the maximum age of judges of First Instance is valid although Congress had before passed an act prescribing the method of appointment of such judges. Chanco v. Imperial, 34 Phil. 329.

g. A general law, no matter how broad and inclusive, does not impliedly repeal a prior special law or grant, unless there is a clear and necessary conflict between the two. Manila Railroad v. Rafferty, 40 Phil. 224; Ynchausti v. Stanley, 36 Phil. 178.

5. The repeal of a law which impliedly—not expressly—repeals a former law, revives the former law. U. S. v. Soliman, 36 Phil. 5.

6. Ordinances passed under the former Municipal Code are not abrogated by its repeal by the Adm. Code. U. S. v. Blanco, 37 Phil. 126.

7. Negative statutes impliedly repeal former statutes unless legislative intention to the contrary clearly appears. Garcia Valdez v. Soteraña Tuason, 40 Phil. 943.

8. Repeals by implication are not favored. Where two statutes cover the same matter, in whole or in part, the courts should, if possible, give effect to both. Lichauco & Co. v. Apostol, 44 Phil. 138.

9. A general law does not repeal a former special law unless it is so expressly provided, or they are incompatible. Tabacalera v. Collector of Customs, 46 Phil. 8.

ART. 6. Any Court which shall refuse to render judg-

ment upon the pretext of the silence, obscurity, or insufficiency of the law shall be liable therefor.

When there is no statute exactly applicable to the point in controversy, the custom of the place shall be applied, and, in the absence thereof, the general principles of law.

1. See Art. 16, Civil Code; Arts. 2, 50, 59, 310, 943, Code of Commerce; Art. 353, Penal Code; Sec. 9 of the Code of Civil Procedure.
2. Price for lease of work or services may be proved by custom of the place. Smith v. Lopez, 5 Phil. 78.
3. Duration of lease of personalty for indefinite period to be governed by rules of the Civil Code regarding lease of real property. Cerrano v. Tan Chuco, 38 Phil. 392.
4. Custom must be proved as any other fact and if contrary to law cannot be enforced. Patriarca v. Orate, 7 Phil. 390.
5. A rule of interpretation of tariff laws continued for a long time must be followed unless there are strong reasons to the contrary. Kuenzle & Streiff v. Col. of Customs, 12 Phil. 117.
6. English and American common law not binding on our courts unless founded on sound principles applicable to local conditions, and not in conflict with existing laws. U. S. v. Cuna, 12 Phil. 241; Arnedo v. Llorente, 18 Phil. 257; U. S. v. Abiog, 37 Phil. 137.
7. Commercial contracts must be understood according to the practice of merchants in the locality where they were made. Lichauco v. Armstrong, 17 Phil. 39; Asiatic Petroleum Co. v. Col. of Int. Rev., 38 Phil. 510.
8. In case of doubt as to which rule to apply, that which best promotes public policy must be applied. Rubi v. Prov. Bd. of Mindoro, 39 Phil. 660.
9. Article applied:
   a. The custom of cocheros in Manila to leave their horses unattended while helping passengers in unloading cargo, proved and sanctioned. Martinez v. Van Buskirk, 18 Phil. 79.
   b. Doubt as to requirements governing purchase and sale of realty prior to the Civil Code; general rule applied that possessor is presumed owner. Jumero v. Lizares, 17 Phil. 117.
   c. General rules of law as to compensation applied to salvage. Urrutia v. Pasig S. & L. Co., 22 Phil. 330.

d. Judge cannot dismiss a case requiring decision as to who was the winner in a cockfight solely because he is unacquainted with rules of cockfighting. Chu Jan v. Bernas, 34 Phil. 631.

See also: Gomez v. Hipolito, 2 Phil. 732; Forbes v. Chuoco Tiaco, 16 Phil. 534; Alzua v. Johnson, 21 Phil. 308.

10. Meaning of "general principles of law" as used in this article. *In re* Shoop, 41 Phil. 226.

ART. 7. Whenever months, days, or nights are referred to in the law, it shall be understood that the months are of thirty days, the days of twenty-four hours, and the nights from the setting to the rising of the sun.

If months are designated by name, they shall be computed by the actual number of days they have respectively.

1. See Arts. 60, 62, 451, et seq., 942 et seq., of the Code of Commerce; Arts. 10, 28, 96, 101, and 132 of the Penal Code; Sec. 31 of the Adm. Code of 1917; Sec. 4, Code of Civ. Proc.; Secs. 85 and 86 of the Neg. Insts. Act.
2. The time provided in bill of lading within which to present claim must be counted from the moment consignee can exercise acts of ownership upon the merchandise, excluding the time it was kept in the Custom House. Cordoba v. Warner, Barnes & Co., 1 Phil. 7.
3. Time to be computed from and after 12 o'clock at night of the day from which to begin, until 12 o'clock at night of the last day designated. U. S. v. Painaga, 27 Phil. 18.
4. "Month" means a month of thirty days and not calendar month. Guzman v. Lichauco, 20 Off. Gaz. 7.
5. The period of thirty days as fixed in this article has now been changed by Sec. 13 of the Administrative Code to calendar months. The "tenth" day within which to pay rent in accordance with Sec. 88 of the Code of Civil Procedure, defined and discussed. Guzman v. Lichauco, 42 Phil. 292.

ART. 8. Penal laws, and those of police and public security, are binding on all who reside in Spanish territory.

ART. 9. The laws relating to family rights and duties, or to the status, condition, and legal capacity of persons,

are binding upon Spaniards even though they reside in a foreign country.

1. See Arts. 17, 22, 26, 732 et seq., Civil Code; Art. 15, Code of Commerce.
2. See notes under Arts. 11 and 15, Civil Code.
3. Concurring opinion of Mr. Justice Torres that a Spanish parent may still emancipate a minor child by concession. Ibañez de Aldecoa v. Hongkong Bank, 30 Phil. 250.
4. Jurisdiction over matrimonial questions formerly vested in the ecclesiastical courts, now lies with the courts of first instance. Benedicto v. De la Rama, 3 Phil. 34; Ibañez v. Ortiz, 5 Phil. 325; Yañez de Barnuevo v. Fuster, 29 Phil. 616.
5. Foreign divorce; validity. See Gorayeb v. Hashim, 50 Phil. 22, cited under Art. 105.

ART. 10. Personal property is subject to the laws of the nation of the owner thereof; real property to the laws of the country in which it is situated.

Nevertheless, legal and testamentary successions, in respect to the order of succession as well as to the extent of the successional rights and the intrinsic validity of their provisions, shall be regulated by the national law of the person whose succession is in question, whatever may be the nature of the property or the country in which it is situated.

Viscayans, even though they reside in towns, shall continue to be subjects, with respect to the property they possess in the level lands, to law 15, title XX, of the *Fuero de Vizcaya*.

1. See Arts. 12, par. 2, 334 to 337 of the Civil Code; Sec. 684, Code of Civil Procedure.
2. Under the Spanish laws prior to the Civil Code, a Chinaman who acquired a domicile in the Philippines was subject as to his personal and real rights to the Spanish laws, the same as any Spaniard. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.
3. An American citizen may leave his property by will made in accordance with the laws of his own State. *In re* Estate of Johnson, 39 Phil. 156.

4. See also concurring opinion of Justice Torres in Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 255 cited under Art. 9.
5. A domiciled citizen of an American State may dispose of property in the Philippines by will executed in a form authorized by the law of such State. Templeton v. Babcock, XXVII Off. Gaz. 153.
6. The condition in a will that property shall be distributed in accordance with the laws of the Philippines, instead of the national law of the testator, is void. Miciano v. Brimo, 50 Phil. 867.

ART. 11. The forms and solemnities of contracts, wills and other public instruments are governed by the laws of the country in which they are executed.

When such instruments are authenticated by diplomatic or consular officials of Spain abroad, the formalities required by Spanish laws for their execution shall be observed.

Notwithstanding the provisions of this and the next preceding article, prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals shall not be made nugatory by any foreign laws or judgments, nor by any action taken or agreement made in a foreign country.

[733] C. Com. 475, 578.

1. See Sec. IV, General Order No. 68; Secs. 300–306, 309–311, 313, 635–637, Code of Civil Procedure; Act No. 2103.
2. A power of attorney executed in Germany must be judged as to its due execution by the laws of that country. Germann & Co. v. Donaldson, Sim & Co., 1 Phil. 63.
3. The age of majority as determining the capacity to contract depends upon the law of the place where the contract was made, not that of the place of performance. Gov't of P. I. v. Frank, 13 Phil. 236.

ART. 12. The provisions of this title, in so far as they determine the effect of the laws and of the statutes and establish general rules for their application, are binding in all the provinces of the Kingdom. The provisions of Title IV of Book I are likewise binding.

In all other respects, the special local law, either statutory or customary, now existing in any of the provinces or territories shall continue in force in its entirety without alteration in any respect by reason of the publication of this code, which shall have effect only as suppletory to any other law recognized as such by special laws in each one of such provinces or territories.

[61, 149, 1458]

1. See notes under Art. 42.

ART. 13. Notwithstanding the provisions of the next preceding article, this code shall take effect in Aragon and in the Balearic Islands at the same time as in the provinces not under the special local laws, in so far as it is not in conflict with such provisions of the local or customary laws as are now in force therein.

[1458]

ART. 14. In accordance with Article 12, the provisions of Articles 9, 10, and 11, concerning the persons, acts, and property of Spaniards abroad and of foreigners in Spain, are applicable to the persons, acts and property of Spaniards in territories or provinces having different civil legislation.

ART. 15. Family rights and duties, those relating to the status, condition, and legal capacity of persons, and the rules of testate and intestate succession established in this code, are applicable.—

1. To persons born in the common-law provinces or territories of parents subject to the special local law, if the latter, during the minority of their children, or such children themselves, within the year following their majority or emancipation, declare it to be their desire to submit themselves to the Civil Code.

2. To children whose father or, if the latter be dead or unknown, whose mother is a citizen of any province or territory subject to the common-law, even if such children

shall have been born in some province or territory still subject to the local law.

3. To persons coming from provinces or territories subject to local law, who have acquired a domicile in other provinces or territories, subject to the common-law.

For the purposes of this article such domicile shall be acquired by living for ten years in provinces or territories subject to the common-law, unless the interested party, before the termination of this period, expresses a contrary intention, or by living therein two years, provided that the interested party states that such is his will. Either declaration must be made before the municipal judge for record in the civil registry.

In any case, the wife shall follow the condition of the husband; and children, not emancipated, that of their father, or, in his default, that of their mother.

The provisions of this article are of reciprocal application to the Spanish provinces and territories having different civil legislation.

1. A Spaniard born in Mallorca, who resided in the Philippines for seventeen years and registered in the Spanish Consulate as a Spaniard, and not as a Mallorquin, held subject as to his conjugal rights to the Spanish common law, and not to the special law of Mallorca. Yañez de Barnuevo v. Fuster, 29 Phil. 612.

ART. 16. In matters which are governed by special laws, any deficiency of the latter shall be supplied by the provisions of this code.

[1101, 1923]

1. Provisions of the Civil Code regarding purchase and sale not applicable to transfer of large cattle except in so far as to supply any deficiency of Special Act No. 1147. Ramos v. De la Rama, 15 Phil. 554.
2. Any deficiency in the Insurance Act may be supplied by pertinent provisions of the Civil Code. Enriquez v. Sun Life Assur. Co., 41 Phil. 272.

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ABBREVIATIONS USED

[ ]=—Civil Code (Cross-references)
C. C. P.=Code of Civil Procedure (Act 190)
C. Com.=Code of Commerce (Spain)
M. L.=Mortgage Law (Ley Hipotecaria de Ultramar)
Off. Gaz.=Official Gazette (Philippines)

All decisions cited refer to Philippine Reports except where otherwise noted.

BOOK FIRST.

PERSONS.

TITLE I.

SPANIARDS AND FOREIGNERS.

ART. 17. The following are Spaniards:

1. Persons born in Spanish territory.

2. Children of a Spanish father or mother, even though they were born out of Spain.

3. Foreigners who may have obtained naturalization papers.

4. Those who, without such papers, may have acquired a domicile in any town in the Monarchy.

1. See the Naturalization Act, No. 2927.

2. Arts. 17 to 27 of the Civil Code being political in nature have been repealed by the change of sovereignty. Roa v. Col. of Customs, 23 Phil. 315.

3. Filipinos are not citizens of the United States in the strict sense, but, from an international standpoint, at least in so far as to entitle them to protection in their personal and property rights, they are citizens. Op. of the Att. Gen. of Sept. 24, 1906.

See also opinions of the Att. Gen. of June 24, 1909; July 16, 1910; Sept. 5, 1910; Sept. 30, 1910; Sept. 16, 1901; August 8, 1901; Sept. 28, 1906; Sept. 29, 1904; April 12, 1905; October 14, 1904; May 4, 1905; August 1, 1902; February 12, 1903, and Sept. 4, 1905.

4. Decision of administrative officials upon right of alien to enter the Islands is final unless abuse of discretion is alleged. Ngo Ti v. Shuster, 7 Phil. 355; Juan Co. v. Rafferty, 14 Phil. 235; Que Guay v. Col. of Customs, 33 Phil. 128; Lim Yong v. Col. of Customs, 36 Phil. 424.

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5. Under Act 520 an agreement of co-ownership between a foreigner and a Filipino of a vessel for the coastwise trade was not illegal. Perez v. Herranz, 7 Phil. 693.
6. Qualifications to enter the Islands must exist before entry; subsequent acquisition unavailing. Juan Co. v. Rafferty, 14 Phil. 235.
7. Forfeiture of citizenship may be express or implied. Pascual Lorenzo v. McCoy, 15 Phil. 559; Muñoz v. Collector of Customs, 20 Phil. 494; U. S. v. Ong Tianse, 29 Phil. 332; Lim Teco v. Col. of Customs, 24 Phil. 84; Que Quay v. Col. of Customs, 33 Phil. 128; Uy Po v. Col. of Customs, 34 Phil. 153.
8. Persons born in the Philippines to parents of foreign nationality are presumed to be Filipinos. Roa v. Col. of Customs, 23 Phil. 315; U. S. v. Lim Bin, 36 Phil. 924; U. S. v. Ang, 36 Phil. 858.
9. All persons born in the Philippines are natives of the Philippines within the meaning of that term as used in the Naturalization Law. Go Julian v. Government, 45 Phil. 289.
10. Naturalization proceedings may not be invoked for the purpose of establishing the Philippine citizenship of an applicant who claims that he was born in the Philippine Islands and therefore entitled to the status of a citizen of the Philippines. Santos Co. v. Government, XXVI Off. Gaz. 3517.
11. A native of the Punjab, India, is not qualified to become a citizen of the Philippine Islands by naturalization. Ratan Singh v. Govt. of the P. I., XXVII Off. Gaz. 4237.

ART. 18. Children, while they remain under parental authority, have the nationality of their parents.

In order that children born of foreign parents in Spanish territory may enjoy the benefits granted them by paragraph 1 of Article 17, it shall be an indispensable requisite that the parents declare, in the manner and before the officials specified in Article 19, that on behalf of their children, they choose the Spanish nationality, renouncing any other.

1. See Arts. 17, 154, 167 et seq., 177, 314 et seq.; Civil Code; and notes under Arts. 17 and 19, same.

2. Children under parental authority follow the nationality of their parents. Op. of the Att. Gen., Sept. 29, 1904.
3. See also Roa v. Col. of Customs, 23 Phil. 315.

ART. 19. Children of foreign parentage born in Spanish domains must state, within the year following their majority or emancipation, whether they desire to enjoy the Spanish nationality granted them by Article 17.

Those who are in the Kingdom shall make this declaration before the official in charge of the civil registry of the town in which they reside; those who reside abroad, before one of the consular or diplomatic agents of the Spanish Government, and those who are in a country in which the Government has no agent, by addressing the Secretary of State of Spain.

1. See Arts. 7, 314 et seq.; and notes under Arts. 17, 18 and 27 of Civil Code.
2. See Sec. 13 of the Naturalization Act, No. 2927.
3. Children of foreign parentage must comply with the conditions imposed by this article in order that they may be considered Spaniards. Under the American law, the contrary rule prevails, which rule also applies to the Philippines. Roa v. Col. of Customs, 23 Phil. 321.

ART. 20. The status of Spanish nationality shall be forfeited by naturalization in a foreign country, or by accepting employment from another Government, or by entering the armed service of a foreign power without the permission of the King.

1. See Art. 23; and notes under Arts. 17, 18, and 27 of the Civil Code.

ART. 21. A Spaniard who loses his status as such by becoming naturalized in a foreign country can recover it upon returning to the Kingdom by declaring to the official in charge of the civil registry of the domicile which he elects that such is his wish, in order that the proper entry may be made, and by waiving the protection of the flag of such country.

1. See notes under Arts. 17, 18, and 27.
2. Cited in Roa v. Col. of Customs, 23 Phil. 315.

ART. 22. A married woman follows the condition and nationality of her husband.

A Spanish woman who marries a foreigner may, upon the dissolution of the marriage, recover Spanish nationality by complying with the formalities mentioned in the next preceding article.

1. See Art. 15; and notes under Arts. 17, 18 and 27, Civil Code.
2. The present rule here is that a Filipino woman marrying a foreigner follows the latter's nationality during coverture, but upon dissolution of the marriage she *ipso facto* reacquires her Filipino nationality unless a contrary intention appears. Roa v. Col. of Customs, 23 Phil. 315.
3. As to Philippine citizenship of a foreign woman married to a Filipino, see Act 2927 as amended by Act 3448.

ART. 23. Any Spaniard who loses his status as a Spanish subject by accepting employment from any other government, or by entering the armed service of a foreign power without the King's permission, cannot recover Spanish nationality until his disability shall have been removed by royal habilitation.

1. See Art. 330; and notes under Arts. 17, 18, and 27 of the Civil Code.

ART. 24. Any person born abroad of a Spanish father or mother who may have lost Spanish nationality on account of its loss by his parents, may also recover it by complying with the conditions imposed by Article 19.

1. See notes under Arts. 17, 18, and 27, Civil Code.

ART. 25. In order that foreigners who have obtained naturalization papers or acquired a domicile in any town in the Monarchy may enjoy Spanish nationality, they must first renounce their former nationality, swear to support

the constitution of the Monarchy, and record themselves as Spaniards in the civil registry.

1. See Arts. 18 and notes, and 19, Civil Code; also notes under Arts. 17 and 27, same.
2. Mere declaration of intention by a foreigner to acquire American citizenship is not enough to give him the status of an American citizen. *In re* McCulloch Dick, 38 Phil. 43.

ART. 26. Spaniards who establish a domicile in any foreign country in which they may acquire the status of natives without other condition than that of residence therein, shall be required, in order to preserve their Spanish nationality, to state such intention before the Spanish diplomatic or consular agent, who must register them, as well as their spouses, should they be married, and any children they may have, in the register of Spanish residents.

1. See notes under Arts. 17, 18, and 27 of the Civil Code.
2. A Spaniard, under this article, may preserve his nationality although a domiciled resident of the Philippines. Yañez de Barnuevo v. Fuster, 29 Phil. 641.

ART. 27. Foreigners shall enjoy in Spain the rights which the civil laws grant to Spaniards, subject to the provisions established by Article 2 of the constitution of the State or by international treaties.

1. See Arts. 18, 19, 22, 25, and 91, Civil Code; Arts. 15, 169, and 634, Code of Commerce; Sec. 636, Code of Civil Procedure; and notes under Arts. 17 and 28 of the Civil Code.
2. See Administrative Code of 1917, Secs. 69, 675, 1186, 1202; Act No. 2761, Sec. 3; Act of Congress of February 5, 1917.
3. As to rights of foreigners to acquire land in the Philippines, see Op. of the Att. Gen. of June 23, 1910, and notes under Art. 339.
4. Both under the Spanish law prior to the Treaty of Paris and under the present law in the Philippines, the right to practise law is denied to foreigners. *In re* Bosque, 1 Phil. 88.

5. It is an essential attribute of sovereignty to control the admission, exclusion, and deportation of aliens. *In re* Patterson, 1 Phil. 93; Forbes v. Chuoco Tiaco, 16 Phil. 534; Chuoco Tiaco v. Cameron Forbes, 18 Off. Gaz. 1534.
6. Deportation of aliens. See Acts 1986 and 2711.
7. See Act 2927, "The Naturalization Law."

ART. 28. Corporations, institutions and associations recognized by law and domiciled in Spain shall enjoy Spanish nationality provided they possess the status of juridical persons in accordance with the provisions of this code.

Associations domiciled abroad shall enjoy in Spain the consideration and the rights which treaties or special laws may determine.

1. See Arts. 35 et seq., 41, 745 et seq., Civil Code; Arts. 1, 15, 116 et seq., 198 et seq., Code of Commerce; Sec. 68 of Act No. 1459 as amended by Act No. 2900.
2. A foreign corporation unregistered in the Philippines may sue for damages in the Philippine Courts. Dampfschieffs Rhederei Union v. Compañia Transatlantica, 8 Phil. 766; Jonas Brook v. Froelich & Kittner, 8 Phil. 580.
3. See Sec. 69 of Act No. 1459 which provides that unregistered foreign corporations cannot sue in the Philippine courts. The cases cited in No. 2 arose prior to the enactment of Act No. 1459.
4. Corporations have no legal status beyond the confines of the sovereignty that created them, and so the state may restrict the right of a foreign corporation to engage in business within its limits and to sue in its courts. Marshall-Wells Co. v. Henry W. Elser & Co., 46 Phil. 70.

TITLE II.

BIRTH AND EXTINCTION OF CIVIL PERSONALITY.

CHAPTER I.

NATURAL PERSONS.

ART. 29. Legal existence commences at birth; but the conceived child is considered as born for all purposes favorable to it, provided that it be born with the requisites mentioned in the following article.

1. See Arts. 108 to 113, 195, 627, 745, No. 2, 814, 959 et seq., Civil Code.

ART. 30. In contemplation of law, the foetus shall not be considered as born unless it shall have a human form and shall live twenty-four hours after complete separation from the mother's womb.

1. See Arts. 745 and 960, Civil Code.

ART. 31. Priority of birth, in case of double parturition, gives to the first born any rights which the law may recognize in favor of primogeniture.

1. See Arts. 220, 227, and 295, Civil Code.
2. Rights of primogeniture abolished by Philippine Bill.

ART. 32. Civil personality is extinguished by death.

Minority, insanity, imbecility, deafmutism, prodigality and civil interdiction, are merely limitations of juridical personality. Persons under any of these disabilities are capable of having rights and even obligations when such obligations are of factual origin or arise from the relations

existing between the property of the person under disability and that of another.

1. See Arts. 44, 50, 52, 83, 191 et seq., 626, 663, 745, and 1263 of the Civil Code; Arts. 4, 5, 13, and 222 of the Code of Commerce.
2. Negligence cannot be imputed to a minor for failing to appear in a land registration case to assert his rights. Guyandoto v. Treasurer of the P. I., 49 Phil. 230.

ART. 33. Whenever a doubt arises as to which was the first to die of two or more persons who would inherit one from the other, the person who alleges the prior death of either must prove the allegation; in the absence of proof the presumption shall be that they died at the same time, and no transmission of rights from one to the other shall take place.

1. See Art. 195, Civil Code; Sec. 334, No. 37, of the Code of Civil Procedure.

ART. 34. The provisions of Title VIII of this book shall govern in respect to the presumption as to the death of an absentee and the effects of such presumption.

1. See Art. III, par. 2 of Gen. Order No. 68; Secs. 334, par. 24, 656, and 759 of the Code of Civil Procedure; and notes under Art. 191, Civil Code.

CHAPTER II.

JURIDICAL PERSONS.

ART. 35. The following are juridical persons:

1. Corporations, associations, and foundations of public interest recognized by law.

Their legal existence begins from the very instant at which, in accordance with law, they are validly established.

2. Associations of private interest, be they civil, commercial, or industrial, to which the law may grant individ-

ual legal existence, independent of that of each member thereof.

1. See Arts. 1669 and 1812, Civil Code; Art. 11 of Act No. 1459.
2. See also Op. of Att. Gen. of January 16, 1904.
3. A partnership organized for mercantile purposes becomes a juridical entity only after registration. Prautch v. Fernandez, 1 Phil. 705; Vargas & Co. v. Chan Hang Chiu, 29 Phil. 446.
4. A partnership organized for civil purposes becomes a juridical entity immediately after organization without the need of registration, but it may assume any of the forms of a mercantile partnership. Cia Agricola v. Reyes, 4 Phil. 2; Wahl v. Donaldson Sim & Co., 5 Phil. 11; Mead v. McCullough, 21 Phil. 95.
5. The Roman Catholic Church is a juridical entity. Barlin v. Ramirez, 7 Phil. 41; Catholic Church v. Placer, 11 Phil. 315.
6. The *cofradias* and *capellanias* of the Roman Catholic Church, which have been legally organized, are also juridical entities, but those not so organized are not. Capellania de Tambobong v. Cruz, 9 Phil. 145; Gov't of the P. I. v. Avila, 38 Phil. 383.
7. Corporations are "persons" within the meaning of the Bill of Rights, as regards their properties. Smith, Bell & Co. v. Natividad, 40 Phil. 136.
8. See note 3 under Art. 38.

ART. 36. The associations mentioned in paragraph 2 of the next preceding article shall be governed by the provisions of law applicable to the particular contract of partnership or association by which they may have been created.

1. See Arts. 1665 to 1708, Civil Code; notes under Art. 35, same.
2. Rule by which to determine the nature of a partnership or association. Prautch v. Hernandez, 1 Phil. 705; Cia Agricola v. Reyes, 4 Phil. 2.

ART. 37. The civil capacity of corporations shall be determined by the laws by which such corporations have been created or recognized; that of associations by their articles, and that of foundations by the rules governing their

establishment, duly approved by the executive authorities if this requisite should be necessary.

1. See Arts. 671, 747, 785, and 788, Civil Code.
2. Article applied. Compañia Agricola v. Reyes, 4 Phil. 2; Mead v. McCullough, 21 Phil. 95.

ART. 38. Juridical persons may acquire and possess property of all kinds, contract obligations and bring civil or criminal actions in accordance with the laws and regulations under which they may have been organized.

The Church shall be governed in this particular by any concordat which may have been entered into between the two powers; educational and charitable institutions shall be governed by the provisions of special laws.

1. See Arts. 37, 745, 746, 993, 994, and notes under Art. 35, Civil Code; Arts. 154, and 13, par. 5, of Act No. 1459; and Act No. 271.
2. The Philippine Bill has established the separation of Church and State, and has abolished the privileges formerly enjoyed by the Catholic Church. U. S. v. Balcorta, 25 Phil. 273.
3. The phrase "agreed upon by both powers" refers to the concordats or treaties between the Holy See and the Spanish Crown, which recognize the right of the Church to possess and acquire property, and its legal status. Ponce v. Roman Catholic Apostolic Church, 210 U. S. 296, 52 L. ed. 1068.

ART. 39. The property of any corporation, association, or institution which has ceased to exercise its corporate powers by reason of the expiration of the term of its legal existence, the accomplishment of the purpose for which it was created, or because it has become impossible to devote its means and energies to such purpose, shall be disposed of in accordance with any provisions in respect thereof which may be found in the law, articles of association or deed of foundation under which it was organized. In default of any prior provision on the subject, the property shall be applied to some similar purpose for the benefit of

the region, province or municipality by which the benefits of the extinct institution were principally enjoyed.

1. See Art. 1666, Civil Code; Art. 223, Code of Commerce; and Arts. 77, 78, and 62 et seq., of Act No. 1459.
2. Article applied. Compañia Agricola v. Reyes, 4 Phil. 2.

TITLE III.

DOMICILE.

ART. 40. For the enjoyment of rights and the performance of civil obligations the domicile of natural persons is the place of their usual residence, or, in certain cases, that determined by the law of civil procedure.

The domicile of diplomats invested with the right of extraterritoriality who, by reason of their official duties, reside in a foreign country, shall be that which they last had in Spanish territory.

1. See Art. 505, Code of Commerce; Art. 10 (No. 20), 205 et seq., 491 et seq., Penal Code; Sec. 377, Code of Civil Procedure.
2. See opinion of the Att. Gen. of December 4, 1903, on the meaning of domicile under the Election Law.
3. When the jurisdiction of a court depends on the residence of one of the parties, failure to allege residence in the complaint renders the latter demurrable. Cerf v. Medel, 33 Phil. 37.
4. Right to choose one's own domicile is guaranteed by the Constitution. Villavicencio v. Lukban, 39 Phil. 778.
5. A wife during coverture may acquire a separate domicile from her husband for the purpose of bringing a divorce suit. Viña v. Villareal, 41 Phil. 13.

ART. 41. In the absence of any provisions as to the domicile of juridical persons in the law by which they have been established or recognized, or in the articles of association or deed of foundation under which they were organized, the place in which their legal representative is established or in which their principal corporate powers are exercised shall be deemed the domicile of such juridical persons.

1. See Arts. 6 and 72 of Act No. 1459; Sec. 396 of the Code of Civil Procedure; and notes under Art. 28 of the Civil Code.

TITLE IV.

MARRIAGE.

(See Appendix, Act No. 3613, Marriage Law of December 4, 1929.)

CHAPTER I.

GENERAL PROVISIONS.

SECTION I. *Forms of Marriage.*

ART. 42. The law recognizes two forms of marriage: the canonical, which all who profess the Catholic religion must contract, and the civil, which shall be celebrated in the manner prescribed in this code.

1. See Arts. 75 and 86, Civil Code; Gen. Orders Nos. 68 and 70 of the Military Occupation; Secs. 44 to 55 of the Spanish Marriage Law of 1870, and Act No. 3613.
2. Arts. 42 to 107 of the Civil Code were not in force in the Philippines at the time of the American occupation and are not now in force, but Secs. 44 to 78 of the Spanish Marriage Law of 1870 were, and are now partly, in force. Benedicto v. Rama, 3 Phil. 34; Ibañez v. Ortiz, 5 Phil. 325; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Del Prado v. De la Fuente, 28 Phil. 23; Ebreo v. Sichon, 4 Phil. 705; Goitia v. Campos, 35 Phil. 252.

SECTION II. *Provisions Common to Both Forms of Marriage.*

ART. 43. A mutual promise of marriage shall not give rise to an obligation to contract marriage. No court shall entertain any complaint by which the enforcement of such promise is sought.

1. See Art. 1326, Civil Code; notes under Art. 42, same.

ART. 44. If the promise has been made in a public or private instrument by an adult, or by a minor with the concurrence of the person whose consent is necessary for the celebration of the marriage, or if the banns have been

published, the one who without just cause refuses to marry shall be obliged to reimburse the other for the expenses which he or she may have incurred by reason of the promised marriage.

The action for reimbursement of expenses to which the foregoing article refers must be brought within one year, computed from the day of the refusal to celebrate the marriage.

1. See Art. 1326, Civil Code; Sec. 335 (No. 3), Code of Civil Procedure; and notes under Art. 42, Civil Code.
2. A contract of promise of marriage in consideration of sexual intercourse is illegal and cannot be the ground of an action for damages. Batarra v. Marcos, 7 Phil. 156; Dalistan v. Armas, 32 Phil. 648; Inson v. Belzunce, 32 Phil. 342.
3. But damages for breach of a valid contract of promise of marriage may be recovered. Domalayan v. Bolifer, 33 Phil. 471; Garcia v. Del Rosario, 33 Phil. 189.

ART. 45. Marriage is forbidden—

1. Any minor who has not obtained the permission and to any adult who has not requested the advice of the persons whose right it is to give such permission or advice in the cases provided by law.

2. The widow during the three hundred and one days following the death of her husband, or before parturition if she should have been left pregnant, and under the same conditions and for the same periods, to be computed from the date of her legal separation, to any woman whose marriage has been declared void.

3. The guardian and his or her descendants with respect to the person whom such guardian may have or may have had under charge, until the guardianship has terminated and the accounts of the same have been approved, except in cases in which the father of the person subject to guardianship has authorized the marriage by will or in a public instrument.

1. See Arts. 4, 7, 46 et seq., 83 et seq., 108, 320, Title X, Book I, Civil Code; Arts. 473 et seq., Penal Code; notes under art. 42, Civil Code.

2. A minor who marries without parental consent is not criminally liable if she erroneously believed herself to be of age. U. S. v. Peñalosa, 1 Phil. 109.
3. A marriage consummated between a boy over fourteen and a girl over twelve even without parental consent cannot be annulled. Aguilar v. Lazaro, 4 Phil. 735.

ART. 46. The permission referred to in paragraph one of the next preceding article must be granted legitimate children by the father; in his default or when he is disqualified to give such permission, the power to grant it devolves, successively upon the mother, the paternal and maternal grandparents, and, in default of all of them, upon the family council.

Acknowledged natural children or children legitimated by royal concession must ask the consent of the persons by whom they have been acknowledged or legitimated, of their ascendants, or of the family council, in the order established in the next preceding paragraph.

Adopted children shall ask such consent of the adopting father or, in his default, of the persons of the natural family upon whom the right to give it may devolve.

Other illegitimate children shall obtain the consent of their mother, when she is lawfully known, that of the maternal grandparents in the same case, and, in the default of all of them, that of the family council.

The right to grant consent to the marriage of persons reared in foundling asylums pertains to the heads of such institutions.

1. See Arts. 49, 177, 178, 212, 294, 303, 307, 309, and 1318; and notes under Art. 42, Civil Code.

ART. 47. Adult children are obliged to ask the advice of their father, or, in his default, that of their mother. If the advice is not given, or if it should be unfavorable, the marriage cannot take place until three months after the advice is requested.

1. See Arts. 218, 224, 229, and 1318, Civil Code; and notes under Art. 42, same.

ART. 48. At the time of making application for the performance of the marriage ceremony, proof must be made by means of a document authenticated by a civil or ecclesiastical notary, or the municipal judge of the applicant's domicile, that such consent or favorable advice has been obtained.

If the request for advice has been made without result, similar proof of the expiration of the time mentioned in the next preceding article shall be presented.

1. See notes under Art. 42, of the Civil Code.

ART. 49. No person upon whom devolves the right to give such consent or advice shall be required to state the grounds upon which it is granted or refused; there shall be no appeal from the dissent of such person.

1. See notes under Art. 42, Civil Code.

ART. 50. If, notwithstanding the prohibitions established by Article 45, any of the persons falling within its terms shall marry, such marriage shall be valid; but the contracting parties, without prejudice to the application of the provisions of the Penal Code, shall be subject to the following rules:

1. The marriage shall be deemed to have been entered into with entire separation of property. Each spouse shall retain the ownership and control of his or her property and shall receive the entire income therefrom, subject to the obligation of contributing proportionately to the payment of the expenses of the matrimonial regime.

2. Neither of the spouses shall receive anything from the other by gift or will.

The provisions of the two preceding rules shall not be applicable to cases falling under paragraph 2 of Article 45, if dispensation has been obtained.

3. If one of the spouses is a minor, not emancipated, he or she shall not administer his or her property until attaining majority. In the meantime he or she shall be

entitled only to support, which shall not exceed the net income from his or her property.

4. In cases falling under paragraph 3 of Article 45, the guardian shall, furthermore, lose the administration of the property of the ward during her minority.

1. See Arts. 4, 45, 101, 315, 320, 624, 628, 744, 755, and 1432, Civil Code; Arts. 473 et seq., 488 et seq., Penal Code, and notes under Arts. 42 and 45, Civil Code.

ART. 51. Civil or canonical marriage shall produce no civil effects when either of the spouses is already legally married.

1. See Arts. 69 and 83, Civil Code; Arts. 440 and 471, Penal Code; notes under Art. 42, Civil Code.

ART. 52. Marriage is dissolved by the death of one of the spouses.

1. See Arts. 34, and 191–194, Civil Code; and notes under Art. 42, same.

SECTION III. *Proof of Marriage.*

ART. 53. Marriages celebrated before this code went into effect shall be proved in the manner established by the former laws.

As to marriages contracted subsequently, no proof other than a certificate of the record in the civil register shall be admitted, unless such books have never been kept, or have disappeared, or the question arises in litigation, in which cases the marriage may be proved by evidence of any kind.

1. See Arts. 76, 1215, and notes under Art. 42, Civil Code; Sec. 334 (No. 28) Code of Civil Procedure.
2. If the fact of marriage is in issue, plaintiff wife cannot have alimony *pendente lite*. Yangco v. Rohde, 1 Phil. 404.
3. There is a strong presumption from fact of cohabitation in favor of marriage, and proof to the contrary must be clear and convincing. U. S. v. Villafuerte, 4 Phil. 559; Son Cui v. Guepangco, 22 Phil. 216; Sison v. Ambalada, 30 Phil. 118; Que Quay v. Col. of Customs, 33 Phil. 128.

4. When a marriage ceremony is shown to have been performed on a certain date, it will not be presumed that the contracting parties had been married before, although children were born to them before the ceremony took place. Enriquez v. Enriquez, 8 Phil. 566.
5. Cohabitation is not direct proof of marriage, which must be proved by the proper documents or by oral testimony in case these have been lost. Santiago v. Cruz, 19 Phil. 145; U. S. v. Evangelista, 29 Phil. 215.

ART. 54. In the cases mentioned in paragraph 2 of the next preceding article, one of the means of proving marriage shall be evidence that a man and woman lived together constantly as husband and wife and that their children are declared to be legitimate, in their birth certificates, unless overcome by proof that one of them was bound by a former marriage.

1. See notes under Arts. 42 and 53, Civil Code; Sec. 334 (No. 29), Code of Civil Procedure.
2. A marriage entered into in this country by a Chinese and a Filipino woman and followed by forty years of cohabitation can only be invalidated by clear and convincing proof of the existence of a prior marriage in China. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.

ART. 55. A marriage contracted in a foreign country, where a regular, authentic registration of marriages is not required, may be proved by any competent legal evidence.

1. See Art. 1215; and notes under Arts. 42, 53 and 54, Civil Code.

SECTION IV. *Rights and Obligations of Husband and Wife.*

ART. 56. The spouses are obliged to live together, to be faithful to and mutually assist each other.

[68, 105, 174, par. 1]

1. See notes under Art. 42, Civil Code; Art. 440, Penal Code; the Spanish Marriage Law of 1870, Secs. 44 to 55.
2. The rights and obligations of spouses are now governed by the Spanish Marriage Law of 1870, Secs. 44 to 55 (56 to 78 having been repealed by the Civil Code) and by the

Civil Code. Ebreo v. Sichon, 4 Phil. 705; Goitia v. Campos Rueda, 35 Phil. 252.

3. The courts cannot compel a wife to live with her husband. Arroyo v. Vazquez, 42 Phil. 61.
4. See Gorayeb v. Hashim, 47 Phil. 87.
5. Alimony *pendente lite;* See Gorayeb v. Hashim, 50 Phil. 22, cited under Art. 143.

ART. 57. The husband must protect the wife and the latter obey the husband.

1. See Art. 603, Penal Code; notes under Arts. 42 and 56, Civil Code.

ART. 58. The wife is obliged to follow her husband wherever he may establish his residence. The courts, nevertheless, may, for just cause, exempt her from this obligation when her husband goes to the ultramarine colonies or to a foreign country.

1. See notes under Arts. 42 and 56, Civil Code.
2. The wife is in duty bound to follow the domicile of her husband. Yañez de Barnuevo v. Fuster, 29 Phil. 606.

ART. 59. The husband is the administrator of the property of the conjugal partnership in the absence of a stipulation to the contrary and subject to the provisions of article 1384.

If he is under eighteen years of age he cannot administer without the consent of his father, or, in default of the latter, that of the mother, or both failing, without that of his guardian, or be a party to any judicial proceedings without being joined with such persons.

In no case, until he has attained majority, may the husband, without the consent of the persons mentioned in the next preceding paragraph, borrow money or encumber or alienate his real property.

1. See Arts. 50, 66, 164, 181 et seq., 199 et seq., 220, 225, 227, et seq., 264, 315 et seq., 1261, 1263, 1315, 1357, 1401, 1412 et seq., Civil Code; Art. 4 et seq., Code of Commerce; Secs. 169, 202 et seq., Mortgage Law; and notes under Arts. 42 and 56, Civil Code.
2. The provisions of the Civil Code regarding guardianship have been superseded by the Code of Civil Procedure. Ibañez de Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 255.
3. Emancipation by marriage was governed by Arts. 315 and 59, and not by Art. 317 of the Civil Code. Ibañez de Aldecoa v. Hongkong & Sh. Bank, 31 Phil. 339.

ART. 60. The husband is the representative of the wife. The latter cannot, without his permission, appear in any judicial proceeding in person or by attorney.

Nevertheless, she shall not require such permission to defend herself in a criminal proceeding, or to commence an action against her husband or defend herself in any action brought against her by him, or when she has been authorized to become a party to a suit in accordance with the provisions of the law of Civil Procedure.

1. See Arts. 61 et seq., 183, 187 et seq., 200, 214, 220 et seq., 1383, 1387, 1408, Civil Code; notes under Arts. 42 and 56, Civil Code; Sec. 115, Code of Civil Procedure.
2. This article not now in force. Casalla v. Enage, 6 Phil. 475.
3. A wife cannot mortgage her paraphernal property without a special power from her husband. Mercado v. Tan Ling-co, 34 Phil. 793.

ART. 61. Neither may the wife, without the permission of her husband, or a power of attorney from him, acquire property for a good or valuable consideration, alienate her property, or contract obligations except in the cases and with the limitations established by law.

1. See Arts. 50, 62, 65, 188, 220 (No. 1), 225, 230, 624 et seq., 893, 995, 1053, 1263 (No. 3), 1334, 1361, 1383, 1387, 1394, 1396, 1416, 1458, 1677, 1716, 1811, notes under Arts. 42, 56 and 60, Civil Code; and Arts. 4, 6 et seq., and 21 (Nos. 7 and 8), Code of Commerce.

ART. 62. Anything done by the wife contrary to the provisions of the preceding articles is void, except that purchases by her of things which by their nature are to be applied to the ordinary use of the family shall be valid. Purchases of jewels, furniture, and expensive things made without the permission of the husband shall be validated only in case the latter shall have consented to the use and enjoyment of such things by his wife.

1. See Arts. 1362, 1385, par. 2, and notes under Arts. 42 and 56, Civil Code.

ART. 63. The wife, without permission of her husband, may—

1. Execute a will.

2. Exercise the rights and perform the duties which appertain to her in respect to any legitimate children or acknowledged natural children she may have had by another, and in respect to the property of such children.

1. See Arts. 46, 47, 134, 136, 155 et seq., 168, 662 et seq., and notes under Arts. 42 and 56, Civil Code; Secs. 553 and 614, Code of Civil Procedure.

ART. 64. The wife shall share the honors of her husband, except those which are strictly and exclusively personal, and shall retain them as long as she does not contract a new marriage.

1. See notes under Arts. 42 and 56.

ART. 65. Only the husband and his heirs may take action to avoid acts done by the wife without proper permission or authorization.

1. See Arts. 1301 (par. 3) 1384, and notes under Arts. 42 and 56, Civil Code; Sec. 65, Mortgage Law.

ART. 66. The provisions of this section are understood to be subject to the provisions of this code relating to the

absence, incapacity, prodigality, and interdiction of the husband.

1. See Arts. 181 et seq., 225, 229, Civil Code; Art. 42, Penal Code; and notes under Arts. 42 and 56, Civil Code.

SECTION V. *Effects of Annulment of Marriage and of Divorce.*

ART. 67. The civil effects of complaints for annulment of marriage or for divorce and of judgments rendered thereon can be obtained only through the agency of the ordinary courts.

1. See Arts. 40, 68 et seq., 80 et seq., 101 et seq., and notes under Art. 42, Civil Code.
2. A divorce suit, nothing to the contrary appearing, presupposes the existence of a marriage relation entitling the plaintiff wife to alimony. Santos v. Sweeney, 4 Phil. 79.
3. See note 7 under Art. 40, Civil Code.

ART. 68. After the complaints mentioned in the next preceding article have been presented and permission to file the same has been obtained, the following measures shall be adopted during the pendency of the suit:—

1. The spouses in every case shall be separated.
2. The wife shall be placed under protection in the cases and in the manner prescribed by the law of Civil Procedure.
3. The children shall be placed under the care of one or both of the spouses as may be proper.
4. Provision shall be made for the support of the wife and that of such of the children as do not remain in the care of the father.
5. Such measures shall be adopted as shall be necessary to prevent the husband, if he shall have given cause for the divorce or if the suit for the annulment of the marriage has been instituted against him, from injuring the wife by his administration of her property.

[56, 73, 143]

1. See notes under Art. 42, Civil Code.
2. See note 2, Art. 67, Civil Code; and note 2, Art. 53, Civil Code.

3. The filing of a bill of exceptions in a divorce suit suspends the judgment including the provision for alimony, unless the latter is expressly excepted. Benedicto v. De la Rama, 2 Phil. 293.
4. An order for the payment of alimony *pendente lite* being interlocutory in character cannot be enforced by execution; but disobedience to the mandate of the court will constitute contempt and may be punished as such. Mendoza v. Paruñgao, 49 Phil. 271.

ART. 69. A marriage contracted in good faith produces civil effects, although it be declared void.

If good faith existed on the part of only one of the spouses it shall produce civil effects only with regard to such spouse and to the children.

Good faith is presumed if the contrary is not shown.

When bad faith has existed on the part of both spouses, the marriage shall produce civil effects only with relation to the children.

1. See Arts. 2, 50, 70 et seq., 83 et seq., 101 et seq., 43 et seq., and notes under Art. 42, Civil Code; Arts. 471 et seq. and 479 et seq., Penal Code.
2. "Civil effects" as used in this article means that marriage in good faith although afterwards declared invalid gives the spouses and children the same rights with reference to the conjugal property as if the marriage was absolutely valid. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.
3. See Mendoza v. Paruñgao, 49 Phil. 271, cited under Art. 143.
4. A former judgment that the surviving wife by the first marriage is entitled to administer the estate of her deceased husband is not a bar to a subsequent judgment that the second wife, and her children, under a void bigamous marriage, entered into by her in good faith, are entitled to take the husband's estate, all of which was acquired after the first marriage, to the exclusion of the lawful wife. Fernandez v. Castro, 48 Phil. 123.
5. When a woman is deceived by a man who falsely represents himself to be single, and she marries him in that belief, she and her children are entitled to all the rights of a lawful wife and legitimate children. Lao v. Dee Tim, 45 Phil. 739.

ART. 70. After final judgment declaring the marriage to be void, if both parties thereto have acted in good faith, the father shall have the custody of the male children over three years of age and the mother that of the daughters.

If there was good faith on the part of one only of the spouses such spouse shall have the custody of the children of both sexes.

If both were guilty of bad faith, the court, in accordance with the provisions of the second subdivision of paragraph two of Article 73, shall determine what disposition is to be made of the children. The children of both sexes under three years of age shall in all cases be left in the care of the mother until they attain that age unless, for some special reason, the judgment provides otherwise.

1. See Arts. 67, 69, 71, and 82; and notes under Art. 42, Civil Code.

ART. 71. The provisions of the first and second paragraphs of the next preceding article shall not be applied if the parents, by common consent, shall otherwise provide for the care of the children.

1. See notes under Art. 42, Civil Code; Sec. 553, Code of Civil Procedure.

ART. 72. The final decree of annulment of marriage shall produce the same effects with regard to the property of the parties as a dissolution of marriage by death; but the spouse who has acted in bad faith shall have no right to participate in the profits of the conjugal partnership.

If both parties have been guilty of bad faith the bad faith of each shall be set off by that of the other.

1. See Arts. 1275, 1315, 1326, 1417, 1433; and notes under Art. 42, Civil Code.
2. Although Art. 72, is not in force, yet Art. 1417 is in force, whereby the guilty spouse is debarred from participation in the conjugal property. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.

ART. 73. A decree of divorce shall produce the following effects:

1. The separation of the spouses.

2. The children shall remain or be placed under the authority and protection of the innocent spouse.

When both are guilty, a guardian shall be provided for the children in accordance with the provisions of this code. Nevertheless, unless the decree has otherwise provided, the mother in every case shall have the custody of the children under three years of age.

Upon the death of the innocent spouse, the guilty spouse shall recover the parental authority and the rights pertaining thereto, if the divorce shall have been granted for adultery, personal violence, or grossly abusive language; otherwise a guardian shall be appointed for the children. The deprivation of parental authority and of the rights pertaining thereto does not exempt the guilty spouse from the performance of the obligations which this code imposes upon him or her in respect to the children.

3. The guilty spouse shall forfeit anything which shall have been given or promised him or her by the innocent spouse or by any other person out of regard for the latter.

The innocent spouse shall be entitled to retain anything which he or she may have received from the guilty spouse and shall, furthermore, be entitled to receive anything which the latter may have promised him or her.

4. The property of the conjugal partnership shall be separated and the husband, if he be the guilty party, shall be deprived of the administration of the wife's property, if it should have been administered by him theretofore.

5. If the husband be the innocent party and should have been administering the wife's property, he shall retain such administration and the wife shall be entitled only to an allowance for her support.

[145, par. 3, 146–148, 155, 156, 893, par. 2, 1432] Act 2710.

1. See notes under Art. 42; Arts. 67, 74, 82, 104 et seq., 154 et seq., 169, 834, 1327, 1384, 1432 et seq., Civil Code; Arts. 11 and 12, Code of Commerce; Art. 436, Penal Code. See also Secs. 9 and 11 of the Divorce Act (No. 2710).
2. The innocent spouse is entitled to one half of the conjugal property. De la Rama v. De la Rama, 11 Phil. 746; De la Rama v. De la Rama, 201 U. S. 303, 50 L. ed. 765.
3. Dismissal of a civil suit for adultery is bar to a criminal action for adultery. U. S. v. Ortega, 37 Phil. 32.
4. The rigorous rule, in force in Spain prior to the adoption of the Spanish Civil Code, whereby the wife, against whom a judgment of divorce for adultery was decreed, forfeited all right to her share in the community property, was not incorporated into that Code. Garrozi v. Dastas, 204 U. S. 64, 51 L. ed. 369.

ART. 74. The reconciliation of the parties shall terminate the divorce suit, or, if judgment has been rendered, shall thenceforth divest such judgment of any force or effect; But it shall be the duty of the parties to report such reconciliation to the court before which the suit is pending or by which it was decided.

Notwithstanding the provisions of the next preceding paragraph the judgment, with respect to the children, shall not be affected if the ground thereof be the connivance of the husband or wife at the corruption of the sons or the prostitution of the daughters of the parties, or an attempt to corrupt or prostitute the same, in which case, if such children are still subject to parental authority, the court shall adopt such measures as may be necessary in order to protect them from such corruption or prostitution.

1. See notes under Art. 42, Civil Code.

CHAPTER II.

CANONICAL MARRIAGE.

ART. 75. The requisites, form, and solemnities for the celebration of canonical marriages shall be governed by the

rules of the Catholic Church and of the Holy Council of Trent, accepted as laws of the Kingdom.

1. See notes under Art. 42, Civil Code.
2. Article applied. Benedicto v. De la Rama, 3 Phil. 34.

ART. 76. Canonical marriage shall produce all the civil effects of marriage in respect to the persons and property of the spouses and their descendants.

1. See notes under Art. 42, Civil Code.

ART. 77. A municipal judge or some other government official shall be present at the celebration of the canonical marriage for the sole purpose of making an immediate record thereof in the civil register. For this purpose the contracting parties shall be required to give notice in writing to the proper municipal judge, not less than twenty-four hours in advance, of the place, day and hour fixed upon for the celebration of the marriage, and, in case of their failure to do so, shall be liable to a fine of not less than five nor more than eighty pesetas. The municipal judge shall give the contracting parties a receipt for the notice; should he refuse to give such receipt he shall be liable to a fine of not less than twenty nor more than one hundred pesetas.

The ceremony of the canonical marriage shall not be performed without the presentation of such receipt to the parish priest.

If the municipal judge shall fail to be present at the performance of the marriage ceremony, although duly notified thereof by the contracting parties, the certificate of the canonical marriage shall be recorded in the civil registry at his expense and he shall, furthermore, be liable to a fine which shall not be less than twenty or more than one hundred pesetas. In such case the marriage shall produce civil effects from the moment of its celebration.

If the contracting parties should be at fault for not having given notice to the municipal judge, they may remedy the defect by having the marriage recorded in the civil reg-

istry. In this case, the marriage shall produce no civil effects, except from the time of its record.

1. See notes under Art. 42, Civil Code.

ART. 78. Those who contract canonical marriage *in articulo mortis* may give notice thereof to the person in charge of the civil registry at any time before its celebration, and prove, in any manner whatsoever, that they have performed this duty.

The penalties imposed upon contracting parties who fail to comply with this requisite shall not be applicable to cases of marriage *in articulo mortis,* when it is shown that it was impossible to give timely notice. In every case, in order that the marriage may produce civil effects from the date of its celebration, the sacramental certificate shall be recorded in the registry within the ten days next following.

1. See Art. 77 and notes under Art. 42, Civil Code.

ART. 79. The secret marriage of conscience, entered into before the church, is not subject to any civil formality, nor shall it produce any civil effects, except from the time of its publication by virtue of its inscription in the registry.

This marriage shall nevertheless produce civil effects from the time of its celebration if both contracting parties, by common consent, ask the bishop who authorized it for a copy of the entry made in the secret register of the bishopric, and send it direct, with the proper secrecy, to the central office of the Civil Registry, with the request that it be recorded. For this purpose a special and secret register shall be kept in the central office of the Civil Registry with the necessary precaution, to the end that the contents of such records may not be made known until the interested parties request that they be made public by transferring the same to the municipal register of their domicile.

1. See notes under Art. 42, Civil Code.

ART. 80. The jurisdiction to entertain suits for divorce from or the annulment of canonical marriages is vested in the ecclesiastical courts.

1. See notes under Arts. 9, 42, and 68.

ART. 81. When a suit for divorce or annulment of marriage has been commenced before an ecclesiastical court the parties in interest must apply to a civil court for the adoption of the measures enumerated in Article 68.

1. See notes under Art. 42, Civil Code.

ART. 82. The final decree of annulment of a canonical marriage must be recorded in the civil registry and must be presented to the civil court for enforcement with respect to its civil effects.

1. See notes under Art. 42; Arts. 70 to 73, Civil Code.

CHAPTER III.

CIVIL MARRIAGE.

(See Appendix, Act No. 3613, Marriage Law of Dec. 4, 1929.)

SECTION I. *Capacity of the Contracting Parties.*

ART. 83. The following cannot contract marriage:

1. Males under the age of fourteen and females under the age of twelve.

Marriage contracted by persons who have not arrived at the age of puberty, shall, nevertheless, be, *ipso facto* validated, without the necessity of an express declaration, if after having attained the legal age of puberty they should have lived together for one day without having commenced judicial proceedings to have the marriage declared invalid or if the woman should have conceived before the legal age of puberty or before the institution of said suit.

2. Those who are not in the full enjoyment of their reason at the time of contracting marriage.

3. Any person who, prior to the celebration of the mar-

riage, was physically impotent, either absolutely or relatively, for the purposes of procreation, if such impotence be manifest, permanent and incurable.

4. Any person ordained *in sacris* or any member of a canonically approved religious order bound by a solemn pledge of chastity, unless such person shall have obtained the proper canonical dispensation.

5. Any person already married.

1. See Arts. 45, 51, 101 et seq., and notes under Art. 42, Civil Code; Arts. 440, 471 and 479 et seq., Penal Code.
2. A male of fourteen and a female of twelve are capable of contracting a valid marriage. Taylor v. Manila E. R. & L. Co., 16 Phil. 8.
3. There are no other impediments to marriage than those provided in G. O. No. 68, and a priest *in sacris* may now contract a valid marriage. Intestate Estate of Enriquez & Reyes, 29 Phil. 167.
4. Under Section 10, General Orders No. 68, a marriage may be annulled where it appears that either party was of unsound mind at the time of the marriage, or that either party at the time was physically incapable of entering into the marriage state when such incapacity continues and appears to be incurable. Engle v. Doe, 47 Phil. 753.

ART. 84. Neither can the following contract marriage with each other:

1. Ascendants and descendants by legitimate or natural consanguinity or affinity.

2. Collaterals by legitimate consanguinity up to the fourth degree.

3. Collaterals by legitimate affinity up to the fourth degree.

4. Collaterals by natural consanguinity or affinity up to the second degree.

5. The adoptive father or mother and the person adopted; the latter and the surviving spouse of the former, and the former and the surviving spouse of the latter.

6. The legitimate descendants of the adoptive parent with the person adopted, while the adoption lasts.

7. Adulterers who have been condemned by a final judgment.

8. Persons who have been convicted as principals, or as principal and accomplice, for killing the husband or wife of either.

1. See notes under Art. 42, and Arts. 915 et seq. and 1340, Civil Code; Arts. 433 and 477, Penal Code.

ART. 85. The government, for sufficient cause, may, at the instance of a party, grant a dispensation of the impediment mentioned in paragraph 2 of Article 45; the third and fourth degrees of collaterals by legitimate consanguinity; and the impediments arising from legitimate or natural affinity between collaterals, and those relating to the descendants of the adoptive parent.

1. See notes under Art. 42, Civil Code.

SECTION II. *Celebration of Marriage.*

ART. 86. Those who, in accordance with Article 42, desire to contract marriage in the manner determined in this code, shall present to the municipal judge of their domicile a declaration signed by both contracting parties, in which shall be stated:

1. The name, surname, age, occupation, domicile or residence of each of the contracting parties.

2. The names, surnames, profession, domicile or residence of their parents.

Certificates of birth and of the status of the contracting parties, the proof of consent or advice, if required, and the dispensation, when it is necessary, shall accompany this declaration.

1. See notes under Art. 42; and Arts. 40, 42, 45 et seq., 327, Civil Code.

ART. 87. Marriages may be celebrated in person, or by a proxy to whom a special power has been given; but the presence of the contracting party who is domiciled or re-

sides in the district of the judge who is to perform the marriage ceremony shall always be required.

The name of the person with whom the marriage is to be celebrated shall be mentioned in the special power, and the marriage shall be valid if, before its celebration, the person so authorized should not have been formally notified of the revocation of the power.

1. See notes under Art. 42, Civil Code.

ART. 88. If the municipal judge selected for the performance of the marriage ceremony is not the judge of the domicile of both contracting parties, two declarations shall be presented, one to the municipal judge of the domicile of each contracting party, stating which of the two judges has been selected for the celebration of the marriage, and the proceedings prescribed by the following articles shall be had in both courts.

1. See notes under Art. 42, Civil Code.

ART. 89. After the declaration has been ratified by both declarants the municipal judge shall order that edicts or proclamations be posted for fifteen days announcing the intention of the parties, with all the details mentioned in Art. 86, and calling upon all persons who may have knowledge of any impediment to give information thereof. Similar edicts shall be sent to the municipal judges of the towns in which the interested parties may have resided or been domiciled during the two previous years, with the request that they be posted in the place where the public sessions of the court are held for a period of fifteen days, and that at the expiration of this period they be returned with a certificate showing that this requisite has been complied with and whether or not any impediment has been denounced.

1. See notes under Art. 42, Civil Code.

ART. 90. Soldiers in active service who desire to con-

tract marriage shall be excused from the publication of such edicts outside of the place where they reside if they present a certificate that they are unmarried, issued by the commanding officer of the military body to which they belong.

1. See notes under Art. 42, Civil Code.

ART. 91. If the interested parties are foreigners, and have not resided two years in Spain, they shall prove, by a certificate in due form, issued by a competent authority, that notice of the intended marriage has been published in the territory where they have had their domicile or residence during the two previous years, with all the formalities which are required in such territory.

1. See notes under Art. 42, Civil Code.

ART. 92. In all other cases the Government alone, upon sufficient evidence of serious reasons therefor, may grant a dispensation of the publication of the edicts.

1. See notes under Art. 42, Civil Code.

ART. 93. Notwithstanding the provisions of the preceding articles, the municipal judge shall perform the marriage ceremony for any person who is in imminent danger of death, whether he or she is domiciled in the place or is a transient.

This marriage shall be considered conditional until the previous freedom of the contracting parties shall be legally established.

1. See notes under Art. 42, Civil Code.

ART. 94. Paymasters of men-of-war and captains of merchantmen shall authorize marriages which are celebrated on board in imminent danger of death. These marriages shall also be considered conditional.

1. See notes under Art. 42, Civil Code.

ART. 95. The provisions of the next preceding article are applicable to the commanders of military forces in the field, in default of a municipal judge, with respect to the members of such forces who may desire to celebrate marriage *in articulo mortis*.

1. See notes under Art. 42, Civil Code.

ART. 96. If the fifteen days referred to in Article 89 shall have elapsed without any impediment having been denounced, and the municipal judge has no knowledge of any such, he shall proceed with the celebration of the marriage in the manner prescribed in this Code.

If the marriage does not take place within one year after the publication of the edict, it cannot be entered into without a new publication.

1. See notes under Art. 42, Civil Code.

ART. 97. If, before the celebration of the marriage, any person should appear opposing it, or alleging a lawful impediment, or the municipal judge should have knowledge of any such impediment, the celebration of the marriage shall be suspended until the truth or falsity of the alleged impediment is determined by a final judgment.

1. See notes under Art. 42, Civil Code; Art. 479, Penal Code.

ART. 98. It is the duty of all persons having notice of the proposed marriage to denounce any impediment thereto known to them. The denunciation shall be referred to the prosecuting officer, who, if he finds that there are legal grounds for the opposition, shall institute proceedings to prevent the marriage. The proceedings can be commenced by private persons only when such have an interest in preventing the marriage. In either case the proceedings shall be conducted in accordance with the provisions established by the Law of Civil Procedure for the trial of incidental issues.

1. See notes under Art. 42; and Arts. 45, 83 et seq., 89 and 99, Civil Code.

ART. 99. Any person who shall commence proceedings to prevent a marriage shall be held liable for the damages caused if by final judgment the grounds alleged to constitute the impediment are declared false.

1. See notes under Art. 42, Civil Code.

ART. 100. The marriage ceremony shall be performed as follows:

The contracting parties, or one of them and the person authorized by special power of attorney to represent the absentee, shall appear before the municipal judge accompanied by two lawfully qualified adult witnesses. Thereupon, the municipal judge, after reading Articles 56 and 57 of this code, shall ask the contracting parties individually if they still desire to enter into the marriage and if they do in fact enter into it. If both answer in the affirmative the judge shall draw up the certificate of marriage, stating therein all matters necessary to show that the requirements prescribed by this section have been complied with. The certificate shall be signed by the judge, by the contracting parties, by the witnesses and by the clerk of the court.

Consuls and vice-consuls shall perform the duties of municipal judges in marriages of Spaniards entered into abroad.

1. See notes under Art. 42; Arts. 53, 56 et seq., 86 et seq., 101, 320, 325 et seq., 1245 et seq., Civil Code; Art. 479, Penal Code.

SECTION III. *Annulment of Marriage.*

ART. 101. The following marriages are void:

1. Those entered into by the persons mentioned in Articles 83 and 84, except in case of dispensation.

2. A marriage entered into by reason of error as to the person, or under such grave compulsion or fear that consent is vitiated.

3. The marriage of the abductor to the woman abducted while she is in his power.

4. Marriages which are not entered into before the proper municipal judge, or the person who should act in his place, or without the presence of the witnesses required by Article 100.

1. See notes under Art. 42; Arts. 50, 67 et seq., 72, 83 et seq., 1265 et seq., Civil Code; Art. 445, Penal Code.
2. See note 2 under Art. 72, Civil Code.

ART. 102. Actions for the annulment of marriage may be brought by either of the parties to the marriage, by the prosecuting officer, or by any person having an interest in procuring its annulment.

Actions for annulment of marriage on the ground of abduction, error, force or intimidation are excepted from this rule. Such actions may be brought only by the party to whom the circumstances mentioned, or either of them, apply.

The action for annulment of marriage on the ground of impotence is also excepted and can be brought only by the husband or wife or by some other person having an interest in securing its annulment.

The action lapses and the marriage becomes valid, in the respective cases, if the parties have continued to live together for six months after the error has been dissipated, or after the force or cause of the fear has ceased, or if the woman abducted shall not have commenced proceedings for the annulment of the marriage within the same period after having recovered her liberty.

1. See notes under Arts. 42 and 101.

ART. 103. The civil courts shall take cognizance of suits for the annulment of marriages entered into in conformity with the provisions of this chapter, shall adopt the measures indicated in Article 68, and shall render final judgment.

1. See notes under Arts. 42 and 101; 67 to 69, 80 et seq., and 107, Civil Code.
2. The ecclesiastical courts did not have jurisdiction over civil marriages. (Dissenting opinion, Justice Cooper.) Yangco v. Rohde, 1 Phil. 404.

SECTION IV. *Divorce.*

ART. 104. Divorce only produces a separation of the spouses.

1. See notes under Art. 42, Civil Code; and the Divorce Law, Act No. 2710, printed in the Appendix.
2. The present divorce law, Act No. 2710, has abolished the limited divorce formerly recognized in the Philippines. Garcia Valdez v. Soteraña Tuason, 40 Phil. 943.
3. Only absolute divorce is now procurable in the Philippine Islands. Chereau v. Fuentebella, 43 Phil. 216.
4. A decree of divorce is not void because the complaint did not allege that the guilty party had been convicted of adultery or concubinage in a criminal court. Chereau v. Fuentebella, 43 Phil. 216.
5. Effect of divorce on wife's interest in husband's life insurance. See Gercio v. Sun Life, 48 Phil. 53.

ART. 105. The legal grounds for divorce are:

1. The adultery of the wife in every case, and of the husband when public scandal or disgrace to the wife results therefrom.

2. Personal violence, or grossly abusive or insulting language or conduct.

3. Violence inflicted by the husband upon the wife in order to force her to change her religion.

4. The proposal of the husband to prostitute his wife.

5. The attempt of the husband or wife to corrupt their sons or to prostitute their daughters, and connivance at their corruption or prostitution.

6. The sentence of the husband or wife to the penalties of *cadena perpetua* or *reclusión perpetua.*

1. See notes under Arts. 42 and 104, Civil Code; Arts. 10, 28, 42, 54, 219, et seq., 433 et seq., 443, 444, 456 et seq., 587, and 588, Penal Code; Sec. 1 of Act No. 2710.

2. In the Philippines, adultery is the only cause for divorce. Benedicto v. De la Rama, 3 Phil. 34; Goitia v. Campos Rueda, 35 Phil. 252.
3. It is the policy of the law to prevent rather than to encourage the granting of a divorce, and where it appears that the husband had personal knowledge of the adultery of his wife in August, 1924, and that he did not file his complaint for a divorce upon such grounds until February 10, 1927, the action is barred by the provisions of Section 4 of Act No. 2710. Juarez v. Turon, XXVII Off. Gaz. 2.
4. Causes for divorce, as now provided by Act 2710, are limited to two—adultery on the part of the wife and concubinage on the part of the husband. Francisco v. Tayao, 50 Phil. 42.
5. A decree of divorce granted by a foreign court to a domiciled resident of the Philippines who resorts to the foreign jurisdiction merely for the purpose of obtaining such divorce is void and subject to collateral attack here, whether the marriage was entered into here or elsewhere. Gorayeb v. Hashim, 50 Phil. 22.

ART. 106. The innocent spouse only can bring the action for divorce.

1. See notes under Arts. 42 and 104, Civil Code; Sec. 3 of Act No. 2710.
2. Under this article of the Code, recrimination is a defense. De la Rama v. De la Rama, 11 Phil. 746.

ART. 107. The provisions of Article 103 shall be applicable to divorce suits and to all matters incidental thereto.

1. See notes under Arts. 42, 103, and 104, Civil Code.

TITLE V.

PATERNITY AND FILIATION.

CHAPTER I.

LEGITIMATE CHILDREN.

ART. 108. Children born after the one hundred and eighty days next following that of the celebration of marriage or within the three hundred days next following its dissolution or the separation of the spouses shall be presumed to be legitimate.

This presumption may be rebutted only by proof that it was physically impossible for the husband to have had access to his wife during the first one hundred and twenty days of the three hundred next preceding the birth of the child.

1. See Arts. 110, 111 and 1250, Civil Code; secs. 333 and 334 (No. 29), Code of Civil Procedure.
2. A marriage in good faith, although afterwards invalidated, produces civil effects as to the children and the innocent spouse. Sy Joc Lieng v. Sy Quia, 16 Phil. 137; U. S. v. Mata, 18 Phil. 490.
3. When two women innocently and in good faith are married to the same man, their children born of such marriage will be regarded as legitimate, and each family will be entitled to one-half of the estate of the husband upon distribution of his estate. Lao v. Dee Tim, 45 Phil. 739.

ART. 109. A child shall be presumed to be legitimate, even though the mother should have declared it to be illegitimate or should have been convicted of adultery.

1. See Arts. 45, 52 et seq., 68 et seq., Civil Code; Art. 468, Penal Code; Secs. 333 (No. 3), and 334 (No. 28), Code of Civil Procedure.
2. This article has been repealed by implication. (Willard).

ART. 110. A child born within the one hundred and eighty days next following that of the celebration of the marriage shall be presumed to be legitimate if any of the following circumstances exist:

1. If the husband knew, before the marriage, that his wife was pregnant.

2. If he, being present, allowed the child born of his wife to be given his surname in the birth certificate.

3. If he has expressly or tacitly acknowledged the child as his own.

1. See Secs. 333 (No. 3) and 334 (No. 29), Code of Civil Procedure.
2. This article has been repealed (Willard).

ART. 111. The husband or his heirs may contest the legitimacy of a child born after the expiration of three hundred days from the dissolution of the marriage or the actual legal separation of the spouses, but both the child and the mother shall be entitled in such cases to prove the paternity of the husband.

1. See Arts. 115 to 118, Civil Code.
2. See note 4 under Art. 108, Civil Code.

ART. 112. The heirs may contest the legitimacy of the child in the following cases only:

1. If the husband died before the expiration of the term allowed for bringing the action.

2. If he dies after bringing the action without having withdrawn it.

3. If the child was born after the death of the husband.

1. See Sec. 703, Code of Civil Procedure.
2. This article is in force (Willard).

ART. 113. The action to contest the legitimacy of the child must be brought within the two months next following the date on which the birth is recorded in the registry,

if the husband, or, as the case may be, any of his heirs, are living at the place of birth.

Should they be absent, the period shall be three months if they reside in Spain, and six if they reside elsewhere. When the birth of the child has been concealed, the period shall be counted from the date of the discovery of the fraud.

1. See Art. 7, Civil Code; Sec. 2212 (d), Adm. Code of 1917; and Secs. 38 et seq., Code of Civil Procedure.
2. This article has been superseded by the provisions of the Code of Civil Procedure regarding prescription (Willard).

ART. 114. Legitimate children are entitled:

1. To bear the surname of the father and of the mother.

2. To receive support from the same, from their ascendants, or from their brothers and sisters in accordance with Article 143.

3. To the *legitime* and other successional rights granted them by this code.

1. See Arts. 45 et seq., 68 et seq., 73, 74, 76, 108 et seq., 122, 134, 142 et seq., 206, 636, 644 et seq., 651, 654 et seq. 806 et seq., 930, Civil Code.
2. Natural children have only those rights that are expressly provided in the law. A natural child cannot represent his natural parent in the inheritance of the latter's legitimate ascendants. Llorente v. Rodriguez, 10 Phil. 585.

CHAPTER II.

PROOFS OF THE FILIATION OF LEGITIMATE CHILDREN.

ART. 115. The filiation of legitimate children is proved by the record of the birth entered in the civil registry, or by an authentic instrument, or by a final judgment in the cases referred to in Articles 110 to 113 of the next preceding chapter.

1. See Arts. 108 et seq., 116, 117, 325 et seq., 332, 1215 et seq., Civil Code; Arts. 2212 (d), Administrative Code of 1917, and Secs. 281 and 298 (No. 4), Code of Civil Procedure.

2. Arts. 115 to 117, Civil Code have been repealed by the Code of Civil Procedure (Willard).
3. Church records are evidence of the facts which they contain, but may be contradicted by any proper evidence. Basa v. Arquiza, 5 Phil. 187; Adriano v. De Jesus, 23 Phil. 350; Baltazar v. Alberto, 33 Phil. 336.
4. Hearsay evidence is competent to establish family relations. U. S. v. Bergantino, 3 Phil. 118.
5. Church records kept under the former laws were and are now public records, certified copies of which are admissible in evidence. U. S. v. Arceo, 11 Phil. 530.

ART. 116. In default of the documents mentioned in the next preceding article, filiation may be proven by the uninterrupted possession of the status of a legitimate child.

1. See notes under Art. 115; Art. 135 (No. 2), Civil Code.
2. Facts examined and held not to constitute sufficient proof of enjoyment of status of natural child. Basa v. Arquiza, 5 Phil. 187; Adriano v. De Jesus, 23 Phil. 350.

ART. 117. In default of such record of birth, authentic document, final sentence, or possession of status, legitimate filiation may be proved by any means, provided there is a foundation of written proof coming from both parents, either jointly or severally.

1. See notes under Arts. 115 and 116; Arts. 108 et seq., 327, 1215, 1249 et seq., Civil Code.

ART. 118. The action to establish legitimacy may be brought at any time during the life of the person whose legitimacy is in question, and shall be transmitted to his heirs should he die during minority or in a state of insanity. In such cases the heirs shall be allowed a period of five years in which to bring the action.

If the action has been commenced during the lifetime of such person it may be continued by his heirs after his death, unless it shall have lapsed before that time.

1. See Arts. 108 et seq., 115 et seq., 320, 657, et seq., Civil Code; Secs. 44, 119 and 127, No. 3, Code of Civil Procedure.

2. The second paragraph of this article has been superseded by Sec. 119, Code of Civil Procedure (Willard).
3. Article applied. Basa v. Arquiza, 5 Phil. 187; Conde v. Abaya, 13 Phil. 249.

CHAPTER III.

LEGITIMATED CHILDREN.

ART. 119. Only natural children can be legitimated.

Natural children are those born out of wedlock of parents who, at the time of the conception of such children, could have married with or without dispensation.

1. See notes under Art. 108; Arts. 123 and 130, Civil Code; Sec. II, General Orders No. 68.
2. A child born of a man and woman who, at the time of the conception, could legally marry, is a natural child susceptible of acknowledgment. Mijares v. Nery, 3 Phil. 195; Cosio v. Pili, 10 Phil. 72; Serrano v. Serrano, 22 Phil. 10; Estate of Enriquez and Reyes, 29 Phil. 167; Osorio v. Osorio, 34 Phil. 522; Concepcion v. Untaran, 38 Phil. 736; Ferrer v. De Inchausti, 38 Phil. 905.
3. Children born before the promulgation of the Civil Code are governed as to their status by the laws then in force. Requejo v. Rabalo, 34 Phil. 14.
4. A child born of adulterous relations cannot be legitimated. Ramirez v. Gmur, 42 Phil. 863.

ART. 120. Legitimation may be effected:

1. By the subsequent marriage of the parents.
2. By royal concession.

1. See Arts. 119, 121, 123 et seq., 128, 325 et seq., and 332, Civil Code.
2. Paragraph No. 2 of this article not in force (Willard). See also Roa v. Col. of Customs, 23 Phil. 315.
3. Subsequent marriage of alleged parents unaccompanied by some act of acknowledgment does not give a child the status of natural or legitimated child. Siguiong v. Siguiong, 8 Phil. 5; Serrano v. Serrano, 22 Phil. 10.

ART. 121. Children shall be considered as legitimated

by a subsequent marriage only when they have been acknowledged by the parents before or after the celebration thereof.

1. See notes under Art. 120; and Arts. 131, 135, and 136.
2. Facts examined and held sufficient to establish enjoyment of status as natural child. Cosio v. Pili, 10 Phil. 72; Requejo v. Rabalo, 34 Phil. 14. See also Ferrer v. De Inchausti, 38 Phil. 905.

ART. 122. Those legitimated by a subsequent marriage shall enjoy the same rights as legitimate children.

1. See notes under Art. 121, Civil Code.
2. An acknowledged natural child becomes legitimated by the subsequent marriage of the parents and enjoys the same rights as the children born thereafter. De Torres v. De-Torres, 28 Phil. 49.

ART. 123. In all cases the effects of the legitimation shall commence from the date of the marriage.

ART. 124. The legitimation of children who died before the celebration of the marriage shall inure to the benefit of their descendants.

ART. 125. In order that legitimation by royal concession be granted it shall be necessary:

1. That legitimation by subsequent marriage be not possible.
2. That it be requested by the parents or by one of them.
3. That the father or mother requesting it have no legitimate children, or children legitimated by subsequent marriage, or descendants of such children.
4. That if the request be made by a married person the consent of the other spouse be obtained.

1. See notes under Art. 120; Arts. 119, 120, 126 et seq., 325 et seq., 332, Civil Code.

ART. 126. Legitimation by royal concession may also be

obtained by a child whose deceased father or mother has expressed in his or her will or in a public instrument a wish to legitimate it, provided the condition established by paragraph 3 of the next preceding article exists.

1. See notes under art. 120.

ART. 127. Legitimation by royal concession entitles the legitimated child—

1. To bear the surname of the father or mother who requested such legitimation.
2. To receive support from the same in accordance with Article 143.
3. To the hereditary portion established by this Code.

1. See notes under Art. 120, Civil Code.

ART. 128. The legitimation may be contested by any person who deems his rights to be injuriously affected thereby, whenever it is granted to any persons not having the status of natural children, or when the conditions prescribed by this chapter do not exist.

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1. In force (Willard).

CHAPTER IV.

ILLEGITIMATE CHILDREN.

SECTION I. *Acknowledgment of Natural Children.*

ART. 129. A natural child may be acknowledged by the father and mother jointly or by either of them alone.

1. See Arts. 119, 135, and 136, Civil Code.
2. Acknowledgment may be made by parents, singly or jointly, not only under the Civil Code but under the laws prior to the Civil Code. Mijares v. Nery, 3 Phil. 195; Llorente v. Rodriguez, 3 Phil. 697; Infante v. Figueras, 4 Phil. 738; Cosio v. Pili, 10 Phil. 72.
3. Requisites for an action to compel acknowledgment. Mandoza v. Ibañez, 4 Phil. 666.

4. The father and the mother may acknowledge jointly or separately. If jointly the child must be really a natural child. If separately, a child, who is not in fact natural, may be acknowledged because of the provision contained in Art. 130, Civil Code. Borres v. Municipality of Panay, 42 Phil. 648.
5. See Larena v. Rubio, 43 Phil. 1017.

ART. 130. In case the acknowledgment is made by only one of the parents, it shall be presumed that the child is a natural one if the parent acknowledging it was at the time of the conception legally competent to contract marriage.

1. Acknowledgment in due form must first be established, before this presumption can apply. Capistrano v. Gabino, 8 Phil. 135; De Torres v. De Torres, 28 Phil. 49.
2. This is the only presumption in favor of natural children, and it may be rebutted by any competent evidence. Serrano v. Serrano, 22 Phil. 10; Estate of Enriquez, 29 Phil. 167.
3. See note No. 4 under Art. 129, Civil Code.
4. This Article and Sec. 334, Par. 1, C. C. P., create a presumption that a child born out of wedlock is natural rather than illegitimate; hence the presumption that the mother at the time of conception was a single woman. Severino v. Severino, 44 Phil. 343.

ART. 131. The acknowledgment of a natural child must be made in the record of birth, in a will, or in some other public document.

1. See notes under Art. 130; Arts. 119, 129, 132 et seq., 325 et seq., 332, 667, 741, 1216 et seq., Civil Code.
2. See Willard regarding the meaning of *"documentos publicos."*
3. Requisites and forms of acknowledgment explained. Mijares v. Nery, 3 Phil. 195; Mendoza v. Ibañez, 4 Phil. 666; Benedicto v. De la Rama, 4 Phil. 746; Cosio v. Pili, 10 Phil. 72; Requejo v. Rabalo, 34 Phil. 14; Llorente v. Rodriguez, 3 Phil. 697.

4. The act of acknowledgment is voluntary, and a statement in a church record as to paternity is insufficient if it is shown that the statement was made without the knowledge of the alleged parent. Concepcion v. Untaran, 38 Phil. 736; Buenaventura v. Urbano, 5 Phil. 1.
5. Under the law prior to the Civil Code, tacit acknowledgment was sufficient; but since the enactment of the Code acknowledgment must be effected as prescribed by this Article. Ramirez v. Gmur, 42 Phil. 861.
6. This article applies when the acknowledgment is made during the life of the parents. Samson v. Corrales Tan, 48 Phil. 401.
7. Acknowledgment in the record of birth under this article is not recognized in this country. Samson v. Corrales Tan, 48 Phil. 401.
8. See Briz v. Briz, 43 Phil. 763; Suarez v. Suarez, 43 Phil. 903.
9. A written recognition of the filiation of a natural child, signed by its father at the time of its baptism, and made a part of the church records, is not sufficient to create in its favor the status of an acknowledged natural child. Samson v. Corrales Tan, 48 Phil. 401.

ART. 132. When the acknowledgment is made separately by the father or the mother, the name of the child's other parent shall not be revealed by the parent acknowledging it, nor shall any circumstance be mentioned by which such person might be recognized.

No public officer shall authenticate any document drawn in violation of this provision and should he do so notwithstanding this prohibition shall be liable to a fine of from 125 to 500 pesetas, and the words containing such revelation shall be stricken out.

1. The administrative fine not in force (Willard).
2. In actions to compel recognition, evidence to show prior relations between the mother and the supposed father is inadmissible. Infante v. Figueras, 4 Phil. 738.
3. The prohibition of this article does not include cases brought for the purpose of attacking the acknowledgment. Estate of Enriquez, 29 Phil. 167.
4. See note No. 4 under Art. 129, Civil Code.

ART. 133. An adult person may not be acknowledged as a natural child without his consent.

The approval of the court, to be granted after hearing the prosecuting officer, shall be necessary to the acknowledgment of a minor, unless such acknowledgment be made in a certificate of birth or in a will.

The minor may in any case contest the acknowledgment within the four years next following the attainment of his or her majority.

1. See Art. 137, and notes under Article 130, Civil Code; Sec. 45, Code of Civil Procedure.
2. This Article has been partially repealed as regards the intervention of the fiscal and the time limit (Willard).
3. An acknowledgment before a notary is insufficient; there must be a judicial proceeding in the regular way. Legare v. Cuerques, 34 Phil. 221.
4. Article cited and applied. Samson v. Corrales Tan, 48 Phil. 401, cited under Art. 131.

ART. 134. An acknowledged natural child is entitled:

1. To bear the surname of the person acknowledging it.

2. To receive support from such person, in accordance with Article 143.

3. To receive the hereditary portion determined by this Code.

1. See notes under Art. 114; and Art. 840, Civil Code.
2. This Article in force, but a minor with property of his own for his support may not now compel the parent to support him (Willard).
3. A natural child acquires these rights not by reason of his birth, but of his acknowledgment. Mijares v. Nery, 3 Phil. 195; Infante v. Figueras, 4 Phil. 738; Mendoza v. Ibañez, 4 Phil. 666; Buenaventura v. Urbano, 5 Phil. 1; Tiamson v. Tiamson, 32 Phil. 62; Concepcion v. Untaran, 38 Phil. 736; Dusepec v. Torres, 39 Phil. 760.
4. A natural child cannot represent his natural father in the inheritance of the latter's legitimate ascendants. Llorente v. Rodriguez, 10 Phil. 585.

5. A Court of First Instance does not exceed its probate jurisdiction in authorizing an alleged acknowledged natural daughter of a decedent to intervene in the probation of the said decedent's will, upon production of *prima facie* evidence of such civil status. Asinas v. Court of First Instance, 51 Phil. 665.

ART. 135. The father may be compelled to acknowledge his natural child in the following cases:

1. When an indubitable writing of his exists in which he expressly acknowledges his paternity.

2. When the child is in the uninterrupted possession of the status of a natural child of the defendant father, justified by the conduct of the father himself or that of his family.

In cases of rape, seduction, or abduction, the provisions of the Penal Code with regard to the acknowledgment of the issue shall be observed.

1. See Arts. 119, 129 et seq., 137, 138, and 1215, Civil Code; Arts. 438, 439, 443, 445, 446, 448, and 449, Penal Code.
2. Evidence examined and found to be insufficient to entitle child to recognition. Infante v. Figueras, 4 Phil. 738; Benedicto v. De la Rama, 4 Phil. 746; Mendoza v. Ibañez, 4 Phil. 666; Buenaventura v. Urbano, 5 Phil. 1; Tengco v. Sanz, 11 Phil. 163; Remigio v. Ortega, 33 Phil. 614; Concepcion v. Untaran, 38 Phil. 736.
3. Evidence examined and found to be sufficient to entitle child to recognition. Dizon v. Ullman, 13 Phil. 90; Intestate of Enriquez & Reyes, 29 Phil. 167; Dalistan v. Armas, 32 Phil. 648; Osorio v. Osorio, 34 Phil. 522.
4. After a suit for acknowledgment has been brought, and the defendant dies, the action may be continued against the estate of the deceased. Mesacampo v. Mesacampo, 11 Phil. 1.
5. See note No. 4 under Art. 129, Civil Code.
6. See Briz v. Briz, 43 Phil. 763.

ART. 136. The mother may be compelled to acknowledge her natural child:

1. When the child is, with respect to the mother, includ-

ed in any of the cases mentioned in the next preceding article.

2. When the fact of the birth and the identity of the child are fully proven.

1. See notes under Art. 135; and Art. 1215, Civil Code.
2. The fact of birth alone gives a natural child the right to compel recognition by the mother. Infante v. Figueras, 4 Phil. 738; Buenaventura v. Urbano, 5 Phil. 1; Siguiong v. Siguiong, 8 Phil. 5; Adriano v. De Jesus, 23 Phil. 350; Intestate of Enriquez & Reyes, 29 Phil. 167; Concepcion v. Untaran, 38 Phil. 736.
3. See note No. 4, under Art. 129, Civil Code.

ART. 137. Actions for the acknowledgment of natural children may be commenced only during the lifetime of the putative parents except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may commence the action within the four years next following the attainment of its majority.

2. If, after the death of the father or mother, some document, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be commenced within the six months next following the discovery of such document.

1. See Secs. 44, 45, and 703, Code of Civil Procedure.
2. An action by a natural child to compel recognition must be brought within the lifetime of the supposed parents, unless the case comes within one of the two exceptions. Capistrano v. Gabino, 8 Phil. 135; Serrano v. Serrano, 22 Phil. 10.
3. See note No. 4 under Art. 135.
4. The right of natural children to sue for acknowledgment is personal and does not pass to their heirs. Conde v. Abaya, 13 Phil. 249.
5. When the father is dead, an action to enforce recognition of a natural child must be brought within two years after majority (Sec. 45, C. C. P.). Suarez v. Suarez, 43 Phil. 903.

6. The question of status as a natural child may be determined in the probate proceedings for settlement of the estate of the putative father, upon notice to all interested parties. Severino v. Severino, 44 Phil. 343.
7. See Briz v. Briz, 43 Phil. 763; Samson v. Corrales Tan, 48 Phil. 401.

ART. 138. Any person whose interests are injuriously affected thereby may contest the acknowledgment of any child not falling within the terms of the second paragraph of Section 119, or who has been acknowledged without compliance with the provisions of this section.

1. See Arts. 45 et seq., 119, 130, 132, 135, 140 et seq., 206, and 845, Civil Code.
2. See note No. 3, under Art. 132, Civil Code.
3. See note No. 4, under Art. 129, Civil Code.

SECTION II. *Other Illegitimate Children.*

ART. 139. Illegitimate children not having the legal status of natural children shall be entitled only to support by their parents, in accordance with Article 143.

1. See notes under Art. 143; and Art. 845, Civil Code.

ART. 140. The right to support, referred to in the preceding article, can be claimed only:

1. If the paternity or maternity is established by a final judgment rendered in a criminal or civil action.

2. If the paternity or maternity is shown by some document unquestionably executed by the father or mother, in which the filiation is expressly acknowledged.

3. With regard to the mother, if the fact of the birth and the identity of the child are fully proven.

1. See notes under Art. 141; Arts. 108, 111, 139, 141, and 1215, Civil Code; Art. 449, Penal Code.
2. See note No. 4, under Art. 129, Civil Code.

ART. 141. With the exception of the cases mentioned in paragraphs 1 and 2 of the next preceding article, no court shall permit the filing of any complaint, the purpose of

which may be to investigate, either directly or indirectly, the paternity of illegitimate children who have not the legal status of natural children.

1. See Art. 135, Civil Code.
2. No investigation into paternity of a child will be allowed. Infante v. Figueras, 4 Phil. 738; Tengco v. Sanz, 11 Phil. 163.
3. But such investigation may be allowed, if the purpose is to show that at the time of the conception the parents could not legally marry. Estate of Enriquez and Reyes, 29 Phil. 167.
4. See note No. 4, under Art. 129, Civil Code.
5. Article cited and applied. Bancosta v. Doe, 46 Phil. 846.

TITLE VI.

THE SUPPORT OF RELATIONS.

ART. 142. By support is understood all that is indispensable for food, shelter, clothing and medical attendance, according to the social standing of the family.

Support also includes the education of the person receiving it, when he or she is a minor.

1. See Arts. 68, 114, 122, 127, 134, 139, 143 et seq., 146, 155, 158, 176, 879, 1041, 1042, 1408, Civil Code.
2. An acknowledged natural child may maintain action for support. Mendoza v. Ibañez, 4 Phil. 666.
3. Marriage entitles each spouse to ask support from the other. Lanzuela Santos v. Sweeney, 4 Phil. 79.
4. Support can be asked only in cases and in the manner provided for in the Civil Code. Lerma v. Mamaril, 9 Phil. 118; Pelayo v. Lauron, 12 Phil. 452; Denzon v. Veloso, 26 Phil. 627.
5. A wife unjustly denied support by her husband will be allowed attorneys' fees and other costs of bringing the suit. Mercado v. Ostrand, 37 Phil. 179.
6. If a wife is forced to live apart from her husband, she may sue for separate maintenance, independently of the existence of a divorce or of any cause for divorce, and she may also recover attorney's fees and other expenses necessary to enforce her rights. Arroyo v. Vazquez, 42 Phil. 56.

ART. 143. The following are bound to support each other to the full extent of the term as defined by the next preceding article:

1. Husband and wife;
2. Legitimate ascendants and descendants;
3. Parents and children legitimated by royal concession and the legitimate descendants of the latter;
4. Parents and acknowledged natural children, and the legitimate descendants of the latter.

Parents and illegitimate children not having the legal status of natural children owe each other by way of support all the help necessary for their subsistence. Such parents are, furthermore, bound to defray the expenses necessary to give such children an elementary education and instruction in some profession, art or trade.

Brothers and sisters, even if only of the half blood, owe each other the assistance necessary for a living, when by reason of some physical or mental defect or any other cause not chargeable to the recipient, he or she may be unable to earn a livelihood. Such assistance shall include, when necessary, the payment of the expenses absolutely necessary to give the recipient of the assistance an elementary education and instruction in some profession, art, or trade.

1. See notes under Art. 142; Arts. 153, 155, 1042, and 1902, Civil Code.
2. See also the following cases: Yangco v. Rohde, 1 Phil. 404; Benedicto v. De la Rama, 2 Phil. 293; Goitia v. Campos Rueda, 35 Phil. 252; Concepcion v. Untaran, 38 Phil. 736.
3. See note No. 6, under Art. 142, Civil Code.
4. Where alimony in favor of the wife is granted by the trial court in an amount not greater than necessary to maintain respectable existence, the Supreme Court will not disturb such allowance; even though it should appear that the wife had been over-paid upon alimony account in the past. Gorayeb v. Hashim, 50 Phil. 22.
5. When a second marriage is annulled upon the appearance of the first husband, who was thought to be dead because he was absent for more than seven years, the wife is not entitled to support from her second husband during the pendency of an action brought by her against him for the liquidation of the conjugal property; but the court may require the defendant to make certain payments to her in the course of the proceedings on account of her share of the conjugal property of the second marriage. Mendozo v. Paruñgao, 49 Phil. 271.
6. The judgment in a suit by a wife for separate maintenance by which the amount to be paid by her husband for her support is determined, is not final but may be modified at any time upon good cause shown, upon application to the court of original jurisdiction. Gorayeb v. Hashim, 47 Phil. 87.

ART. 144. When there are two or more persons liable for the support of another the demand shall be made in the following order:

1. Upon the husband or wife;
2. Upon the descendants in the nearest degree;
3. Upon the ascendants also in the nearest degree;
4. Upon brothers and sisters.

Between descendants and ascendants the graduation shall be regulated by the order in which they are called to the legal succession of the person entitled to support.

1. See notes under Art. 143; also Arts. 142, 930 et seq., 1137 et seq., and 1894, Civil Code; and Sec. 684, Code of Civil Procedure.

ART. 145. Whenever the obligation to give support is incumbent upon two or more persons, the payment of the allowance shall be divided among them at a rate proportionate to their respective means.

However, in cases of urgent necessity and under special circumstances the judge may compel any one of them to pay the entire amount temporarily, without prejudice to the right of such person to recover from the other parties obligated the portion due from them.

When two or more persons entitled thereto claim support at the same time from the same person legally bound to give it, and such person has not sufficient means to pay for all, the order established in the next preceding Article shall be observed, unless the persons claiming the support are the husband or wife of the person upon whom the claim is made and a child subject to parental authority, in which case the latter shall be given preference over the former.

ART. 146. The amount allowed for support in any of the cases falling within the four paragraphs of Article 143 shall be proportionate to the capital or means of the person required to pay it and to the necessities of the recipient.

1. See Arts. 142 et seq., 147 et seq., 152, 154, and 155, Civil Code.

ART. 147. The amount allowed for support, in the cases to which the next preceding article refers, shall be reduced or increased proportionately according to the increase or reduction of the necessities of the recipient and the means of the person obliged to give it.

ART. 148. The obligation to give support may be enforced whenever the person having a right to claim it requires such assistance for his or her maintenance; such allowance, however, shall be paid only from the date of the filing of the complaint.

Payments shall be made monthly in advance, but in case of the death of the recipient, his or her heirs shall not be required to refund any payments which may have been advanced to the deceased.

1. See notes under Art. 143; and Art. 1894, Civil Code.
2. In a divorce suit, a wife cannot recover arrears of payment for her support, although the latter was stipulated in a contract of separation. Yañez de Barnuevo v. Fuster, 29 Phil. 606.
3. See Ramirez v. Redfern, 49 Phil. 849, cited under Art. 1894.

ART. 149. Any person upon whom devolves the obligation to support another may, at his option, do so either by paying such allowance as may be determined, or by receiving and maintaining in his own home the person entitled to such support.

1. See Arts. 68, 71, 73, 81, 142, 143, and 155, Civil Code.
2. The right of election granted by this article to the person under obligation to give support may be exercised unless the the court, upon moral or other impelling considerations, shall provide otherwise. Mendoza v. Ibañez, 4 Phil. 666; U. S. v. Alviar, 9 Phil. 576; Goitia v. Campos Rueda, 35 Phil. 252.

ART. 150. The obligation to support another ceases with the death of the person upon whom the obligation devolves even if he should have been performing such obligation in obedience to a final judgment.

1. See Art. 845, Civil Code; Sec. 684, Code of Civil Procedure.
2. A contract to support does not cease upon the death of the obligor if it was made upon consideration of services rendered. Majarabas v. Leonardo, 11 Phil. 272.
3. Grandchildren are not entitled to the allowances for support granted to the widow and minor children of the deceased by Section 684, C. C. P. Babao v. Villavicencio, 44 Phil. 921.

ART. 151. The right to support cannot be waived or transferred to another, nor can it be set off against any indebtedness of the recipient in favor of the person required to furnish such support.

Nevertheless, payments of allowances for support which are in arrears may be set off against such indebtedness or may be waived, and the right to sue for such payments in arrears may be transferred either gratuitously or for valuable consideration.

1. See Arts. 1041, 1200, 1814, 1961, Civil Code.

ART. 152. The obligation to give support shall cease:

1. Upon the death of the recipient.

2. When the means of the person required to pay it are reduced to such a degree that he cannot meet the obligation without disregarding his own necessities and those of his family.

3. When the recipient is able to work at a trade, profession, or industry, or has obtained employment or improved his fortune to such a degree that the allowance is not required for his or her support.

4. When the recipient, whether a forced heir or not, commits any of the offenses which constitutes sufficient grounds for disinheritance.

5. When the recipient is a descendant of the person upon whom devolves the obligation to support him, and his necessities arise from bad conduct or from lack of application to work, while such cause exists.

1. See Arts. 32, 142, 146, 150, 154 et seq., 756, and 852, Civil Code.

2. Adultery of wife is a good defense by husband against her suit for support. Quintana v. Lerma, 24 Phil. 285; Ibañez v. Ortiz, 5 Phil. 325.
3. A bond given, as a condition for pardon, to guarantee the support of children during minority, subsists even after the death of the obligor. Denzon v. Veloso, 26 Phil. 627.
4. Separation of wife from husband does not extinguish the latter's obligation to support. Goitia v. Campos Rueda, 34 Phil. 252.

ART. 153. The foregoing provisions shall apply to all cases in which the right to receive support exists by virtue of the provisions of this code, by will, or by contract, subject to such will or contract or the provisions of the law in each particular case.

1. See Arts. 68, 73, 148, 158, 176, 264, 268, 964, 1379 and 1430, Civil Code.

TITLE VII.

PARENTAL AUTHORITY.

CHAPTER I.

GENERAL PROVISION.

ART. 154. The father or, in his default, the mother may exercise parental power over their unemancipated legitimate children; and children are bound to obey their parents while subject to such authority and at all times to treat them with respect and reverence.

Acknowledged natural children and adopted minors are subject to the authority of the father or mother who acknowledges or adopts them and are subject to the obligations mentioned in the next preceding paragraph.

1. See Arts. 18, 45 et seq., 68 et seq., 73, 74, 84, 108 et seq., 156, 167 et seq., 175 et seq., 206, 224, 229, 314, 315, 317, 320, and 1903, Civil Code; Arts. 10, 18, 42, 54, 56, 416, 419, and 588, Penal Code; Secs. 553, 768 and 771, Code of Civil Procedure.
2. See notes under Arts. 173 to 180, Civil Code.
3. In default of the father, the mother exercises parental authority over minor children. Mendoza v. Ibañez, 4 Phil. 666; Tuason v. Orozco, 5 Phil. 596; Salunga v. Evangelista, 20 Phil. 273.
4. Parental authority is not lost even though the parents live with their children in a foreign country. Ibañez de Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 255.
5. A father cannot exercise parental authority over his natural child before the latter has been acknowledged in due form. Legare v. Cuerques, 34 Phil. 221.

CHAPTER II.

EFFECTS OF PARENTAL AUTHORITY WITH RESPECT TO THE PERSONS OF THE CHILDREN.

ART. 155. The father, and, in his default, the mother shall have with respect to their unemancipated children—

1. The duty of supporting them, keeping them in their company, educating them and instructing them in proportion to their means, and representing them in the exercise of all actions which may contribute to their benefit; and

2. The right to correct and punish them in moderation.

1. See Arts. 68 et seq., 73, 142, 145 et seq., 152, 154, 156 et seq., 167 et seq., 176, 314 et seq., 320, and 1903, Civil Code; Art. 234, Code of Commerce; Arts. 17 et seq., 42, 54, 57, 448, Penal Code; Secs. 116, 117, 558, 564, Code of Civil Procedure.
2. See notes under Art. 154, Civil Code.
3. Rights and obligations inherent in parental authority discussed. Reyes v. Alvares, 8 Phil. 723.
4. Upon separation of husband and wife, the custody of their children is left to the discretion of the court. Lozano v. Martinez, 36 Phil. 976; Pelayo v. Lavin, 40 Phil. 501.
5. The father is no longer the legal representative of his child before the courts. Palet v. Aldecoa & Co., 15 Phil. 232; Pobre v. Blanco, 17 Phil. 156; Siman v. Leus, 37 Phil. 967; Salunga v. Evangelista, 20 Phil. 273.

ART. 156. The father or, in his default, the mother shall be entitled to call upon the executive authorities for aid in enforcing the parental authority over their unemancipated children, either in the home or by confining such children in educational establishments or other institutions lawfully authorized to receive them.

They may also require the municipal judge to order the confinement of such children for a period of not more than one month in any correctional institution available for this purpose; the order of the father, or mother, approved by the municipal judge, shall be sufficient authority for such confinement.

The provisions of the two next preceding paragraphs shall be applicable to legitimate, legitimated, adopted or acknowledged natural children.

1. See Arts. 200, 203, 204, 481, and 487, Penal Code; and Secs. 768 and 770, Code of Civil Procedure.
2. See notes under Art. 154, Civil Code.

ART. 157. When the father or mother has contracted a second marriage and the child in question is the issue of a former marriage, they shall be obliged to state to the judge the grounds upon which they base their decision to punish him. The judge shall grant the child a personal hearing and shall either approve or disapprove of the confinement. No appeal shall be allowed against the judge's decision. The same rule shall be applied when the child, though not emancipated, is engaged in any employment or trade, even if the parents have not contracted a second marriage.

1. See notes under Arts. 154 and 156, Civil Code.

ART. 158. The father and, in his default, the mother, shall pay for the support of the child while in confinement. They shall have no right to interfere in the management of the institution in which he is confined, but may have him released whenever they deem proper.

CHAPTER III.

EFFECT OF PARENTAL AUTHORITY IN RESPECT TO THE PROPERTY OF THE CHILDREN.

ART. 159. The father or, in his default, the mother, shall be the legal administrator of the property of children who are subject to parental authority.

1. See Arts. 59, 60 and 154 et seq., 162, 224 et seq., 314, 317, 320, 761, 857, 1810, Civil Code; Arts. 4, 5, 234, Code of Commerce; Art. 200, Mortgage Law; Secs. 553, 565 and 569, Code of Civil Procedure.
2. The parental authority of the father or the mother no longer extends to the property of the children unless so ordered by the court. Tuason v. Orozco, 5 Phil. 596; Boydon v. Felix, 9 Phil. 597; Palet v. Aldecoa & Co., 15 Phil. 232; Ibañez v. Hongkong & Sh. Bank, 30 Phil. 228; Palarca v. Baguisi, 38 Phil. 177.

3. The mother of minor children who had assumed charge of their property and was enjoying its usufruct prior to the adoption of the Code of Civil Procedure, could legally emancipate them so as to confer upon them capacity to execute a valid mortgage of their real property. Aldecoa y Palet v. Hongkong & Shanghai Banking Corporation, 246 U. S. 621, 62 L. ed. 907.

ART. 160. Any property which an unemancipated child may acquire by his work or industry or by lucrative title shall belong to him, subject to the usufructuary interest of the father or mother to whose authority such child may be subject and in whose company he may be living; but if the child, with the consent of his parents, lives independently of them, he shall be considered as emancipated for all purposes with respect to such property and shall have the ownership, usufruct and administration thereof.

1. See Arts. 68 et seq., 73, 155, 171, 314, 317, 320, 348, 353 et seq., 467, 471, 477, 492, 761, 857, Civil Code; Art. 4, Code of Commerce; Arts. 108 and 201, Mortgage Law.
2. See notes under Arts. 154 and 159, Civil Code.
3. Parents have no longer the right of administration and usufruct of the property of their minor children, unless so ordered by the court. Ibañez v. Hongkong & Sh. Bank, 30 Phil. 255. See Willard's Notes.
4. As to matters which occurred prior to the promulgation of Act 190, the rule of the Civil Code applies. Salunga v. Evangelista, 20 Phil. 273; Juson v. Binuya, 32 Phil. 422.

ART. 161. The ownership and usufruct of any property which the child may acquire with capital belonging to his parents shall pertain to the latter; but should the parents expressly grant to him the whole or any part of the profits which he may earn, such profits shall not be chargeable to him as part of his inheritance.

1. See notes under Art. 159, Civil Code.
2. This article is not incompatible with Sec. 760 of the Code of Civil Procedure (Willard).

3. If a father buys a vessel with his own money in the name of his son, the legal title is in the son. Martinez v. Martinez, 1 Phil. 647.

ART. 162. Any property or income donated or left by will to an unemancipated child for the purpose of defraying the expenses of his education shall belong to him in ownership and usufruct; but the father or the mother shall have the management thereof unless otherwise provided in the donation or bequest, in which case the will of the donor shall be strictly complied with.

1. See notes under Arts. 154, 159 and 160, Civil Code.

ART. 163. Parents shall have with respect to any property belonging to their children which is subject to usufruct or administration by them the same obligations as other usufructuaries or administrators and also the special obligations established by Section 3, Title 5, of the Mortgage Law.

An inventory shall be made, subject to examination by the prosecuting officer, of all property of the children of which the parents are only entitled to the administration; and on motion of this officer the court may order that any securities belonging to the children be deposited.

1. See Arts. 159 et seq., 264 (No. 3) et seq., 491 et seq., and notes under Arts. 154 and 159, Civil Code; Art. 168, Mortgage Law; and Sec. 553, Code of Civil Procedure.
2. This article is no longer in force (Willard).

ART. 164. The father, or the mother, as the case may be, shall not be empowered to alienate any real property belonging to their children of which they are entitled to the usufruct or administration nor encumber such property except upon proof of the utility or necessity of such alienation or encumbrance and after obtaining authority to that end from the judge of their domicile, to be granted after hearing the opinion of the prosecuting officer, subject, how-

ever, to the provisions of the Mortgage Law with respect to the effects of the transfers of property.

1. See Arts. 40, 159, 160, 270, 334, 404, 406, 467, 1060 and 1810, Civil Code; Art. 234, Code of Commerce; Arts. 2, 108, 168, 202, 203, 204, 205 and 206, Mortgage Law; Sec. 553, Code of Civil Procedure.
2. See notes under Arts. 154, 159, 160 and 163, Civil Code.
3. Parents have no power to dispose of the property of their minor children without authority of the court. Boydon v. Felix, 9 Phil. 597; Rosario v. Manila Railroad, 22 Phil. 140; Hongkong & Sh. Bank v. Aldecoa, 30 Phil. 255; Ibañez v. Hongkong & Sh. Bank, 30 Phil. 228; Palarca v. Baguisi, 38 Phil. 177.
4. See also Nable Jose v. Nable Jose, 41 Phil. 734.

ART. 165. Whenever in any matter the interests of the father or the mother may be opposed to those of any of their unemancipated children, the latter shall be represented by a next friend who shall be appointed to represent them in court and elsewhere.

The judge, upon the petition of the father or the mother, or of the minor himself, or of the prosecuting officer or of any other person *sui juris,* shall confer such appointment upon the relative of the minor who would be his legal guardian if the occasion were to arise for the appointment of such guardian, or in default of such upon some other relative or a stranger.

1. See Art. 211, Civil Code; and Secs. 117 and 558, Code of Civil Procedure.
2. This Article is no longer in force (Willard).

ART. 166. Parents who acknowledge or adopt children do not thereby become entitled to the usufruct of the property of the latter nor shall they have the management of such property unless they give bond as security for such management to the satisfaction of the judge of the domicile of the minor or that of the persons whose consent is necessary to the adoption.

1. See notes under Arts. 154, 159, 160 and 173, Civil Code; and Secs. 765 to 768, Code of Civil Procedure.
2. This Article is no longer in force (Willard).

CHAPTER IV.

MEANS BY WHICH PARENTAL AUTHORITY IS TERMINATED.

ART. 167. Parental power is terminated:
1. By the death of the parents or of the child;
2. By emancipation;
3. By the adoption of the child.

1. See Art. 177, and notes under Art. 166, Civil Code.
2. In force. Appointment of a guardian under Sec. 544, Code of Civil Procedure also terminates parental authority (Willard).
3. Parental authority does not terminate by mere neglect of the parents to care for their child. Reyes v. Alvarez, 8 Phil. 723.
4. Parental authority is extinguished by death and is not transmitted to the personal representatives of the deceased parent. Abiera v. Orin, 8 Phil. 193.
5. An emancipated child under the former law could validly mortgage his realty with the consent of his mother. Aldecoa v. Hongkong & Sh. Bk. 30 Phil. 228.
6. A natural mother cannot be deprived of her parental authority over her natural child except by legal means, and holds it even as against the alleged natural father. Legare v. Cuerques, 34 Phil. 225.

ART. 168. The mother who contracts a second marriage loses her parental authority over her children unless her deceased husband, the father of such children, should have expressly provided in his will that in case his widow should remarry she was to retain and continue to exercise parental authority over his children.

1. See Arts. 155, 206, and 237, and notes under Art. 169, Civil Code; and Sec. 553, Code of Civil Procedure.
2. In force, but Sec. 553, of the Code of Civil Procedure provides that marriage of guardian does not end guardianship (Willard).

3. A widow who marries again loses her parental authority over her children unless the will of the deceased husband otherwise provides. Palet v. Aldecoa & Co., 15 Phil. 232.

ART. 169. The father or, as the case may be, the mother, shall lose authority over his or her children:

1. When by a final judgment in a criminal case the penalty imposed on such parent consists in part in the deprivation of such right;

2. When so provided by a final judgment in a divorce case, as long as such judgment shall continue to be in force.

1. See Arts. 45 et seq., 69 et seq., 73, 74, 154 et seq., 170 et seq., 854 et seq., and notes under Arts. 167 and 168, Civil Code; Art. 24, Penal Code; and Secs. 553 and 771, Code of Civil Procedure.
2. No. 1 is in force, but No. 2 has been repealed by the Code of Civil Procedure (Willard).

ART. 170. Whenever the father, or the mother, as the case may be, shall have been judicially declared to be disqualified or to be an absentee, the right of such person to exercise parental authority shall be suspended; the same effect shall follow the imposition of the penalty of civil interdiction.

1. See Arts. 45 et seq., 154 et seq., 181, 184, 186, 200, 206, 213, 218, 224, 228 et seq., Civil Code; 42, 54, 57, Penal Code.

ART. 171. Parents who treat their children with excessive cruelty or who, by the orders or advice given to such children, or the example set them, tend to corrupt them, may be deprived by the courts of their parental authority or suspended in the exercise thereof. In such cases the courts may also deprive the parents in whole or in part of the usufruct of the property of their children or may adopt such measures as may be deemed necessary to protect the interests of the latter.

1. See Arts. 45 et seq., 74, 105 (Nos. 5 and 6), 154 et seq., and notes under Arts. 156, 167, 169, Civil Code; Arts. 10, 416 and 450, Penal Code.

2. Repealed by Sec. 770, Code of Civil Procedure (Willard).
3. In force. The trial court may, in its discretion, deprive a father or a mother of parental authority. Cortes v. Castillo, 41 Phil. 466.

ART. 172. If the widowed mother who has remarried again becomes a widow, she shall thereupon recover her parental authority over all her unemancipated children.

1. See notes under Arts. 154, 159 and 160, Civil Code.

CHAPTER V.

ADOPTION.

ART. 173. Persons who are in the full exercise of their civil rights and are over forty-five years of age may adopt, provided that the person adopting be at least fifteen years older than the person adopted.

1. See Art. 32, Civil Code.
2. Not in force. Repealed by Secs. 765 to 772, Code of Civil Procedure (Willard).
3. See Arts. 545, 546, 547 and 548, Adm. Code of 1917.

ART. 174. Adoption is forbidden:

1. To clergymen;
2. To those having legitimate or legimated descendants;
3. To the guardian with respect to his ward, until his accounts have been finally approved;
4. To either spouse without the consent of the other. A husband and wife may jointly adopt another person and, with this exception, no one may be adopted by more than one person.

1. See notes under Art. 173; Arts. 29 and 83, Civil Code.

ART. 175. The person adopted may use, in addition to his own surname, that of his adopted parent when so provided in the deed of adoption.

1. See notes under Art. 173, Civil Code.

ART. 176. The person adopted and the adopting parent are reciprocally obliged to support one another. This obligation shall be understood as being subject to the preferential right of acknowledged natural children and of the ascendants of the adopting parent to be supported by the latter.

1. See notes under Art. 173, Civil Code.

ART. 177. The adopting parent acquires no right to inherit from the person adopted, nor does the latter acquire any right to inherit from the former, otherwise than by will, unless the adopting parent shall have agreed in the deed of adoption to institute the person adopted as his heir. This obligation shall cease if the person adopted dies before the adopting parent.

The person adopted retains all the rights belonging to him in his natural family with the exception of those relating to the parental authority.

1. See Art. 766, and notes under Art. 173, Civil Code.
2. The right of a Chinaman, allowed to land under bond, to enter the Islands, is not affected by the fact of his adoption by a resident here. Juan Co. v. Rafferty, 14 Phil. 235.
3. But a minor Chinese adopted in good faith by an inhabitant of the Islands may enter. Ng Hian v. Col. of Customs, 34 Phil. 248.
4. Under Sec. 768, Code of Civil Procedure, adoption produces the effect of relieving the child of all legal obligation to obey the legitimate parents. Ibañez de Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 228.
5. This Article cited as an instance in which the Civil Code permits transactions regarding future inheritance. Osorio v. Osorio, 41 Phil. 538.

ART. 178. The authority of the court is necessary to authorize an adoption, as also is the consent of the person adopted if he be of age; if he be a minor, that of the persons who would be called upon to give consent to his marriage; and if the person adopted be incapacitated, that of his guardian. The prosecuting officer shall be granted a

hearing in the matter and the judge, after such inquiries as he may deem necessary, shall approve the adoption if the same is in accordance with law and is, in his opinion, beneficial to the person adopted.

1. See Arts. 46, 173, 174, 179 et seq., 320; and notes under Art. 173, Civil Code.
2. At the age of fourteen, a minor may consent or refuse to be adopted (Sec. 765, Code of Civil Procedure). Taylor v. Manila E. R. & L. Co., 16 Phil. 8.

ART. 179. After the adoption is finally approved by the judge, a deed shall be executed in which the conditions upon which the adoption is made shall be stated. The deed shall then be recorded in the proper civil registry.

1. See Arts. 84, 166, 175, 177, 325 et seq., and notes under Art. 173, Civil Code.

ART. 180. Any minor or incapacitated person who has been adopted may contest the adoption within the four years next following the attainment of his majority or the date upon which such incapacity ceased.

1. See notes under Art. 173, Civil Code.

TITLE VIII.

ABSENCE.

CHAPTER I.

PROVISIONAL MEASURES IN CASE OF ABSENCE.

ART. 181. Whenever any person has disappeared from his home and his whereabouts are unknown and he has left no attorney to manage his property, the judge, at the instance of any person lawfully interested, or of the prosecuting officer, may appoint some person to represent the absentee in all matters in which he may need representation.

The same measures shall be adopted when, under similar circumstances, the power of attorney, if any, left by the absentee, has lapsed.

1. See Arts. 40, 183 et seq., 220, 1732, Civil Code; Arts. 218 (No. 6) and 889 (No. 3), Code of Commerce; and Secs. 334 (No. 24) and 656, Code of Civil Procedure.
2. In force, except that part of it regarding the fiscal and the court (Willard).
3. Before an action can be brought on behalf of an absent person, the complaint must contain allegations sufficient to show that the provisions of the Civil Code regarding declaration of absence, etc., have been complied with. Ablang v. Fernandez, 25 Phil. 33.

ART. 182. After the appointment referred to in the next preceding article has been made, the judge shall take the necessary measures to secure the rights and interests of the absentee and shall determine the powers, duties and remuneration of the person appointed, which shall be regulated, in accordance with the circumstances, by the provisions of law applicable to guardians.

1. See Arts. 190, 264, 266, 276 and notes under Art. 181, Civil Code; Secs. 551 et seq., Code of Civil Procedure.
2. The provision regarding guardianship must be understood to be that contained in the present Code of Civil Procedure (Willard).

ART. 183. The spouse who is present of any person who has absented himself shall be the representative of the absentee unless the parties have been legally separated.

If such spouse be a minor, a guardian shall be appointed for him in the ordinary manner.

In default of husband or wife, the absentee shall be represented by his or her parents, children, or grandparents, in the order established by Article 220.

1. See Arts. 73, 74, 181, 183, 184, 200, 205, 211, 212, 220, 330, 441, 1441 and notes under Art. 181, Civil Code; Arts. 11, 12 and 21, Code of Commerce; and Sec. 553, Code of Civil Procedure.
2. In force, except that in place of Art. 220, Civil Code, the Article referred to must be understood to be Sec. 553, Code of Civil Procedure (Willard).

CHAPTER II.

DECLARATION OF ABSENCE.

ART. 184. A person may be declared an absentee after two years have elapsed without his having been heard from or if the same period has elapsed since the last news concerning him was received or after five years if the absentee shall have left some person in charge of his property.

1. See Arts. 181 et seq., and 185 et seq., 1280; and notes under Art. 181, Civil Code.

ART. 185. The petition to have such person declared an absentee may be presented by:

1. The husband or wife who is present;
2. The heirs instituted as such in the absentee's will, of which they shall present an authenticated copy;

3. The relatives who would inherit in case of intestacy; or

4. Any person having an interest in the property of the absentee conditioned upon his decease.

1. See Arts. 660, 931, 935, 937, 939, 944 et seq., and 1441, and notes under Art. 181, Civil Code.

ART. 186. The order of court declaring a person to be an absentee shall not take effect until six months after its publication in the official newspapers.

1. See Art. 1433, and notes under Art. 181, Civil Code.

CHAPTER III.

ADMINISTRATION OF THE PROPERTY OF THE ABSENTEE.

ART. 187. The administration of the property of the absentee shall be granted, in the order established by Article 220, to the persons specified therein.

1. See Art. 1441, and notes under Art. 181, Civil Code; and Sec. 553, Code of Civil Procedure.
2. In force, except that the order to be followed must be as provided in Sec. 553, Code of Civil Procedure (Willard).

ART. 188. The wife of the absentee, if of age, may freely dispose of any property belonging to her, but may not alienate, exchange, or mortgage the property of her husband, nor that of the conjugal partnership without judicial authority.

1. See Arts. 59 et seq., 54, 66, 183, 184, 186, 1433, 1436, 1441, 1444, and notes under Art. 181, Civil Code; Arts. 11, 12, 21 (No. 7), Code of Commerce.

ART. 189. In cases in which the children of the absentee would be entitled to administer his property, but such children are minors, a guardian shall be appointed for them who shall take possession of the property after complying with the legal requirements.

1. See Art. 183, and notes under Arts. 154 and 181, Civil Code; and Sec. 553, Code of Civil Procedure.
2. Not in force (Willard).

ART. 190. The administration shall cease in any of the following cases:

1. Whenever the absentee may appear, either in person or by attorney;

2. Whenever the death of the absentee is proved and his testamentary or intestate heirs appear;

3. Whenever a third person appears and makes proof by means of the proper documents that he has acquired the property of the absentee by purchase or other title.

In these cases the duties of the administrator shall cease and the property shall be placed at the disposal of the person entitled to it.

1. See Arts. 32, 52, 327 and 1215, and notes under Art. 181, Civil Code.

CHAPTER IV.

PRESUMPTION OF THE DEATH OF THE ABSENTEE.

ART. 191. After thirty years have elapsed since the disappearance of the absentee, or since he was last heard from, or ninety years from his birth, the judge, upon the petition of any party lawfully interested, shall enter judgment declaring that such absentee is presumed to be dead.

1. See notes under Arts. 52, 181; and Sec. 334 (No. 24), Code of Civil Procedure.
2. Repealed by Sec. 656, Code of Civil Procedure (Willard).

ART. 192. The judgment by which the presumption of the death of an absentee is established shall not be executed until six months after its publication in the official papers.

1. See notes under Arts. 181 and 191, Civil Code.

ART. 193. After the judgment establishing the pre-

sumption of death has become final, administration shall be granted upon the estate of the absentee and it shall be distributed in accordance with the formalities prescribed for testamentary or intestate proceedings, as the case may be.

1. See Art. 955, and notes under Arts. 181 and 191, Civil Code.

ART. 194. Should the absentee appear, or without appearing, prove that he is still alive, he shall recover his property in the condition in which it may then be, and also the proceeds of any property which may have been sold or other property which may have been acquired with such proceeds, but shall not be entitled to claim the revenue or income which has been produced by such property.

1. See Art. 644, and notes under Arts. 181 and 191, Civil Code.

CHAPTER V.

EFFECTS OF ABSENCE UPON CONDITIONAL RIGHTS OF THE ABSENTEE.

ART. 195. He who claims a right formerly belonging to another person whose existence is not acknowledged must prove that such person was alive at the time his existence was necessary to the acquisition of such right.

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1. In force, because the presumption established in Sec. 334, No. 30, Code of Civil Procedure, is not sufficient (Willard).

ART. 196. Whenever the estate of a deceased person is being administered and an absentee is entitled to participate therein, the share of the latter shall accrue to his coheirs unless there be some person entitled to claim such share in his own right. In either case, the person or persons receiving the absentee's share shall be required to make an inventory thereof, subject to the approval of the prosecuting officer.

1. See Art. 197, and notes under Art. 181, Civil Code.
2. In force, except as regards the intervention of the fiscal (Willard).

ART. 197. The provisions of the next preceding article shall be understood as being without prejudice to the right to bring any action of petition of inheritance or the exercise of any other rights which may pertain to the absentee, his representatives, or persons holding under him. Such rights shall not be extinguished except by the lapse of the period of time fixed for prescription. The record in the registry of deeds of real property accruing to coheirs shall contain a statement to the effect that such property is subject to the provisions of this article.

1. In force (Willard).

ART. 198. Any person who has entered into the enjoyment of the inheritance shall be entitled to retain all the rents, issues, or profits thereof received in good faith before the absentee appears, or an action to enforce his rights is brought by his representatives or persons holding under him.

1. See Arts. 433 to 436, 451 to 458, and notes under Art. 181, Civil Code.
2. In force (Willard).

TITLE IX.

GUARDIANSHIP.

CHAPTER I.

GENERAL PROVISIONS.

ART. 199. The object of guardianship is the custody and care of the persons and property, or the property only, of those who, not being subject to parental authority, are incapable of managing their own affairs.

1. See Arts. 32, 205, 261, 293, 1459 and 1903, Civil Code; and Chapter 27 (Secs. 551 to 581), Code of Civil Procedure.
2. Repealed (Willard).
3. Under the Civil Code, there is a clear distinction between parental authority and guardianship. Ibañez v. Hongkong Bank, 30 Phil. 228.
4. See note 3 under Art. 159.

ART. 200. The following are subject to guardianship:

1. Minors not legally emancipated;
2. Insane or demented persons, even though they have lucid intervals, and deaf-mutes unable to read and write;
3. Persons who have been declared prodigals by final judgment;
4. Persons suffering the penalty of civil interdiction.

1. Arts. 32, 50, 59, 199, 211, 213, 221, 225 and 317, Civil Code; Arts. 5 and 13, Code of Commerce; Arts. 18 and 42, Penal Code; Secs. 551, 559 and 572, Code of Civil Procedure.
2. See notes under art. 199, Civil Code.
3. Not in force (Willard).

ART. 201. The duties of the guardianship shall be performed by a single guardian under the inspection of the protutor and of the family council.

1. See notes under Arts. 199, 200 and 204, Civil Code; Secs. 553, 557 and 559, Code of Civil Procedure.

ART. 202. No person may refuse to perform the duties of the office of guardian or protutor except upon proof of some lawful excuse.

1. See Arts. 244, 245 and 298, Civil Code; Sec. 574, Code of Civil Procedure.
2. Repealed (Willard).

ART. 203. Municipal judges of places in which persons subject to guardianship reside shall adopt the measures necessary for the care of such persons and of their personal property until the appointment of a guardian if there be no other person upon whom this obligation devolves by law.

Any judge who fails to perform this duty shall be liable for any damages thereby suffered by the minor or incapacitated person in question.

1. See Arts. 228, 232, 243, 250, 293 and 301, Civil Code; Sec. 3, Act No. 1627, and Sec. 214, Adm. Code of 1917.
2. See notes under Art. 200, Civil Code.
3. Repealed (Willard).

ART. 204. Guardianship is conferred:

1. By will;
2. By law;
3. By the family council.

1. See notes under Arts. 199, 200 and 201, Civil Code.

ART. 205. The guardian shall not enter upon the discharge of his duties until his appointment has been recorded in the registry of guardianships.

1. See Arts. 234, 252, 256 et seq., and 288, Civil Code; and Secs. 551 to 560, Code of Civil Procedure.

CHAPTER II.

TESTAMENTARY GUARDIANSHIP.

ART. 206. The father may appoint a guardian and a protutor for his minor children or for incapacitated children of age whether they be legitimate or acknowledged natural children, or other illegitimate children whom, in accordance with the provisions of Article 139, he is obliged to support.

The mother has like powers; but if she has contracted a second marriage, the appointment by her of a guardian for the children of her first marriage shall not be effective without the approval of the family council.

No person subject to the parental authority of another may hold the office of guardian or protutor.

1. See Art. 294, and notes under Art. 201, Civil Code; and Secs. 551 to 560, Code of Civil Procedure.
2. Repealed (Willard).

ART. 207. Any person who leaves an important inheritance or legacy to a minor or an incapacitated person may appoint a guardian for such person. Such appointment, however, shall not be effective until the family council has determined to accept the inheritance or the legacy.

1. See Arts. 206 (par. 3), 210, 269, 292, and notes under Arts. 201, 204 and 206, Civil Code; and Secs. 551 to 560, Code of Civil Procedure.

ART. 208. The father and the mother may appoint a guardian for each one of their children and may make several appointments in order that the appointees may substitute one another.

In case of doubt it shall be deemed that a single guardian has been appointed for all the children, and the office shall be conferred upon the person whose name first appears in the appointment.

1. See Art. 261, and notes under Arts. 199, 200, 201 and 206, Civil Code; and Secs. 551 to 560, Code of Civil Procedure.

ART. 209. If guardians shall have been appointed for the same minor by different persons, the office shall devolve upon:

1. The guardian chosen by the father or the mother;

2. The guardian appointed by a stranger who has made the minor or incapacitated person his heir if the inheritance is of some considerable amount;

3. The guardian appointed by one who has left the minor or incapacitated person an important bequest.

If in either of the cases falling within paragraphs 2 or 3 of this article more than one guardian shall have been appointed, the family council shall determine which of them is to be preferred.

1. See notes under Arts. 199, 201, 204 and 206, Civil Code; and Sec. 551, Code of Civil Procedure.

ART. 210. If, after a guardian has entered upon the discharge of his duties, another appointed by the father shall appear, the guardianship shall at once be transferred to the latter. If the guardian who has newly appeared be one appointed by a stranger under any of the circumstances mentioned in paragraphs 2 and 3 of the next preceding article, he shall manage only the property left by the person by whom he was appointed, until the office of guardian becomes vacant.

1. See notes under Art. 206, Civil Code; and Sec. 551, Code of Civil Procedure.

CHAPTER III.

LEGAL GUARDIANSHIP.

SECTION I. *Guardianship of Minors.*

ART. 211. The legal guardianship of unemancipated minors pertains solely:

1. To the paternal grandfather;

2. To the maternal grandfather;

3. To the paternal and maternal grandmothers, in the same order, while they remain in widowhood.

4. To the eldest of the brothers of full blood or, in default of such, to the eldest of the half-brothers on the paternal or maternal side.

The rules established by this article as to guardianship shall not apply with respect to illegitimate children.

C. C. P. 551–560.

1. See Arts. 119, 139, 199 et seq., 210, 231, 237 et seq., 260, 314, 317, 320 and 753, and notes under Art. 201, Civil Code.
2. Repealed (Willard).
3. See Salunga v. Evangelista, 20 Phil. 273, for application of this article to facts which took place prior to the promulgation of the present Code of Civil Procedure.

ART. 212. Heads of foundling asylums are the guardians of the persons sheltered and educated therein. It shall be the duty of the prosecuting officer to represent such persons in any action affecting them in their capacity as guardians.

[178] C. C. P. 551–560.

1. See notes under Arts. 200, and 211, Civil Code; and Secs. 545 to 548, Administrative Code of 1917.

SECTION II. *Guardianship of Insane Persons and Deaf Mutes.*

ART. 213. No guardian shall be appointed for any insane or demented person or deaf-mute of full age without a prior judicial determination of the fact that such person is incapable of managing his affairs.

1. See Arts. 199, 200, 203, 206, 218, 269, 320, and notes under Art. 200, Civil Code; Art. 222, Code of Commerce; Arts. 8, 100, 584, Penal Code; Secs. 551–560, Code of Civil Procedure.
2. Repealed (Willard).
3. The notification required by Sec. 562 of the Code of Civil Procedure may be made in any form which to the Court may seem convenient. A person placed under guardianship because of insanity must be released therefrom upon proof of complete recovery although there is reason to believe that he would squander his property if allowed to administer same. In re Guardianship of Ynchausti, 40 Phil. 682.

4. The rule regarding service of notice of application for guardianship of a person alleged to be insane is that established by the Code of Civil Procedure, as modified by Act 2122. In re Guardianship of Ynchausti, 40 Phil. 504.
5. Insane persons; guardianship; see Acts 190 and 2640.

ART. 214. Such declaration may be obtained upon the petition of the husband or wife of the presumptive incapable or of such of his relatives as would be entitled to succeed him *ab intestato*.

1. See Arts. 40, 934, 935, 939, 946 and 955; and notes under Arts. 200 and 213, Civil Code.

ART. 215. It shall be the duty of the prosecuting officer to petition for such declaration:

1. When the person is a raving maniac;

2. When none of the persons mentioned in the next preceding article are in existence or when they have failed to make use of the rights thereby granted them;

3. When the husband or wife and the heirs of the person presumed to be incapable are minors or are not qualified to appear in court.

In all these cases the court shall appoint the next friend to appear for the person presumed to be incapable if the latter does not desire or is unable to defend himself. In all other cases the prosecuting officer shall defend such person.

1. See Art. 165, and notes under Arts. 200 and 213, Civil Code.

ART. 216. The court, before declaring a person to be incapable, shall grant a hearing to the family council and personally examine the person alleged to be incapacitated.

1. See Art. 312, and notes under Arts. 200 and 213, Civil Code.

ART. 217. None of the relatives who may have petitioned for the declaration of incapacity may sit as members of the family council during its deliberations upon the

report to be made by it to the court, but shall be entitled to a hearing before such council if they so request.

1. See notes under Arts. 200 and 213, Civil Code.

ART. 218. The declaration of incapacity shall be made summarily. When the declaration concerns any deaf-mute it shall determine the extent of the guardianship according to the degree of incapacity of such person.

1. See notes under Arts. 199 to 204, and 213, Civil Code.

ART. 219. Persons interested therein may commence an ordinary action for the purpose of setting aside the final order by which proceedings to determine the incapacity of any person have been disposed of. The person appearing to defend the incapacitated person shall, nevertheless, require a special authorization of the family council to do so.

1. See notes under Arts. 199 to 204, and 213, Civil Code.

ART. 220. The guardianship of insane persons and deaf-mutes pertains:

1. To the husband or wife of such person, if there has not been a legal separation;
2. To the father or, in his default, the mother;
3. To the children;
4. To the grandparents;
5. To the brothers or unmarried sisters, subject to the preference in favor of the whole blood established by paragraph 4 of Article 211.

If there be several children or brothers and sisters, males shall be preferred to females and older persons to younger.

When there are paternal and maternal grandparents the males shall be preferred or, in case such persons are of the same sex, the preference shall be in favor of those of the paternal line.

C. C. P. 559.

1. See Arts. 187, 230 and 1441; and notes under Arts. 181, 199 to 204, and 213, Civil Code.

SECTION III. *Guardianship of Prodigals.*

ART. 221. The declaration of prodigality can only be made in a litigated proceeding.

The judgment shall determine what acts are to be forbidden the ward, the powers to be exercised by the guardian in his name and the cases in which either shall be required to consult the family council.

1. See notes under Arts. 199 to 204, and 213, Civil Code.
2. Before a person can be declared a prodigal, it must be shown that he has a morbid mind and a disposition to waste his estate so as to expose his family to want or deprive his forced heirs of their inheritances. Martinez v. Martinez, 1 Phil. 182.

ART. 222. The proceeding mentioned in the next preceding article may be instituted by the husband or wife or the forced heirs of the prodigal only; or in exceptional cases by the prosecuting officer either on his own motion or at the request of some relative of the persons mentioned if they be minors or are incapacitated.

1. See Arts. 40, 200, 230 and 897; notes under Arts. 199 to 204, and 213, Civil Code; Sec. 559, Code of Civil Procedure.
2. Under the Civil Code, an action to declare a person a spendthrift must be brought by the spouse or the forced heirs. Martinez v. Martinez, 1 Phil. 182.

ART. 223. If the defendant does not enter an appearance he shall be represented by the prosecuting officer or, if the latter be already a party to the proceedings, by some person appointed by the court to appear for the defendant, but without prejudice to the provisions of the law of civil procedure concerning proceedings upon default.

1. See Arts. 165 and 215, and notes under Art. 213, Civil Code; and Arts. 35, 116 and 559, Code of Civil Procedure.

ART. 224. A person declared to be a prodigal shall not be deprived of his marital or parental authority nor shall

the guardian be given any authority over the person of the prodigal.

1. See notes under Art. 213, Civil Code; and Sec. 561, Code of Civil Procedure.

ART. 225. The guardian shall manage any property belonging to the children the prodigal may have had by a former marriage.

The wife shall manage her dotal and paraphernal property, the property of the children had by the prodigal, and that of the conjugal partnership, but cannot sell such property without the authorization of the court.

C. C. P. 551 et seq.

1. See Arts. 1365 and 1443; and notes under Arts. 199 to 204, and 213, Civil Code.

ART. 226. No act of the prodigal done prior to the filing of the complaint to have him declared such may be attacked by reason of his prodigality.

1. See notes under Art. 213, Civil Code.

ART. 227. The guardianship of the prodigal belongs:

1. To the father, or, in his default, to the mother;
2. To the paternal and maternal grandparents;
3. To the eldest of the emancipated male children.

C. C. P. 559.

1. See Art. 278, and notes under Arts. 199 to 204, and 213, Civil Code.

SECTION IV. *Guardianship of Persons under Interdiction.*

ART. 228. Whenever a judgment in which the penalty of interdiction has been imposed has become final the prosecuting officer shall ask that the provisions of Articles 203 and 293 be complied with. If he should fail to do so he shall be responsible for any damages resulting from such failure.

The petition may also be presented by the husband or wife and by the heirs *ab intestato* of the defendant.

1. See Arts. 40, 199 et seq., 229 et seq., 931, 935, 939, 946, 955, Civil Code; Arts. 42, 54 and 57, Penal Code.
2. Arts. 228 to 229, Civil Code, repealed (Willard).

ART. 229. Such guardianship shall be limited to the management of the property and to the representation in legal proceedings of the person under interdiction.

It shall furthermore be the duty of the guardian of the interdicted person to care for the persons and property of any minors or incapacitated persons who are subject to the authority of the person sentenced to interdiction until another guardian is provided for them.

The wife of the person sentenced to interdiction shall exercise parental authority over their children while the interdiction lasts. If she be a minor she shall act under the direction of her father, or in his default, of her mother, or in default of both, that of her guardian.

1. See Arts. 60, 154, 159 et seq., 262 et seq., and 320; and notes under Art. 228, Civil Code; Arts. 11 et seq., Code of Commerce; and Arts. 42, 45 and 47, Penal Code.

ART. 230. The guardianship of persons under interdiction shall be granted in the order established by Article 220.

1. See notes under Art. 228, Civil Code.

CHAPTER IV.

GUARDIANSHIP BY APPOINTMENT.

ART. 231. In default of a testamentary guardian and of the persons called by law to fill any vacant guardianship, the appointment of a guardian devolves upon the family council in all cases falling under Article 200.

1. See notes under Arts. 199 to 204, Civil Code.
2. Repealed by Sec. 552, Code of Civil Procedure (Willard).

ART. 232. Any municipal judge who shall neglect to convene the family council in any case in which the appoint-

ment of a guardian for a minor or incapacitated person is necessary shall be liable for any damages caused by his negligence.

1. See notes under Arts. 199 to 204, Civil Code.
2. Repealed (Willard).

CHAPTER V.

PROTUTORS.

ART. 233. The power of appointing the protutor devolves upon the family council if the persons entitled to appoint guardians for minors have not made such appointment.

1. See note under Art. 204, Civil Code.
2. Arts. 233 to 236 repealed (Willard).

ART. 234. The guardian shall not enter upon the discharge of his duties until the protutor has been appointed. Any guardian who shall fail to apply for the appointment of a protutor shall be removed from his office and shall be liable for any damages which the minor may suffer.

1. See notes under Arts. 199 to 205, and 233, Civil Code.

ART. 235. No relative of the same line as the guardian shall be eligible for appointment as protutor.

1. See notes under Arts. 199 to 205, and 233, Civil Code.

ART. 236. It shall be the duty of the protutor:

1. To supervise the taking of the inventory of the minor's property and to examine the guardian's bond if such bond be required;

2. To protect the rights of the minor, in court or out, whenever such rights conflict with the interests of the guardian;

3. To call the attention of the family council to the management of the guardian whenever he may deem it injurious to the person or interests of the minor;

4. To bring about a meeting of the family council for the purpose of appointing a new guardian whenever the guardianship becomes vacant or is abandoned;

5. To perform such other duties as are prescribed by law.

The protutor shall be liable for any damage suffered by the minor by reason of nonperformance or neglect of these duties.

The protutor shall be entitled to be present at the deliberations of the family council and to participate therein; but he shall not be entitled to vote.

1. See Arts. 165 (par. 1), 207, 231, 243, 256, and 257 and notes under Arts. 199 to 205, and 233, Civil Code; Secs. 158, 116, 117, 551 et seq., Code of Civil Procedure.
2. Par. 2 of this article cited and applied in relation with facts occurring prior to the enactment of the present Code of Civil Procedure. Salunga v. Evangelista, 20 Phil. 299.

CHAPTER VI.

PERSONS DISQUALIFIED TO BE GUARDIANS AND PROTUTORS AND THE REMOVAL OF THE SAME.

ART. 237. The following cannot be guardians or protutors:

1. Persons subject to guardianship;

2. Persons who have been convicted of the crimes of robbery, theft, swindling, forgery, corruption of minors or public scandal;

3. Persons who have been sentenced to any corporal punishment, until the sentence has been served;

4. Persons who have been lawfully removed from a former guardianship;

5. Persons of bad conduct, or who have no known means of support;

6. Bankrupts and insolvents not discharged;

7. Women, with the exception of the cases in which they are expressly qualified by law;

[211, 220, 227, 230]

8. Persons who at the time the office of guardian is filled have any litigation pending with the minor with respect to his civil status;

9. Persons who have any litigation pending with the minor concerning the ownership of his property unless the father or the mother, as the case may be, with knowledge of the fact, has otherwise provided;

10. Persons who are indebted to the minor to any considerable extent unless such person shall have been appointed by the father or the mother, as the case may be, with knowledge of this fact;

11. The relatives mentioned in paragraph 2 of Article 293 and the testamentary guardian when either of them has failed to perform the duties imposed upon him by such article;

12. Professed members of monastic orders;

13. Foreigners not residing in Spain.

1. See Arts. 27, 98, 102, 128, 133, 180, 200, 201, 206, 213, 221, 330, and notes under Arts. 199 to 205, Civil Code; Arts. 10, 25, 28, 30, 42, 54, 56, 218, 223, 226, 266 et seq., 343, 440, 444 et seq., 451, 502 et seq., 534 et seq., 588, 594, Penal Code; Arts. 13, 874 et seq., 878, 920 et seq., Code of Commerce.
2. Repealed by Sec. 553, Code of Civil Procedure (Willard).
3. A person to be appointed guardian must be within the jurisdiction of the appointing court, and therefore subject to it. Guerrero v. Teran, 13 Phil. 212.
4. The appointment and removal of guardians is left to the sound discretion of the trial courts. Feliciano v. Camahort, 22 Phil. 235.

ART. 238. The following shall be removed from guardianship:

1. Any person who, after having qualified, shall become subject to any of the disabilities mentioned in paragraphs 1, 2, 3, 4, 5, 6, 8, 12 and 13 of the next preceding article;

2. Any person who has assumed the management of the guardianship without having had the family council convened or having asked for the appointment of a protutor,

or without having given bond if required, or who has failed to record a mortgage bond;

3. Any guardian who shall fail to prepare the inventory within the period and in the manner prescribed by law, or who shall be guilty of any breach of faith in its preparation;

4. Any guardian who has improperly conducted himself with respect to the duties of his office.

[171, 210, 264, 272, 910, 1902] C. C. P. 574.

1. See note under Art. 237, Civil Code.
2. Arts. 238 to 243, Civil Code, repealed by Sec. 574 of the Code of Civil Procedure (Willard).
3. A guardian can be removed from office only on the grounds specified in Sec. 574, Code of Civil Procedure. Alemany v. Sweeney, 5 Phil. 172.

ART. 239. The family council may not declare any guardian or protutor disqualified or adopt resolutions for his removal without giving him notice and granting him a hearing if he appears.

1. See notes under Arts. 238, 204, Civil Code.

ART. 240. If the guardian has been declared disqualified, or a resolution for his removal has been adopted by the family council, such decision shall be deemed final and the vacancy shall be filled unless the guardian shall commence proceedings in court to contest such action within fifteen days after the date of service upon him of notice of the resolution.

1. See Arts. 40, 237, et seq., 241, 243, 305 and 310, and notes under Arts. 238 and 204, Civil Code.

ART. 241. If the guardian shall commence judicial proceedings, the family council shall litigate at the expense of the minor, but the members of such council shall be liable for the costs if they have acted with evident bad faith.

1. See Arts. 249, 262 and 263, and notes under Arts. 238 and 204, Civil Code.

ART. 242. When the resolution of the family council is favorable to the guardian and has been unanimously adopted, there shall be no appeal therefrom.

1. See Arts. 305 and 310, and notes under Arts. 238 and 204, Civil Code.

ART. 243. If, by reason of some disqualification the guardian does not enter upon the discharge of his duties, the family council shall attend to the duties of the guardianship until the question concerning the disqualification is finally decided.

If, after the guardian shall have entered upon the discharge of the duties of his office the family council shall declare him disqualified or adopt a resolution for his removal, the action proposed by such council for the purpose of attending to the interests of the guardianship, in case of litigation, cannot be carried out until approved by the court.

1. See Arts. 241, 256 and 310, and notes under Arts. 238 and 204, Civil Code; Sec. 574, Code of Civil Procedure.

CHAPTER VII.

EXCUSES FOR NOT ACCEPTING GUARDIANSHIP AND PROTUTORSHIP.

ART. 244. The following may excuse themselves from guardianship and protutorship:

1. The ministers of the Crown;

2. The presidents of the co-legislative houses, of the council of state, of the supreme court, of the supreme council of war and navy, and of the court of accounts of the Kingdom;

3. Archbishops and bishops;

4. Associate justices, judges, and officials of the department of public prosecution;

5. Persons who exercise authority conferred upon them directly by the Government;

6. Military men in active service;

7. Ecclesiastics who are performing the duties of ministers of the gospel;

8. Any person having five legitimate children subject to his authority;

9. Persons who are so poor that they cannot attend to the guardianship without impairing their own means of livelihood;

10. Those who in consequence of continuous ill health or because of inability to read or write cannot well perform the duties of the office;

11. Persons over sixty years of age; and

12. Persons who are already guardians or protutors of another person.

1. See notes under Arts. 199 et seq., Civil Code.
2. Arts. 244 to 251, Civil Code repealed (Willard).

ART. 245. No person not a relative of the minor or incapacitated person shall be bound to accept the guardianship if within the district of the court making the appointment there are relatives within the sixth degree, qualified to perform the duties of the office.

1. See Arts. 261, 293, 301, 955; and notes under Arts. 199 et seq., and 244, Civil Code.

ART. 246. Persons who have been excused may, at the petition of the guardian or protutor, be compelled to accept the guardianship whenever the cause of the exemption ceases.

1. See notes under Arts. 199 et seq. and 244, Civil Code.

ART. 247. No excuse shall be accepted unless it has been advanced at the meeting of the family council held for the purpose of appointing a guardian.

If the guardian was not present at the meeting of the council, or was not previously informed of his appointment,

he must make the excuse within the ten days following the date on which he shall have been notified thereof.

1. See notes under Arts. 199 et seq. and 244, Civil Code.

ART. 248. If the causes of the exemption should arise subsequently to the acceptance of the guardianship, the period within which they must be asserted shall be computed from the day on which the guardian may have had knowledge thereof.

1. See notes under Arts. 199 et seq. and 244, Civil Code.

ART. 249. The resolution by which the family council rejects the excuses may be contested before the courts within the period of fifteen days.

The resolution of the family council shall be defended by it at the expense of the minor. If it be affirmed the person by whom the contest was provoked shall pay the costs.

1. See Arts. 241, 310, and notes under Arts. 204 and 244, Civil Code.

ART. 250. During the pendency of the suit concerning the exemption alleged, it shall be the duty of the person asserting the same to perform the duties of the guardianship. Should he fail to do so the family council shall appoint some person to take his place. If the excuses alleged be rejected the guardian shall be responsible for the management of the person appointed to take his place.

1. See notes under Arts. 199 to 205, and 244, Civil Code.

ART. 251. Any testamentary guardian who declines to accept the guardianship shall forfeit anything which may have been voluntarily left him by the person by whom he was nominated.

1. See notes under Arts. 201 and 244, Civil Code.

CHAPTER VIII.

BONDS OF GUARDIANS.

ART. 252. Before assuming the office, all guardians shall give bond to secure the faithful discharge of their duties.

1. See Art. 260, and note under Art. 205, Civil Code; Art. 207, Mortgage Law.
2. Repealed by Sec. 555, Code of Civil Procedure (Willard).

ART. 253. The bond must be secured either by mortgage or by pledge.

A personal bond shall be accepted only when it is impossible to obtain a bond secured by mortgage or pledge. The security given by the bondsmen shall not prevent the adoption of any measures advisable for the preservation of the property of the minor or incapacitated person.

1. See notes under Arts. 205 and 252, Civil Code.

ART. 254. The bond shall be security for—

1. The value of any personal property which may come into the possession of the guardian;
2. The income or revenue which the property of the minor or incapacitated person may produce during one year;
3. The profits which the minor may receive from any commercial or industrial enterprise during one year.

1. See notes under Arts. 205 and 252, Civil Code; and Art. 212, Mortgage Law.

ART. 255. The guardian may appeal to the courts from any resolution of the family council concerning the amount or sufficiency of his bond, but he shall not take possession of the office without having given the bond required of him.

1. See Arts. 40, 238, 252 et seq. and 310, and notes under Arts. 204, 236 and 252, Civil Code; Art. 213, Mortgage Law.

ART. 256. Until the bond is executed the protutor shall discharge such administrative functions as the family council may consider indispensable for the safekeeping of the property and the collection of its revenue.

1. See notes under Arts. 204 and 252, Civil Code; and Art. 209, Mortgage Law.

ART. 257. The mortgage bond shall be recorded in the Registry of Deeds. If the bond is secured by pledge, the property pledged shall be deposited in some authorized public depository.

1. See Arts. 253, 258, 259, 290, and notes under Arts. 205 and 252, Civil Code; Art. 208, Mortgage Law; Sec. 577, Code of Civil Procedure.

ART. 258. The record of the mortgage bond or the deposit of the property pledged may be demanded—

1. By the guardian;
2. By the protutor;
3. By any member of the family council.

Any person required to perform this duty who shall neglect to perform it shall be liable for any damage caused thereby.

1. See notes under Arts. 205, 252 and 257, Civil Code; Art. 210, Mortgage Law.

ART. 259. The bond may be increased or reduced during the term of the guardianship to such extent as may be necessary by reason of any increase or reduction in the amount of the property of the minor or incapacitated person, or the fluctuation in value of the property by which the bond is secured.

The bond shall not be canceled until after the accounts of the guardianship are approved and the guardian has satisfied all the liabilities arising from his management.

1. See Art. 282 and note under Art. 252, Civil Code; Arts. 214 and 215, Mortgage Law; and Sec. 576, Code of Civil Procedure.

ART. 260. The following guardians shall not be required to give bond:

1. The father, the mother, and the grandparents, in cases in which they are required to act as guardians of their descendants.

2. The testamentary guardian, if relieved from this obligation by the father or the mother, as the case may be. This exemption shall cease whenever, subsequently to the appointment of the guardian, causes unknown to the testator shall arise which, in the opinion of the family council, make a bond necessary.

3. A guardian appointed without bond by a stranger who may have made the minor or incapacitated person his heir or left him an important legacy. In such cases the exemption shall be limited to the property or income of which the inheritance or legacy consists.

1. See notes under Arts. 201, 205 and 252; and Arts. 206, 207, 211, 220, 227 and 230, Civil Code; and Art. 216, Mortgage Law.

CHAPTER IX.

EXERCISE OF THE GUARDIANSHIP.

ART. 261. The family council shall give possession to the guardian and protutor.

C. C. P. 551 et seq.

1. See Arts. 205, 234 and 252; and notes under Art. 204, Civil Code.
2. Arts. 261 to 286 repealed (Willard).

ART. 262. The guardian shall represent the minor or incapacitated person in all civil acts, with the exception of those which the latter, by express provision of the law, is qualified to perform personally.

[168, 298] C. C. P. 551 et seq.

1. See notes under Arts. 199 and 261, Civil Code; and Sec. 116, Code of Civil Procedure.

ART. 263. Minors and incapacitated persons subject to guardianship owe respect and obedience to the guardian. He may punish them in moderation.

C. C. P. 551 et seq.

1. See Arts. 154, 224, 229 and 269; and notes under Arts. 199 and 261, Civil Code.

ART. 264. It shall be the duty of the guardian—

1. To support and educate the minor or incapacitated person in accordance with his condition and in strict accordance with the instructions of his or her parents or, in default of the latter, those of the family council;

2. To make every possible endeavor, within the means of the insane or demented person or deaf-mute, to cause such person to recover or acquire capacity;

3. To make an inventory of the property of the ward within the period fixed for this purpose by the family council;

[236, 265, 267]

4. To manage the estate of the minor or incapacitated person with the diligence of a good father of a family;

[273, 279, 280]

5. To make timely application for the authorization of the family council for any transaction which cannot be effected without such authorization;

[269, 279]

6. To request the co-operation of the protutor in all cases in which the law requires it.

C. C. P. 551 et seq.

1. See Arts. 50, 142, 225, 229, 234, 256, 265 et seq., 269, 287, 304, 308, and notes under Arts. 199 to 204, and 261, Civil Code; and Art. 588 (No. 6), Penal Code.

2. A guardian who takes possession of the estate of the minor's deceased father, and invests the whole estate for the benefit of the minor, without paying the debts, will be personally liable for such debts. Villarruz v. Azarraga, 15 Phil. 108.

ART. 265. The inventory shall be made with the assistance of the protutor and in the presence of two witnesses selected by the family council. The latter shall decide, in view of the importance of the estate, whether the inventory shall also be authenticated by a notary.

1. See notes under Arts. 204 and 261; and Sec. 567, Code of Civil Procedure.

ART. 266. Any jewelry, valuable personal property, public securities or commercial or industrial securities which, in the judgment of the family council, should not be left in the possession of the guardian, shall be deposited in some authorized depository.

The other personal property and domestic animals if not already appraised, shall be appraised by experts appointed by the family council.

1. See notes under Arts. 204, 261 and 265, Civil Code.

ART. 267. Any guardian who, having been called upon to do so by the notary, the protutor, or the witnesses, shall fail to include in the inventory any claims he may hold against the minor shall be deemed to have waived the same.

1. See notes under Arts. 199, 261 and 265, Civil Code.

ART. 268. When the will of the person who nominated the guardian makes no mention of the amount to be allowed for the support of the minor or incapacitated person, the family council, after examining the inventory, shall determine what part of the income or revenue shall be used for this purpose.

This resolution may be modified in proportion to the increase or decrease of the estate of the minor or incapacitated person or in accordance with any change in the circumstances of the latter.

C. C. P. 551 et seq.

1. See Arts. 207, 231, 279 and 290, and notes under Arts. 204 and 261, Civil Code.
See Linsangan v. Linsangan, 11 Phil. 521.

ART. 269. It shall be necessary for the guardian to obtain the authorization of the family council—

1. To inflict upon the minor the punishment referred to in paragraph 2 of Article 155 and in Article 156;

2. To teach the minor any particular profession or trade when this matter has not been decided by the parents, or to modify any instructions they may have given upon this subject;

3. To place the incapacitated person in an asylum, unless the guardianship is exercised by the father, the mother, or a son;

4. To continue any business or trade in which the incapacitated person or his ascendants or those of the minor may bave been engaged;

5. To sell or encumber the property constituting the estate of the minor or incapacitated person or to make contracts or execute instruments subject to record;

[164, 270, 272, 1548]

6. To invest any money remaining at the end of each year after meeting the obligations of the guardianship;

7. To effect a partition of the inheritance or of any other thing of which the minor or incapacitated person may be a tenant in common with others;

8. To withdraw from deposit any money producing interest;

9. To lend or borrow money;

[207, 631]

10. To accept any inheritance without the benefit of inventory or to reject any inheritance or gift;

[63, 992]

11. To incur extraordinary expenses in connection with

any real estate, the management of which is included in the guardianship;

[500]

12. To compromise or submit to arbitration any question in which the minor or incapacitated person may be interested;

[274, 1810]

13. To commence suits in the name of the person subject to guardianship or to appeal or take out a writ of error against any judgment which may have been rendered against such person. Complaints and appeals in verbal suits are excepted.

1. See Arts. 155, 156, 205, 262, 263, 270 et seq., and notes under Arts. 199, 204 and 261, Civil Code; Art. 5, Code of Commerce; Secs. 191, 551 et seq., 566, 569 and 571, Code of Civil Procedure.
2. A minor may intervene in any action in court through a guardian ad litem. Bautista v. Tiongson, 11 Phil. 579.
3. A contract of lease entered into by the guardian and approved by the court will be binding on the minor. Enriquez v. Watson & Co., 22 Phil. 623.
4. A mother, who is not the legal guardian of the property of her minor children, cannot waive the latter's rights to claim indemnity for damages. Rosario v. Manila Railroad, 22 Phil. 140.
5. A sale made in 1895 and approved in accordance with this Article (Nos. 5 and 7) held valid. Rafols v. Rafols, 22 Phil. 237.

ART. 270. The family council shall not authorize the guardian to sell or encumber the property of the minor or incapacitated person unless it be for reasons of necessity or utility, which the guardian shall duly prove. The authority shall expressly specify the thing to which it applies.

[1252 par. 1] C. C. P. 551 et seq.

1. See Art. 269, and notes under Arts. 204, 269 and 261, Civil Code.

ART. 271. The family council before granting authority to encumber real estate or establish any lien or servitude thereon in favor of third persons may first hear the opinion of experts with regard to the conditions of the encumbrance and the possibilities of bettering them.

1. See notes under Arts. 204, 269 and 261, Civil Code.

ART. 272. The sale of real property, rights subject to record, jewelry or personal property, the value of which is over four thousand pesetas, shall be made at public auction with the intervention of the guardian or protutor.

Securities quoted on exchange, whether public, commercial or industrial, shall be sold by an exchange agent or by a commercial broker.

[238, 275] C. C. P. 551 et seq.

1. See notes under Arts. 269 and 261, Civil Code; Arts. 67 et seq., 89, 93, 100 et seq., 106 et seq., Code of Commerce.

ART. 273. The guardian is liable for interest at the legal rate on the capital of the minor if, by his fault or neglect, it should remain unproductive or uninvested.

C. C. P. 551 et seq.

1. See Arts. 264, 1104 and 1108, and notes under Arts. 269 and 261, Civil Code.

ART. 274. The authority to make a settlement or to compromise through arbitration must be requested in writing; the guardian shall state in the petition for such authority all the conditions and advantages of the transaction.

The family council before acting may obtain the opinion of one or more lawyers, according to the importance of the matter and may grant or refuse to grant the authority requested. If the authority is granted the fact shall be recorded in the minutes of the council.

C. C. P. 551 et seq.

1. See Arts. 270, 304, 311 and 1810, and notes under Arts. 199, 204, and 261, Civil Code.

ART. 275. The guardian is forbidden—

1. To give away or waive any thing or right belonging to the minor or incapacitated person;

Donations *propter nuptias* made by the minor with the approval of the persons called upon to give their consent to the marriage shall be valid, provided they do not exceed the limits fixed by law;

2. To collect from the debtors of the minor or incapacitated person, without the intervention of the protutor, any amounts with the exception of interest or the revenue from property, in excess of five thousand pesetas;

No payment made without this requisite shall operate to discharge the debt unless the debtor shall prove that the amount so paid was invested for the benefit of the minor or incapacitated person;

3. To pay to himself any amount due him from the estate without the intervention of the protutor;

4. To buy, either personally or through the mediation of another, any property belonging to the minor or incapacitated person unless expressly authorized thereto by the family council.

C. C. P. 551 et seq.

1. See Arts. 46, 174, 236, 264, 267, 287, 1318, 1323, 1331, 1459, and notes under Arts. 199, 269 and 261, Civil Code; and Art. 397, Penal Code.

ART. 276. The guardian is entitled to compensation, chargeable against the property of the minor or incapacitated person.

The compensation of guardians appointed by will, if not determined by the testator, and that of legal and appointive guardians, shall be fixed by the family council, in consideration of the amount of the estate and the work required for its management.

In no case shall compensation be less than 4 nor more than 10 per cent of the net income or proceeds of the property.

The guardian may appeal to the courts from the resolution fixing his compensation.

1. See notes under Arts. 204 and 261; and Sec. 568, Code of Civil Procedure.

ART. 277. Should the family council maintain its decision, it shall litigate at the expense of the minor or incapacitated person.

C. C. P. 551 et seq.

1. See Arts. 310 and 312, and notes under Arts. 204 and 261, Civil Code.

ART. 278. The guardianship terminates—

1. When the minor attains the age of twenty-three years, is specially emancipated, or is adopted;

2. With respect to the guardianship of incapacitated persons and prodigals or persons under interdiction, upon the cessation of the causes which necessitated it.

1. See Arts. 154, 322, 371 and notes under Art. 261, Civil Code; Secs. 262, 551 et seq. and 575, Code of Civil Procedure; Act 1891.

CHAPTER X.

ACCOUNTS OF THE GUARDIANSHIP.

ART. 279. If the guardian be a collateral relative of the minor or incapacitated person, or a stranger, he shall render the family council an annual account of his administration, unless the guardianship shall have been undertaken upon the agreement that the guardian is to have the revenue of the ward's property as compensation for his support.

These accounts, after being examined by the protutor and audited by the council, shall be deposited in the office of the clerk of the court in which the guardianship has been registered.

If the guardian shall not be satisfied with the decision of

the council he may appeal to the courts, in which case, the interests of the minor or incapacitated person shall be defended by the protutor.

1. See Arts. 236, 259, 268, 273, 276, 280 et seq., 293 and 310, and notes under Arts. 199, 204, 261 and 269, Civil Code; and Secs. 551 et seq., 568, Code of Civil Procedure.
2. After a guardian's accounts are received by his successor and approved by the family council, his responsibility as such guardian ceases. Tria v. Ortiz, 14 Phil. 551.

ART. 280. When any guardian is replaced by another he or his heirs shall be required to render a general account of the guardianship to his successor, which account shall be examined and audited in the manner prescribed in the next preceding article. The new guardian shall be liable to the minor in damages should he fail to demand and examine the accounts of his predecessor.

1. See notes under Arts. 279 and 261, Civil Code; and Sec. 574, Code of Civil Procedure.
2. One who, under threat of imprisonment, undertakes to restore missing property for which he is responsible as guardian, cannot evade the contract upon the plea of duress. Boronilla v. Lopez, 3 Phil. 360.

ART. 281. Upon the termination of the guardianship it shall be the duty of the guardian or his heirs to render an account of the administration to the ward or to his representatives or successors in interest.

1. See notes under Arts. 219, 280 and 261, Civil Code.

ART. 282. The general accounts of the guardianship shall be audited and passed upon by the family council within a period not exceeding six months.

C. C. P. 551 et seq.

1. See Arts. 259, par. 2, 285 and 287, and notes under Arts. 204 and 261, Civil Code.

ART. 283. The accounts shall be accompanied by the

proper vouchers. Only expenditures such as those for which a diligent father of a family does not take a receipt shall be allowed without such proof.

1. See notes under Arts. 276 and 261, Civil Code.

ART. 284. The expenses of the rendition of accounts shall be chargeable to the minor or incapacitated person.

1. See notes under Arts. 283 and 261, Civil Code.

ART. 285. Neither the successors in interest of the minor, nor the latter, if of age, may enter into agreement with the guardian relating to the administration of the guardianship until fifteen days have elapsed since the guardian's accounts, supported by proper vouchers, were rendered.

The family council, without prejudice to any agreement the parties in interest may make after the expiration of this period, shall report to the courts any offenses which may have been committed by the guardian in the course of his administration.

1. See Arts. 45, 50, 281 et seq., and notes under Arts. 204, 284 and 261, Civil Code; Arts. 397 and 478, Penal Code.

ART. 286. Any balance appearing from the general account in favor of or against the guardian shall draw interest at the legal rate.

If the balance be in favor of the guardian interest shall accrue from the time payment is demanded of the minor after delivery of his property; if in favor of the ward, from the date of the rendition of the account, if rendered within the period fixed by law, otherwise, from the expiration thereof.

C. C. P. 551 et seq.

1. See Arts. 1100, 1101, 1108, and notes under Arts. 219, 276, 269 and 261, Civil Code.

ART. 287. Any right of action growing out of the guardianship in favor of the ward against the guardian or of the

guardian against the ward shall be extinguished five years after the termination of the guardianship.

[180] C. C. P. 578, 579.

1. Repealed by Secs. 578 and 579, and Chapter III, Code of Civil Procedure (Willard).

CHAPTER XI.

REGISTRATION OF GUARDIANSHIPS.

ART. 288. In each court of first instance there shall be one or more books in which shall be recorded all guardianships commenced during the year within the judicial district.

1. See Arts. 205, 269, 289 et seq., Civil Code; and Sec. 580, Code of Civil Procedure.
2. Arts. 288 to 292 repealed (Willard).

ART. 289. These books shall be in charge of a court clerk who shall make the entries without fee.

1. See notes under Art. 288, Civil Code; and Sec. 384, Code of Civil Procedure.

ART. 290. The record of each guardianship shall show—

1. The name, surname, age and domicile of the minor or incapacitated person and the extent and limitations of the guardianship, when the incapacity has been the subject of judicial decision;

2. The name, surname, profession and domicile of the guardian, and a statement as to whether he is a testamentary or legal guardian or was appointed by the family council;

3. The date on which the guardianship was conferred and that on which the bond required of the guardian was given with a statement of the kind of property, if any, by which the bond is secured;

4. The allowance which may have been assigned for the support of the minor or incapacitated person, or, if the

guardian has been authorized to take the ward's income as compensation for his support it shall be so stated.

C. C. P. 551 et seq.

1. See notes under Arts. 276, 279, 288 and 289, Civil Code.

ART. 291. An entry shall be made at the beginning of each judicial year at the foot of each record showing whether or not the guardian has rendered an account of his administration, in case it shall be his duty to do so.

C. C. P. 551 et seq.

1. See notes under Arts. 276, 279, 288 and 289, Civil Code.

ART. 292. The judges shall examine these registries every year and shall take the necessary steps in each case to protect the interests of the persons subject to guardianship.

1. See notes under Arts. 276 and 288, Civil Code.

TITLE X.

THE FAMILY COUNCIL.

SECTION I. *Manner of Constituting the Family Council.*

ART. 293. Whenever the existence within his district of any of the persons mentioned in Article 200 shall come to the knowledge of any prosecuting officer or municipal judge, it shall be the duty of such prosecuting officer to request or of such judge to order, either upon his own motion or at the instance of the prosecuting officer, the organization of a family council.

It shall be the duty of any testamentary guardian and of all relatives upon whom the legal guardianship devolves or who are required by law to act as members of the family council, to report to the municipal judge any facts which make necessary the establishment of a guardianship as soon as such facts may come to their knowledge. Any person failing to perform this duty shall be liable in damages.

The municipal judge shall cite the persons who are to constitute the family council, informing them of the purpose of the meeting and the day, hour and place where it is to be held.

1. See Arts. 12, 200, 220, 227 et seq., 230, 232, 237, 294, 300 et seq., and notes under Art. 204, Civil Code; and Secs. 552 and 596, Code of Civil Procedure.
2. Arts. 293 to 313, repealed (Willard).

ART. 294. The family council shall be composed of the persons whom the father or the mother, as the case may be, may have designated by will or, failing such, of male ascendants and descendants of the minor or incapacitated person, his brothers and the husbands of his living sisters, whatever may be their number. If there are less than five of such persons this number shall be made up by the ap-

pointment of the nearest male relatives of the paternal and maternal lines; or, failing such, or should they not be under obligation to act as members of the council, the municipal judge shall appoint in their stead any honest persons, giving preference to friends of the parents of the minor or incapacitated person.

In default of ascendants, descendants, brothers, or husbands of living sisters, the municipal judge shall form the council by the appointment of the five nearest male relatives of the minor or incapacitated person or, should there be no such relatives or should there be less than the required number he shall appoint in their stead any honest persons, giving preference in all cases to friends of the parents.

1. See Arts. 206, 237, 238, 298 and 310, and notes under Art. 293, Civil Code.

ART. 295. Where the degrees of relationship are equal, the elder relative shall be preferred for membership in the family council.

1. See note under Art. 293, Civil Code.

ART. 296. The courts may validate proceedings which would otherwise be void by reason of failure to conform to the provisions of the preceding articles, if such failure be not due to fraud and has caused no injury to the person or property of the ward; but the error committed in the formation of the council shall be corrected.

1. See Art. 293, and notes, Civil Code.

ART. 297. No relative of the minor or incapacitated person who resides more than thirty kilometers from the court having jurisdiction over the guardianship shall be obliged to become a member of the family council, though such relative be one of those designated by the law for membership therein. The municipal judge shall, nevertheless, send notice of the formation of the council to such relatives

and, if they voluntarily accept appointment as members thereof, they shall be required to continue to discharge the duties of the office.

1. See notes under Art. 293, Civil Code.

ART. 298. The causes which excuse, disqualify or give ground for the removal of guardians and protutors shall be applicable to members of the family council. If the father of the ward, or the mother, as the case may be, shall have expressly provided by will for the exclusion of any person or persons from the family council, such person or persons shall be ineligible for membership therein.

1. See notes under Art. 293, Civil Code.

ART. 299. The guardian and protutor shall not be at the same time members of the family council.

1. See Art. 202, and notes under Art. 293, Civil Code.

ART. 300. The meeting held for the purpose of organizing the family council shall be presided over by the municipal judge. The persons cited shall be obliged to appear in person or by special attorney, provided that such attorney shall in no case represent more than one person. Should they fail to appear the judge may impose upon them a fine not to exceed fifty pesetas.

1. See notes under Art. 293, Civil Code.

ART. 301. After the family council has been organized by the municipal judge it shall proceed to adopt any measures necessary for the preservation of the person and property of the minor or incapacitated person and to establish the guardianship.

1. See notes under Art. 293, Civil Code.

ART. 302. The family council for natural children shall be constituted under the same rules as that for legitimate

children, but shall be composed of relatives of the father or mother by whom such children have been acknowledged.

The family council for other illegitimate children shall consist of the prosecuting officer, who shall be the president, and of four good citizens.

1. See Arts. 119, 129 et seq., 293 et seq., and notes under Art. 293, Civil Code.

ART. 303. The management of all charitable institutions shall have, with respect to minor orphans who are inmates of such institutions, all the powers corresponding to guardians and of the family council.

1. See Art. 212, and note under Art. 293, Civil Code.

SECTION II. *Rules of Procedure for the Family Council.*

ART. 304. The president of the council shall be some member thereof elected by the others.

It shall be the duty of the president—

1. To call a meeting of the council whenever he considers it advisable or whenever requested to do so by any member thereof, by the guardian, or by the protutor, and to preside over its deliberations;

2. To draft the resolutions of the council, setting forth therein the grounds upon which they are based, and the opinion of each one of the members, all of whom shall be required to sign the minutes;

3. To carry out the resolutions of the council.

1. See note under Art. 293, Civil Code.

ART. 305. The family council shall not act upon any matters submitted to it unless at least three members are present.

A majority vote shall be sufficient for the adoption of a resolution.

In case of a tie the president shall have the casting vote.

1. See note under Art. 293, Civil Code.

ART. 306. It shall be the duty of all members of the family council to attend any meeting thereof to which they have been summoned. Should they fail to attend or give some proper excuse, the president of the council shall report the fact to the municipal judge who may impose on the offender a fine of not more than fifty pesetas.

1. See Art. 300 and note under Art. 293, Civil Code.

ART. 307. No member of the family council shall be present at or vote in any meeting thereof when the subject of its deliberations is any matter in which he, his descendants, ascendants, or wife, have any interest, but he may be given a hearing if the council deems it advisable.

1. See Art. 217 and note under Art. 293, Civil Code.

ART. 308. It shall be the duty of the guardian and of the protutor to attend the meeting of the family council whenever cited, but they shall have no vote. They may also attend if the council meets at their request.

The person subject to guardianship, if over fourteen years of age, shall be entitled to be present and to be heard.

1. See Arts. 236 and 269, and note under Art. 293, Civil Code.

ART. 309. The family council shall take cognizance of all matters which, under the provisions of this code, fall within the scope of its authority.

1. See Arts. 46, 201, 204, 206 et seq., 216 et seq., 221, 231, 233, 239 et seq., 247, 249, 260, 264 et seq., 274, 276, 279, 280, 282, 285, 301, 304 et seq., 312 and 322, and notes under Art. 293, Civil Code.

ART. 310. Any member who shall have dissented from the majority on any resolution, as well as the guardian or protutor or any relative of the minor or other person interested in the decision, may appeal therefrom to the judge

of first instance, unless the case falls within the terms of Article 242.

1. See Art. 240, and note under Art. 293, Civil Code.

ART. 311. Upon the termination of the guardianship and the consequent dissolution of the family council, the latter shall deliver the minutes of its meetings to the ward or to the person representing or holding under him.

1. See Arts. 278, 281 and 287, and note under Art. 293, Civil Code.

ART. 312. Members of the family council shall be liable for any damage which the ward may suffer by reason of any intentional misconduct or culpable negligence on their part.

Members who dissent from the resolution which was the cause of the injury shall be exempted from this liability.

1. See note under Art. 293, Civil Code.

ART. 313. The family council shall be dissolved in the same cases in which the guardianship is terminated.

1. See note under Art. 293, Civil Code; Sec. 575, Code of Civil Procedure.

TITLE XI.

EMANCIPATION AND MAJORITY.

CHAPTER I.

EMANCIPATION.

ART. 314. Emancipation takes place—

1. Upon the marriage of the minor;
2. Upon the attainment of majority;
3. By concession of the father or mother exercising the parental authority.

[321]

1. See Arts. 154, 167 et seq., 177, 278, 315 et seq.; and Secs. 554 and 575, Code of Civil Procedure.
2. Parents can no longer emancipate their minor children by voluntary concession. Aldecoa v. Hongkong & Shanghai Bank, 30 Phil. 228.

ART. 315. Emancipation results, by operation of law, from marriage, subject to the limitations established by Article 59 and paragraph 3 of Article 50.

1. See Art. 317, Civil Code; and Sec. 575, Code of Civil Procedure.
2. Repealed (Willard).
3. See note under Art. 314, Civil Code.

ART. 316. Emancipation by parental concession, under the provisions of paragraph 3 of Article 314, shall be effected by the execution of a public instrument or by the appearance of the parties before the municipal judge, provided that such emancipation shall not be effective as to strangers until recorded in the civil registry.

1. See Arts. 314, 317 et seq., 325 et seq. and 332, and notes under Arts. 314 and 325, Civil Code.

2. Partly repealed (Willard). See also notes under Art. 131, Civil Code.
3. A document acknowledged before a notary public in accordance with the present notarial law is a "public document" within the meaning of that term as used in this article. Ibañez v. Hongkong & Sh. Bank, 30 Phil. 249.

ART. 317. Emancipation qualifies the minor to control his person and property as if of age; but until he attains his majority he cannot borrow money or encumber or sell real property without the consent of his father, or, in default of the latter, of his mother, or, in default of both, that of his guardian, nor can he be a party to any judicial proceeding without the joinder of such persons.

1. See Arts. 50, 59, 60, 66, 69, 269, 270, 314 et seq., 1263, 1361, 1378, 1716 and notes under Arts. 314 and 199 to 204, Civil Code; Arts. 4, 6, 7, 11 et seq., Code of Commerce; Art. 42, Penal Code, and Secs. 116, 117, 558 and 569, Code of Civil Procedure.
2. Partly repealed by Arts. 558 and 116, Code of Civil Procedure (Willard).
3. Under the Civil Code an emancipated minor has all the powers of a person of legal age subject to the limitation established by this Article. Hongkong & Sh. Bank v. Aldecoa & Co. 30 Phil. 255; Ibañez v. Hongkong & Sh. Bank, 30 Phil. 228; Ibañez v. Hongkong & Sh. Bank, 31 Phil. 339.
4. A woman emancipated by marriage, although still under the age of majority, may sue without joining a guardian *ad litem*. Siman v. Leus, 37 Phil. 968.

ART. 318. In order that emancipation may take place by concession of the father or mother, the minor shall be not less than eighteen years of age and must consent thereto.

1. See Art. 160, and note under Art. 314, Civil Code.
2. Repealed (Willard).

ART. 319. After emancipation has been granted it cannot be revoked.

1. See notes under Arts. 214 and 318, Civil Code.

CHAPTER II.

MAJORITY.

ART. 320. Majority commences upon the attainment of the age of twenty-three years.

A person of age is qualified for all the acts of civil life, subject to the exceptions established in special cases by this code.

1. Majority now commences at the age of twenty-one years. Act 1891, Sec. 1, repealing Act 370 of the Civil Code.
2. See Arts. 15, 45, 173, 199 et seq., 663, 879 and 1263, Civil Code; Arts. 4 and 6 et seq., Code of Commerce; and Art. 42, Penal Code.
3. See Opinions of Attorney General of August 24 and September 10th, 1909.

ART. 321. Notwithstanding the provisions of the next preceding article, unmarried daughters who have attained their majority but are under twenty-five years of age, cannot leave the parental home without permission of the father or mother in whose company they live, except to marry, or when the father or mother has remarried.

1. See Art. 171, and notes under Arts. 199 to 204, 314 and 318, Civil Code.
2. A girl under 25 years of age, may bring in her own name proceedings for the trial and conviction of her seducer. U. S. v. De la Santa, 9 Phil. 22.

ART. 322. Any orphan minor may be emancipated by concession of the family council with the approval of the presiding judge of the territorial Audiencia of the district, to be granted after hearing the prosecuting officer.

1. See Arts. 278, 313, 320 and 323 et seq., and notes under Arts. 204 and 318, Civil Code.
2. The family council has been abolished, and the Chief Justice of the Supreme Court no longer has the power mentioned in this Article (Willard).

ART. 323. In order that the concession and approval of emancipation mentioned in the next preceding article may be granted, it shall be necessary—

1. That the minor be over eighteen years of age;
2. That he or she consent to the emancipation;
3. That such emancipation be deemed advantageous to the minor.

The emancipation shall be recorded in the registry of guardianships and in the civil registry.

1. See Arts. 288, 316, 318, 325 and 1262 et seq., and notes under Arts. 204, 318 and 322, Civil Code.

ART. 324. The provisions of Article 317 shall be applicable to any minor who has been emancipated by concession.

1. See notes under Arts. 317 and 318, Civil Code.

TITLE XII.*

REGISTRY OF CIVIL STATUS.

ART. 325. Acts relating to the civil status of persons shall be recorded in the registry devoted to that purpose.

1. See Arts. 18, 19, 21 et seq., 77 et seq., 82, 100, 115, 131 et seq., 179, 316 and 323, and notes under Art. 42, Civil Code; Sec. 2212, Adm. Code of 1917.
2. Arts. 325 to 332, Civil Code, were not in force on August 13th, 1898 (Willard). See also Del Prado v. De la Fuente, 28 Phil. 23.

ART. 326. The registry of civil status shall include the records or entries of births, marriages, emancipations, acknowledgments and legitimations, deaths, naturalizations and acquisitions of domicile. In Spain the registry shall be in charge of the municipal judges or other civilian officials, and of consular or diplomatic agents in foreign countries.

1. See notes under Art. 325, Civil Code.

ART. 327. The records of the registry shall be evidence of civil status and no other evidence thereof shall be admitted, unless such records have never existed or the books of the registry have disappeared, or the question arises in the course of litigation.

1. See Arts. 53 et seq., 115 et seq., 325 and 1215, and notes under Arts. 325 and 115, Civil Code.

ART. 328. It shall not be necessary that a newly born child be exhibited to the official in charge of the registry in order for its birth to be recorded, but the statement of the person whose duty it is to have the birth recorded shall

*Concerning all articles embraced in this title, see note to Art. 42.

be sufficient. This statement shall include all the details required by law and shall be signed by the person making it or by two witnesses, at his request, should he be unable to write.

1. See notes under Art. 325, Civil Code.

ART. 329. In canonical marriages it shall be the duty of the contracting parties to furnish the official who attends the ceremony in representation of the Government all the data required for its record in the civil registry. Matters concerning the publication of the banns or impediments and their dispensation are excepted and shall not be entered in the registry.

1. See notes under Art. 325, Civil Code.

ART. 330. Naturalization shall have no legal effect whatever until entered in the registry, whatever may be the evidence by which it is established or the date upon which it was granted.

1. See notes under Arts. 25 and 325, Civil Code.

ART. 331. Municipal judges and judges of first instance, as the case may be, may punish any violation of the provisions of law relating to the civil registry which do not constitute a felony or misdemeanor by a fine of not less than twenty and not more than one hundred pesetas.

1. See notes under Art. 325, Civil Code.

ART. 332. The law of June 17, 1870, shall continue in force in so far as not modified by the preceding articles.

1. See notes under Art. 325, Civil Code.

BOOK SECOND.

PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS.

TITLE I.

CLASSIFICATION OF PROPERTY.

PRELIMINARY PROVISION.

ART. 333. All things which are or may be susceptible of appropriation are considered as personal or real property.

1. See Art. 10, and notes under Art. 334, Civil Code.
2. Electricity is personal property and may be the subject of theft. U. S. v. Carlos, 21 Phil. 553.

CHAPTER I.

REAL PROPERTY.

ART. 334. Real property consists of—

1. Land, buildings, roads and constructions of all kinds adhering to the soil;

2. Trees, plants, and ungathered products, while they are annexed to the land or form an integral part of any immovable property;

3. Anything permanently annexed to any immovable property in such manner that it cannot be separated therefrom without breakage of material or injury to the object.

4. Statutes, reliefs, paintings or other useful or ornamental things placed in buildings or on lands by the owner thereof in such a manner as to indicate his intention of attaching them permanently to such building or land;

5. Machinery, liquid containers, instruments or implements intended by the owner of any building or land for

use in connection with an industry or trade being carried on therein and which are expressly adapted to meet the requirements of such trade or industry.

6. Vivaries for animals, pigeon houses, beehives, fishponds, or similar breeding places, when built or placed on the land by the owner thereof with the intent that they shall be kept attached to the estate and form a permanent part thereof;

7. Fertilizers to be used in the cultivation of an estate which are on the land for which they are intended;

8. Mines, quarries, tailings and slagdumps, while the matter forms part of the beds, and waters, either running or still;

9. Docks and other constructions which though floating, are destined, by their purpose and nature, to be kept in some fixed place in a river or lake or on the coast;

10. Administrative concessions for public works, and easements and other rights appurtenant to real property. [1521, 1522]

1. See Arts. 10, 333, 346 et seq., 1521, 1522, and notes under Art. 333, Arts. 108, 110, Mortgage Law; and Sec. 89, Act No. 496.
2. Ships or vessels, moved by steam or sail, partake of the nature of real property for certain purposes. Rubiso v. Rivera, 37 Phil. 77.
3. A building mortgaged separately from the land on which it is built does not thereby lose its character as real property. Leung Yee v. Strong, 37 Phil. 644.
4. Machinery which is movable in its nature only becomes immobilized when placed in a plant by the owner of the property or plant, but not when so placed by a tenant, a usufructary, or any person having only a temporary right, unless such person acted as the agent of the owner. Valdes v. Central Altagracia, 225 U. S. 58, 56 L. ed. 980.
5. See Standard Oil Co. v. Jaramillo, 44 Phil. 630.
6. Paragraph 2 of Article 334 of the Civil Code has been modified by Section 450 of the Code of Civil Procedure and by the Chattel Mortgage Law in the sense that for the purposes of attachment, execution and mortgage growing crops have the nature of personal property. Sibel v. Valdez, 50 Phil. 512.

CHAPTER II.

PERSONAL PROPERTY.

ART. 335. Personal property consists of things susceptible of appropriation not included in the next preceding chapter, and, in general, anything which can be moved from place to place without damage to any real property to which it may have been attached.

1. See Arts. 10, 346, 449, 464, 615, and notes under Arts. 333 and 334, Civil Code; Art. 585, Code of Commerce; Arts. 4 and 108, Mortgage Law.
2. See opinion of the Attorney General of May 28th, 1907.
3. An interest in a business is personal property and may be mortgaged. Strochecker v. Ramirez, 44 Phil. 933.
4. Growing crops as personalty; see Sibel v. Valdez, 50 Phil. 512, cited under Art. 334.

ART. 336. Incomes or annuities, either for life or hereditary, payable to any person or family, provided they do not constitute a charge upon real property, purchasable public offices, contracts for public services, and bonds or securities representing mortgage loans, are also personal property.

1. See Sec. 707, Code of Civil Procedure.
2. A real estate mortgage is not personal property. Hongkong Bank v. Aldecoa, 30 Phil. 255.

ART. 337. Personal property is either consumable or nonconsumable.

To the first class belong things which cannot be used for the purpose for which they are adapted without being consumed. All other personal property belongs to the second class.

CHAPTER III.

PROPERTY IN RESPECT TO OWNERSHIP.

ART. 338. Property is of public ownership or private ownership.

1. See notes under Arts. 339 and 340, Civil Code.
2. Churches are neither public nor private property; they are property the distinctive characteristic of which is that it is devoted to divine worship. Barlin v. Ramirez, 7 Phil. 55.

ART. 339. Property of public ownership is—

1. That devoted to public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, riverbanks, shores, roadsteads, and that of a similar character;

2. That belonging exclusively to the State which, without being intended for general public use, is employed in some public service, or in the development of the national wealth, such as walls, fortresses, and other works for the defense of the territory, and mines, until granted to private individuals.

1. See notes under Art. 340; and Opinion of the Attorney General of October 24, 1906.
2. What are public lands?
   a. Defined. Tipton v. Andueza, 5 Phil. 477; Mapa v. Gov't of P. I., 10 Phil. 175.
   b. Seashores, river banks, etc. Ker v. Cauden, 6 Phil. 732; Moreano v. Insular Gov't, 12 Phil. 572; Aragon v. Ins. Gov't, 19 Phil. 223; Ins. Gov't v. Aldecoa & Co., 19 Phil. 505; Mestres v. Dtor. of Lands, 23 Phil. 108; Francisco v. Gov't of P. I., 28 Phil. 505.
   c. Churches, and church property in general. Barlin v. Ramirez, 7 Phil. 41; Harty v. Victoria, 13 Phil. 152.
   d. Public streets, roads, etc. Warner v. Mpality. of Pasay, 1 Phil. 227; Cuaycong v. Benedicto, 37 Phil. 781.
   e. Military reservations, forts, etc. Inchausti & Co. v. Commander, 6 Phil. 556; Hinunangan v. Dtor. of Lands, 24 Phil. 124.
   f. Communal property. City of Manila v. Ins. Gov't, 10 Phil. 327.

g. Esteros. Samson v. Dionisio, 11 Phil. 538; Bautista v. Alarcon, 23 Phil. 631.
h. Forest lands. Jocson v. Director of Forestry, 39 Phil. 560.
i. Marshy lands and mangrove swamps. Montano v. Ins. Gov't, 12 Phil. 572.

3. The friar lands to which the Government of the P. I. holds title are not public lands, but constitute private or patrimonial property of that Government. Jacinto v. Director of Lands, 49 Phil. 853.

ART. 340. All other property belonging to the State, of a different character from that mentioned in the next preceding article, is considered as private property.

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1. See opinions of the Attorney General of December 4, 1909, December 22, 1909, and August 3rd, 1906.
2. For distinction between public and private property of the State, see Tipton v. Andueza, 5 Phil. 477; Montano v. Ins. Gov't, 12 Phil. 572; Archbishop of Manila v. Director of Lands, 27 Phil. 245.
3. "Public Lands" as used in Act No. 2874 (The Public Land Act) defined and distinguished. Central Capiz v. Ramirez, 40 Phil. 883.

ART. 341. Property of public ownership, when no longer devoted to public uses or to the defense of the territory, shall become a part of the private property of the State.

1. See notes under Art. 339, Civil Code; Sec. 567, Administrative Code of 1917.
2. Examples of cases in which public property becomes private property of the State. Oas v. Roa, 7 Phil. 20; Insular Gov't v. Aldecoa & Co., 19 Phil. 505; Hinunangan v. Dtor. of Lands, 24 Phil. 124.

ART. 342. Property of the royal patrimony is governed by its special law, and as to matters not provided for therein by the general provisions established by this code regarding private property.

1. Repealed (Willard).

2. See Alcubilla, vol. 8, pag. 650; Treaty of Paris, Art. 8; and Jones Bill, Art. 9.

ART. 343. The property of provinces and of towns is divided into property of public use and patrimonial property.

1. See Arts. 334 and 345, and notes under Art. 342, Civil Code.
2. Municipalities are the owners of their public streets. Warner v. Pasay, 1 Phil. 227.
3. Municipalities cannot register as their own any part of the public domain, unless it is first shown that a grant thereof has been made or possession enjoyed during the period necessary to establish a presumption of ownership. City of Manila v. Insular Gov't, 10 Phil. 327; Catbalogan v. Director of Lands, 17 Phil. 216; Tacloban v. Director of Lands, 17 Phil. 426; Tigbauan v. Director of Lands, 35 Phil. 798.

ART. 344. Property of public use, in provinces and in towns, comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service paid for by such towns or provinces.

All other property possessed by either is patrimonial and shall be governed by the provisions of this code, unless otherwise provided by special laws.

1. See Art. 601, and notes under Arts. 338, 339, 342 and 343, Civil Code; and Secs. 570 and 571, Adm. Code of 1917.
2. See opinions of the Att. Gen. of October 23d, 1905; September 8th, 1904; November 14th, 1904; December 7th, 1905; August 30th, 1906; October 26th, 1907, and July 30th, 1907.
3. A municipality cannot validly execute a lease of part of its public plaza. Cavite v. Rojas, 30 Phil. 602.
4. When a franchise for the exploitation of a public market is levied on, the creditor's right is limited to the proceeds of the business. Tufexis v. Olaguera, 32 Phil. 654.
5. The property of a municipality, whether real or personal, necessary for governmental purposes, cannot be attached on execution to satisfy a judgment against the municipality. Viuda de Tan Toco v. Municipal Council of Iloilo, 49 Phil. 52.

ART. 345. Private property consists of the patrimonial property of the State, of provinces, and of municipalities, and that belonging to private persons, either individually or collectively.

1. See notes under Art. 342, Civil Code.

PROVISIONS COMMON TO THE THREE PRECEDING CHAPTERS.

ART. 346. Whenever by any provision of law or individual declaration the expressions "real property," or "personal property" are used they shall be deemed to include, respectively, the things enumerated in chapter one and chapter two hereof.

Whenever the word "furniture" (muebles) is used alone, it shall not be deemed to include money, credits, commercial securities, stocks, bonds, jewels, scientific or artistic collections, books, medals, arms, clothing, horses or carriages, and their accessories, grain, liquids, and merchandise, or any things other than those of which the principal use is to furnish or ornament rooms, with the exception of cases in which the contrary clearly appears from the text of the law, or from the particular disposition under consideration.

1. See Arts. 440, 449 and 1582, Civil Code.

ART. 347. Whenever, by any sale, legacy, donation, or other disposition in which reference is made to real estate or personal property, the possession or ownership thereof is transmitted together with everything therein contained, the conveyance shall not be deemed to include money or securities, bonds or shares, the titles to which are contained in the thing transferred, unless it clearly appears that it was intended to include such things in the conveyance.

1. See notes under Art. 1281, Civil Code.

TITLE II.

CHAPTER I.

OWNERSHIP IN GENERAL.

ART. 348. Ownership is the right to enjoy and dispose of a thing without further limitations than those established by law.

The owner has a right of action against the holder and the possessor of the thing to recover the same.

1. See Arts. 384, 388, 400, 414, 417, 446, 463, 489 et seq., 1095, 1300, 1521, Civil Code; Art. 23, Mortgage Law.
2. To maintain an action for the recovery of realty (*reivindicacion*), plaintiff must prove himself to be the owner. De Guzman v. Rivera, 4 Phil. 620; Puruganan v. Martin, 8 Phil. 519; Mendoza v. Fulgencio, 8 Phil. 243; Edralin v. Viernes, 28 Phil. 358; Perez v. Cortes, 15 Phil. 211; Salacup v. Rambao, 17 Phil. 21; Cid v. Peralta, 24 Phil. 142; Porlay v. Hombrado, 34 Phil. 928; Samson v. Salvilla, 12 Phil. 497; Vargas v. Egamino, 12 Phil. 56.
3. In a case of *reivindicacion,* plaintiff must prove not only his title, but also the identity of the property. Lubrico v. Arbado, 12 Phil. 391; Sison v. Ramos, 13 Phil. 54; Belen v. Belen, 13 Phil. 202; De la Cruz v. Niño, 18 Phil. 284; Del Valle v. Mercado, 34 Phil. 963; Marcelo v. Maniquis, 35 Phil. 134.
4. A person who is illegally deprived of the possession of property, may recover such possession, with damages, regardless of the question of ownership. Roxas v. Mijares, 9 Phil. 252; U. S. v. Garcia, 26 Phil. 289; Barretto v. Barretto, 37 Phil. 234; Waite v. Peterson, 8 Phil. 449.
5. *Jus disponendi.* Saul v. Hawkins, 1 Phil. 275; Cleto v. Salvador, 11 Phil. 416; Ranjo v. Salmon, 15 Phil. 436; Tuazon v. Goduco, 23 Phil. 342; Tolentino v. Paraiso, 34 Phil. 609; Gomez v. La Germinal, 37 Phil. 691.

6. Extraordinary prescription based on oral evidence cannot prevail against one in possession under registered title. Cacnio v. Baens, 5 Phil. 742.
7. The mere fact that plaintiff has collected rents from the tenants of certain property is not proof of its ownership thereof. City of Manila v. Ins. Gov't, 10 Phil. 347.
8. The uniform of a soldier of the United States Army remains the property of the United States and cannot be disposed of by the soldier to a third person. Tan Te v. Bell, 27 Phil. 354.
9. See also Yuson v. Diaz, 42 Phil. 28.

ART. 349. No one may be deprived of his property unless it be by competent authority for some purpose of proven public utility and after payment of the proper compensation.

Unless this requisite has been complied with, it shall be the duty of the courts to protect the owner of such property in its possession or to restore its possession to him, as the case may be.

1. See Art. 446, Civil Code, and Secs. 241 et seq., and 534 et seq., Code of Civil Procedure; Sec. 3, Jones Law; Sec. 64 (h) Adm. Code of 1917; Acts Nos. 294, 1528, 1592, 2826, 496, 1459 (79), and other acts conferring on certain grantees the right of eminent domain; Philippine Bill, Sec. 74.
2. See opinions of the Attorney General of December 21, 1908; December 6, 1905; June 16, 1909, and January 10th, 1910.
3. "Due Process of Law" or "law of the land" defined. Endencia v. Loalhati, 9 Phil. 177; Ayala de Roxas v. City of Manila, 9 Phil. 215; Buzon v. Ins. Government, 13 Phil. 324; Santos v. Dtor. of Lands, 22 Phil. 424; Tan Te v. Bell, 27 Phil. 354.
4. If the owner of a piece of land allows a public utility company to occupy his land, without objection, he is considered to have waived the right to the possession thereof and may sue only for his damages. Manila Railroad Co. v. Paredes, 32 Phil. 532.
5. Market value of land condemned in the exercise of eminent domain, defined and explained. Manila Railroad v. Alano, 36 Phil. 500; City of Manila v. Corrales, 32 Phil. 85; City of Manila v. Neal, 33 Phil. 291; City of Manila v. Estrada, 25 Phil. 208.

6. After the court has determined the amount to be deposited before the party seeking expropriation may take possession of the land, and the amount is deposited, the court cannot thereafter alter its ruling. Manila Railroad Co. v. Paredes, 31 Phil. 118.
7. The court may substitute its own judgment as to compensation for land condemned, in place of that of the commissioners. Manila Railroad Co. v. Velasquez, 32 Phil. 286; Manila Railroad v. Aguilar, 35 Phil. 118; Antipolo v. Domingo, 37 Phil. 13.
8. When money due as compensation for condemned land may draw interest. Manila Railroad v. Rodriguez, 29 Phil. 336; Philippine Railway v. Solon, 13 Phil. 34; Philippine Railway v. Duran, 33 Phil. 156.
9. What is meant by "public use." U. S. v. Toribio, 15 Phil. 85; City of Manila v. Chinese Community, 40 Phil. 349.
10. A party seeking to expropriate may at any time dismiss the action, except in certain cases. City of Manila v. Ruyman, 37 Phil. 421.
11. If a corporation vested with the power of eminent domain illegally takes possession of part of a tract of land, with the result of damaging the remainder, the owner may surrender the entire tract and demand indemnity for the whole. Tenorio v. Manila Railroad, 22 Phil. 411.
12. Possible future profits from a use of which the property is susceptible are speculative and cannot be taken into consideration in determining the amount of indemnity due the owner of expropriated land. Manila R. R. Co. v. Mitchel, 49 Phil. 801.
13. When land is taken in the exercise of the power of eminent domain, title does not pass to the plaintiff until the indemnity is paid. Calvo v. Zandueta et al., 49 Phil. 605; Jacinto v. Director of Lands, 49 Phil. 853.
14. In the exercise of the power of eminent domain, only as much land can be taken as is necessary for the legitimate purpose of the condemnation. The term "necessary" in this connection does not mean absolutely indispensable, but requires only a reasonable necessity of the taking for the purpose in view; and the growth and future needs of the enterprise may be considered. Manila R. R. Co. v. Mitchel, 50 Phil. 832.

ART. 350. The proprietor of any parcel of land is the owner of its surface and of everything under it, and may

build, plant, or excavate thereon, as he may see fit, subject to any existing easements and to the provisions of the Laws of Mines and Waters and to the police regulations.

1. See Arts. 182, 414, 457, 582, Civil Code; Law of Waters of 1866.

ART. 351. Hidden treasure belongs to the owner of the land in which it is found.

Nevertheless, when the discovery is made on property belonging to another or to the State, and by chance, one half thereof shall be awarded the finder.

If the things discovered be of scientific or artistic interest, the State may acquire them at their just value, which shall be divided as above provided.

1. See Arts. 350, 352, 461, 471, 610, 614 and 1632, Civil Code; and Sec. 517, Penal Code.

ART. 352. By treasure is understood, for legal purposes, hidden and unknown deposits of money, jewels, or other precious objects, the lawful owner of which is unknown.

1. See Arts. 351, 471, 610 and 614, Civil Code.

CHAPTER II.

RIGHT OF ACCESSION.

GENERAL PROVISION.

ART. 353. The ownership of property gives right by accession to all that which is produced thereby or which is united to or incorporated therein naturally or artificially.

1. See notes under Arts. 339, 366, 368 and 370, Civil Code.
2. This rule applied, subject to the exception with respect to buildings erected on land belonging to one of the spouses established by Art. 1404 of the Civil Code. Tabotabo v. Molero, 22 Phil. 418.
3. Profits accruing to plaintiff's share in the business held to belong to him by right of accession. Osorio v. Osorio, 41 Phil. 543.

SECTION I. *Right of Accession with Respect to the Products of Property.*

ART. 354. To the owner belong:—

1. Natural fruits;
2. Industrial fruits;
3. Civil fruits.

1. See Arts. 451, 471, 1554, 1571, 1632, 1633 and 1861, Civil Code.
2. An heir who has been unlawfully deprived of his inheritance, after the death of his father, may recover his share together with all the fruits thereof. Irlanda v. Pitargue, 22 Phil. 383.
3. The owner of a cow is presumed to be the owner of its young by right of accretion. U. S. v. Caballero, 25 Phil. 356.
4. See Unson v. Urquijo, 50 Phil. 160, cited under Art. 1922.
5. Trees or crops planted on land belonging to one of the spouses exclusively are not conjugal community property. The contrary rule established by Article 1404 is limited to buildings. Dominado v. Derayunan, 49 Phil. 452.

ART. 355. Natural fruits are the spontaneous products of the soil, and the young and all other products of animals.

Industrial fruits are those produced by land of any kind as the result of cultivation or labor.

Civil fruits are the rents of buildings, proceeds from leases of land, and the income from perpetual or life annuities, or other similar sources of revenue.

1. See Arts. 357 and 451, Civil Code; Art. 108 (No. 1), Mortgage Law.
2. When land is recovered from an unlawful possessor, not only the natural fruits, but also the civil fruits, such as rent, etc., must be accounted for. Guido v. Borja, 12 Phil. 718.
3. "Natural," "industrial," and "civil" fruits defined and explained. Pamintuan v. Garcia, 39 Phil. 746.
4. Rents paid for leased real estate are "civil fruits." Waite v. Williams & Co., 5 Phil. 573.

ART. 356. He who receives fruits is obliged to pay any expenses which may have been incurred by another in the production, gathering, and preservation thereof.

1. See Arts. 362, 1922, 1926, Civil Code.

ART. 357. No products except such as are visible or existing shall be deemed natural or industrial fruits.

With regard to animals, it is sufficient if they are in the womb of the mother, although still unborn.

SECTION II. *Rights of Accession in Respect to Real Property.*

ART. 358. Whatever is built, planted, or sown on another's land, and any improvements or repairs made on it, belongs to the owner of the land, subject to the provisions of the following articles.

1. This rule applied, except as to building erected on land belonging to one of the spouses. See Art. 1404, Civil Code. Tabotabo v. Molero, 22 Phil. 418.
2. In an action involving improvements made on land belonging to another, the owner of the land is a necessary party. Birondo v. Mier, 34 Phil. 575.
3. When a building is erected on land which greatly exceeds it in value, the building is accessory to the land. Philippine, etc. Co. v. Poizat et al., 48 Phil. 536.

ART. 359. All building, sowing, or planting on land is presumed to have been done by the owner and at his expense, in the absence of proof to the contrary.

1. Article cited. U. S. v. Genato, 15 Phil. 170.
2. See note No. 2, under Art. 358, Civil Code.

ART. 360. The owner of land who shall plant or build anything thereon, in person or through another, with material belonging to another person, is obliged to pay the value thereof; and, should he have acted in bad faith, he shall, furthermore, be liable in damages. The owner of the material shall be entitled to remove it only in case he can do so without injury to the thing constructed or without destroying the plantation, construction, or work done.

1. See Art. 1106, Civil Code.
2. A lessee used the material of another in constructing a house on the land leased. The owner of the material did not thereby become a part owner of the house. Liuanag v. Yu Sonquian, 5 Phil. 147.

ART. 361. The owner of land on which anything has been built, sown, or planted, in good faith, shall be entitled to appropriate the thing so built, sown, or planted, upon paying the compensation mentioned in Articles 453 and 454, or to compel the person who has built or planted to pay him the value of the land, and the person who sowed thereon to pay the proper rent therefor.

1. See Arts. 353, 367 et seq., and notes under Arts. 359, 360, 362, 363 and 364, Civil Code.
2. A possessor in bad faith has no right to improvements made by him. De Guzman v. Rivera, 4 Phil. 620.
3. Although a possessor in bad faith builds upon the land of another, if the latter allows it without opposition, the owner of the land is considered to have acted also in bad faith, and the rule applicable to possession in good faith will be applied with respect to the improvements. Municipality of Oas v. Roa, 7 Phil. 20; Merchant v. City of Manila, 11 Phil. 116; Javier v. Javier, 7 Phil. 261.
4. A possessor who builds in good faith upon the land of another is entitled to recover the value of his improvements. Aringo v. Arena, 14 Phil. 263; Insular Gov't v. Aldecoa & Co., 19 Phil. 505; Mina v. Pascual, 25 Phil. 540; Martinez v. Baganus, 28 Phil. 500.
5. One who allows a railroad company to build its track on his land, without opposition, may recover his damages, but cannot deprive the company of the possession so acquired. De Ynchausti v. Manila E. R. & L. Co., 36 Phil. 908.
6. A lessee may not recover from his landlord the value of improvements made by him upon the leased property. Alburo v. Villanueva, 7 Phil. 277.
7. One who, through fraud, obtains the registration in his name of part of a parcel of land belonging to another, is bound to pay the owner of the land for the value of the improvements, although four years have elapsed since the registration. Manotoc v. Choco, 30 Phil. 628.
8. The purchaser for value of land registered under the Torrens system, the certificate of title of which shows that the vendor is the owner of the land and of the improvements thereon, takes the land free from the claims of persons who have built thereon in good faith. Atkins, Kroll & Co. v. Domingo, 46 Phil. 362.

9. As to rights to permanent improvements made by a tenant in possession under a voidable lease of minor's real estate, see Lichauco v. Tan Pho, 51 Phil. 862.

ART. 362. He who builds, plants, or sows in bad faith on another's land shall lose that which he has built, planted, or sown, without right to compensation.

1. See notes under Arts. 359 to 361, 363 and 364, Civil Code.
2. One who builds on another's land in time of war, with full knowledge of the facts, is a builder in bad faith, and has no right to the improvements. Catholic Church v. Municipalities, 10 Phil. 1.
3. If improvements have been made on another's land, the title to the land cannot be registered until after the question regarding the improvements has been settled. Merchant v. City of Manila, 11 Phil. 116.
4. The defendant in an action of ejectment must assert in that action his right to reimbursement of his outlay for improvements placed on the land, failing which his claim will be barred. Berses v. Villanueva, 25 Phil. 473.
5. See also Mina v. Pascual, 25 Phil. 540; Agustin v. Montano, 27 Phil. 643.

ART. 363. The owner of land on which any one has built, planted, or sown in bad faith may demand that the building be demolished, or that the things planted or sown thereon be pulled up and everything restored to its original condition at the expense of the person by whom the building, planting, or sowing was done.

1. See Arts. 361 and 365, and notes under Arts. 359, 360, 361, 362 and 364, Civil Code.

ART. 364. When there has been bad faith, not only on the part of the person who built, sowed, or planted on another's land, but also on the part of the owner of the latter, the rights of both shall be the same as if they had acted in good faith.

Bad faith on the part of the owner is deemed to exist whenever the act has been done in his presence, with his

knowledge and tolerance, and without opposition on his part.

1. See notes under Arts. 359 to 362, Civil Code.

ART. 365. If the material, plants, or seed belong to a third person who has not acted in bad faith, the owner of the land shall be liable subsidiarily for their value in case the person who used them has no means to pay therefor.

This provision shall not be applicable if the owner makes use of the rights granted him by Article 363.

1. See Art. 363, and notes under Arts. 360 to 364, Civil Code.

ART. 366. Any accretions which the banks of rivers may gradually receive from the effect of the current belong to the owners of the estates bordering thereon.

1. See notes under Art. 339, Civil Code.
2. Accretion by alluvion of land adjacent to a river, the bed of which pertains to the public domain, belongs to the owner of the land upon which the deposit is formed. Roxas v. Tuason, 9 Phil. 408.
3. This accretion refers to river banks and not to seashores. Pascual v. Angeles, 13 Phil. 441.
4. Article applied. Cortes v. City of Manila, 10 Phil. 567; Banatao v. Dabbay, 38 Phil. 612; Cañas v. Tuason, 5 Phil. 690.
5. Land gradually formed since 1811 by the action of the sea must be deemed to belong to the State, not to the owner of the upland. Ker & Co. v. Couden, 223 U. S. 268, 56 L. ed. 432.

ART. 367. The owners of estates bordering on ponds or lakes do not acquire the land left dry by the natural decrease of the waters, nor lose those inundated by them in extraordinary floods.

See Ker & Co. v. Couden, 223 U. S. 268, 56 L. ed. 432; Ker & Co. v. Couden, 6 Phil. 733.

ART. 368. When the current of a river, creek, or torrent detaches from an estate fronting thereon a known por-

tion of land and transfers it to another estate, the owner of the estate to which the detached part belonged retains the ownership thereof.

1. To apply this article, the evidence must establish the identity of the claimed portion. Cañas v. Tuason, 5 Phil. 688.
2. It having been shown that the claimed portion was, by a sudden change in the current of a river, segregated from the hacienda of plaintiff, the segregation did not affect his title. Cañas v. San Mateo, 6 Phil. 3. See also Martinez v. San Mateo, 6 Phil. 3.

ART. 369. Trees uprooted and carried away by currents of waters belong to the owner of the land upon which they may be deposited, if the former owners do not claim them within one month. If the latter claim them, they must pay all the expenses incurred in removing them or putting them in a safe place.

ART. 370. Beds of rivers abandoned because of a natural change in the course of the water belong to the owners of the lands bordering thereon throughout their respective extents. If the abandoned bed divided estates belonging to different owners, the new dividing line shall be equidistant from the former boundaries.

1. As soon as a river leaves its bed, the latter belongs in the proportion mentioned in this article to the riparian owners, without the need of any formal act of acquisition. Sanchez v. Pascual, 11 Phil. 395; Villanueva v. Claustro, 23 Phil. 54; Pascual v. Sarmiento, 37 Phil. 170.
2. See Panlilio v. Mercado, 44 Phil. 695.

ART. 371. Islands which may form in the waters adjacent to the coast of Spain, and in navigable or floatable rivers, belong to the State.

1. See notes under Arts. 339 and 366, Civil Code.

ART. 372. Whenever a navigable or floatable river changes its course from natural causes and opens a new bed through a private estate, the new bed shall be of public

ownership, but the owner of the estate shall recover it in the event that the waters leave it dry again either naturally or as the result of any work legally authorized for this purpose.

1. See Panlilio v. Mercado, 44 Phil. 695.

ART. 373. Islands formed in rivers, of matter brought down by the water, shall belong to the owners of the nearest margins or banks, or to the owners of both margins if the island is in the middle of the river, in which case it shall be divided longitudinally in halves. If the island thus formed be farther from one margin than the other, the owner of the nearest margin shall be the sole owner of the island.

1. See notes under Art. 336, Civil Code.
2. See also Banatao v. Dabbay, 38 Phil. 612.

ART. 374. When the current of a river divides itself into branches, leaving an estate or any part thereof isolated, the owner of the same retains his ownership. He also retains it if a portion of his land is detached by the current from the rest.

1. See note No. 1 under Art. 268, Civil Code.

SECTION III. *Right of Accession with Respect to Personal Property.*

ART. 375. When two articles of personal property belonging to different persons are, without bad faith, united in such manner as to form a single object, the owner of the principal thing acquires the accessory one, subject to payment of its value to the former owner.

1. See Arts. 335, 336, 353, 378 et seq., 382, par. 2, 383 and 433 et seq., Civil Code.

ART. 376. As between two things incorporated, that one to which the other has been united as an ornament, or for its use or perfection, shall be deemed the principal.

ART. 377. If it be not possible to determine by the rule established by the preceding article which of the two incorporated things is the principal, the thing of greater value shall so be considered; and, as between two articles of equal value, that of the greater volume.

With respect to paintings, sculpture, writings, printed matter, engravings, and lithographs, the board, metal, stone, canvas, paper, or parchment shall be deemed accessories.

1. See Arts. 364, 375 and 378, Civil Code.

ART. 378. When the articles united can be separated without injury, their respective owners may demand that they be separated.

Nevertheless, when the article united for the use, embellishment, or perfection of the other is much more precious than the principal one, the owner of the former may demand its separation, even though the article to which it was united may suffer some injury thereby.

ART. 379. When the owner of the accessory thing has united it to the other in bad faith, he shall lose the thing incorporated and shall be obliged to indemnify the owner of the principal thing for any damages he may have suffered thereby.

When the person who acted in bad faith is the owner of the principal thing, the owner of the accessory thing shall be entitled to choose between being paid by the former for the value thereof or to have the thing belonging to him separated, even though it be necessary for this purpose to destroy the principal one; and, furthermore, in either case, he shall be entitled to recover his damages.

If either of the owners has made the incorporation with the knowledge and tolerance and without objection from the other, their respective rights shall be determined as provided for cases in which both acted in good faith.

1. See notes under Arts. 360 to 364, Civil Code.

ART. 380. Whenever the owner of the material used without his consent is entitled to compensation, he may demand that such compensation be made either by the delivery to him of material equal in every respect in kind and value to that employed, or by payment of the value thereof as determined by expert appraisement.

ART. 381. If, by the will of their owners, two things of identical or dissimilar nature are mixed, or if the mixture occurs accidentally, and in the latter case the things cannot be separated without injury, each owner shall acquire a right in the mixture proportionate to the part belonging to him, according to the value of the things mixed or commingled.

ART. 382. If, by the will of only one of the owners, but in good faith, two things of identical or dissimilar nature are mixed or commingled, the rights of the owners shall be determined in accordance with the provisions of the next preceding article.

If the person responsible for the mixture or commingling acted in bad faith he shall lose the thing belonging to him so mixed or commingled and shall furthermore be obliged to indemnify the owner of the thing with which he made the mixture for any loss caused thereby.

1. See notes under Arts. 360 to 364, Civil Code.

ART. 383. He who, in good faith, makes use of matter wholly or partially belonging to another to make something of a different kind from the material used, shall be the owner of the thing so made upon indemnifying the owner of the material for the value thereof.

If the material is more valuable than the thing for the making of which it has been used, the owner thereof may, at his option, retain the new thing by paying the price of the work or may claim indemnity for the material.

If in the making of the new thing there was bad faith, the

owner of the material shall be entitled to keep it without paying anything to the maker, or to require the latter to pay him the value of the material and indemnify him for any losses he may have suffered.

CHAPTER III.

SURVEYS AND LANDMARKS.

ART. 384. Every land owner shall be entitled to ascertain and mark the boundaries of his property after giving notice to the owners of adjoining estates to be present.

The same right pertains to all persons having an interest in real estate.

1. See Art. 1965, Civil Code.
2. The proceeding for the establishment of boundaries cannot create new substantive rights nor deprive any one of rights already acquired. Catigbac v. Leyesa, 44 Phil. 221.
3. In regard to boundaries and extent of lands in dispute, the general rule is that courses and distances will yield to known, visible, and definite objects, whether natural or artificial, such as monuments or landmarks, but will control a call of quantity or area. Govt. of P. I. v. Abad, 47 Phil. 573.

ART. 385. The survey shall be made in accordance with the title deeds of each owner or, in default of sufficient titles, in conformity with the possession of each abutting owner.

1. The right of action for the settlement of a dispute concerning a boundary line is that recognized by Articles 384 et seq. of the Civil Code. The burden of proof rests upon the plaintiff. Mendoza v. Fulgencio, 8 Phil. 243; Arguellez v. Montalvo, 31 Phil. 142; Regner v. Librea, 34 Phil. 573.
2. Discrepancies in the description of land resulting from changes in adjoining owners during a long period of time are usually of comparatively slight importance and cannot prevail against well established natural boundaries. Govt. of P. I. v. Franco, 49 Phil. 328.

ART. 386. If the titles do not fix the boundaries or area

of each owner, and the question cannot be decided by possession or by other means of proof, the demarcation shall be made by dividing the land in dispute into equal parts.

ART. 387. If the titles of the abutting owners show a larger or smaller area than that comprised in the whole of the land the excess or deficiency shall be distributed proportionately.

1. See Art. 385, Civil Code.

CHAPTER IV.

RIGHT TO INCLOSE RURAL ESTATES.

ART. 388. Every owner may inclose or fence his estates by means of walls, ditches, growing or dead hedges, or in any other manner, whatsoever, subject to any easements existing thereon.

1. See Arts. 348, 350, 384, 413, 560, 561, 564, 571, 572, 591, 593, 602 and 612, Civil Code; Arts. 522, 594 et seq., Penal Code.
2. The right of an owner to inclose his estate is without prejudice to easements legally existing thereon. Lunod v. Meneses, 11 Phil. 128.
3. Article applied. Arguelles v. Montalvo, 31 Phil. 142.

CHAPTER V.

UNSTABLE BUILDINGS AND TREES ABOUT TO FALL.

ART. 389. If any building, wall, column, or other construction be in danger of falling, the owner shall be obliged to demolish it or do such work as may be necessary to prevent its fall.

Should the owner of the unstable structure fail to demolish it, the authorities may have it done at his expense.

1. See Art. 586, Penal Code.
2. Arts. 389 to 391 are in force, except that administrative officers do not now have the powers mentioned in these Articles (Willard).

ART. 390. Whenever any large tree threatens to fall in such a manner that it may cause damage to the estate of another or to travelers on a public or private thoroughfare, the owner of the tree shall be obliged to uproot it and take it away, and, should he not do so, it shall be done at his expense by order of the authorities.

1. See notes under Art. 389, Civil Code.

ART. 391. In cases coming within the two next preceding articles, if the tree or building falls, the provisions of Articles 1907 and 1908 shall be applicable.

1. See Arts. 1907, 1908, and notes under Art. 389, Civil Code; Arts. 568, 570, 586 (No. 2), 591 (No. 3) and 604, Penal Code.

TITLE III.

COMMUNITY OF PROPERTY.

ART. 392. Community of property exists whenever the undivided ownership of a thing or right pertains to more than one person.

In default of contracts or of special provisions, ownership in common shall be governed by the provisions of this title.

1. See Arts. 450, 490, 548, 600 to 604, 1513 to 1517 and 1521 to 1525, Civil Code; Arts. 589 to 601, 606 et seq., Code of Commerce.
2. Co-ownership according to this Article does not create a juridical entity, and any action brought by the co-owners must be brought in their own names. Smith v. Lopez, 5 Phil. 78.
3. The fact that the land and a house built thereon belong to two different persons does not create co-ownership between them. Javier v. Javier, 6 Phil. 493.
4. No formal articles of association are necessary for co-ownership to exist. Gallemit v. Tagbilaran, 20 Phil. 241.
5. See Ramirez v. Bautista, 14 Phil. 528; Cid v. Peralta, 24 Phil. 142.
6. Article cited and applied. Rodriguez v. Borromeo, 43 Phil. 479.
7. See Prades v. Tecson, 49 Phil. 230, cited under Art. 1418.

ART. 393. The share of the participants in the benefits, as well as in the charges, shall be proportionate to their respective interests.

The interests of the co-owners shall be presumed to be equal until the contrary is proved.

1. See Arts. 395, 398, par. 2, Civil Code.

ART. 394. Each participant may make use of the thing owned in common, provided that he use it for the purpose

for which it is intended and in such a manner as not to prejudice the interests of the community or prevent the other owners from making use of it in accordance with their rights.

1. See Arts. 392, 398, 490 and 1137, Civil Code.
2. During the existence of co-ownership, each co-owner enjoys all the rights of an owner subject only to such limitations as the interests of the other co-owners require. Pardell v. Bartolome, 23 Phil. 450.
3. A sales agent on a commission basis does not become a co-owner of the proceeds of the sale, and if he retains more than his commission, he is guilty of estafa. U. S. v. Reyes, 36 Phil. 904.

ART. 395. Each co-owner shall be entitled to compel the other participants to contribute to the expenses of preserving the thing or right held in common. No participant can relieve himself of this obligation except by renouncing his share of the ownership.

1. See Arts. 543, 544 and 575, Civil Code; and Arts. 500 et seq., Code of Commerce.
2. A co-owner is bound to contribute to the expense of preserving the thing owned in common. Trinidad v. Ricafort, 7 Phil. 449; Hibberg v. McElroy, 25 Phil. 164.

ART. 396. When the different stories of a house belong to different owners, if the title deeds do not specify the terms upon which they are to contribute to the necessary expenses and there is no agreement on the subject, the following rules shall be observed:

1. The main and party walls, the roof, and other things used in common shall be preserved at the expense of all the owners in proportion to the value of the story belonging to each.

2. Each owner shall pay the cost of maintaining the floor of his story. The expenses connected with the floor of the entrance, the front door, the common yard, and sanitary work beneficial to all shall be borne *pro rata* by all the owners.

3. The stairs from the entrance to the first story shall be maintained at the expense *pro rata* of all the owners, with the exception of the owner of the ground floor; the stairs leading from the first to the second story shall be maintained at the expense of all, excepting the owners of the ground floor and first story, and so on successively.

1. See Art. 8, Mortgage Law.

ART. 397. None of the owners shall, without the consent of the others, make any alterations in the common property even though such alterations might be advantageous to all.

1. When one of the co-owners of a tract of land erects a building thereon, the failure of the others to object will not render them liable to contribute to the cost of the upkeep of the building. Javier v. Javier, 6 Phil. 493.
2. See notes under Art. 395, Civil Code.

ART. 398. The decision of the majority of the part owners as to the management and enjoyment of the common property shall be binding on all.

To constitute a majority the decision must have been made with the concurrence of owners representing the greater part of the interests which constitute the thing held in common.

Should there be no majority or, if the decision of the latter is seriously prejudicial to the parties interested in the thing held in common, the judge, at the instance of any part owner, shall adopt such measures as may be necessary, even to the extent of appointing a manager.

When a part of the thing is the several property of one or more of the part owners and the other part is owned in common, the foregoing provision shall be applicable to the latter only.

1. See Arts. 392 et seq., 397, 490 and 1713, Civil Code; Arts. 589, 592, 594, Code of Commerce.

2. After the estate of a deceased person has been partitioned by mutual agreement among the heirs, the court cannot appoint an administrator of such estate, even as to the part not actually divided, which becomes the joint property of the heirs having undivided interests in that part. Alcala v. Pabalan, 19 Phil. 520.
3. If a minor has an interest in property held under co-ownership, he is as much bound by the decision of the majority regarding its use and enjoyment, by lease or otherwise, as though he were an adult. Enriquez v. Watson & Co., 22 Phil. 623.
4. Article cited and construed. Rodriguez v. Borromeo, 43 Phil. 479.

ART. 399. Each co-owner shall have the absolute ownership of his part, and of the fruits and benefits derived therefrom, and he may, therefore, sell, assign, or mortgage it, and even substitute another person in its enjoyment, unless personal rights are involved; but the effect of the sale or mortgage, with respect to the other participants, shall be limited to the share which may be allotted him in the partition upon the dissolution of the community.

1. See Arts. 348, 353, 354, 392 et seq., 469, 1068, 1086, 1514, 1522, Civil Code; Arts. 9, 30 and 106, Mortgage Law; Sec. 85 of Act No. 496.
2. Each co-owner has the absolute right to dispose of his undivided portion, and of the fruits, interests, or proceeds arising from that portion, but the transferee does not acquire any specific portion of the whole, his right being limited to the result of the division which may be made in due time. Jackson v. Blum, 1 Phil. 4; Lopez v. Ilustre, 5 Phil. 567; Ramirez v. Bautista, 14 Phil. 528; Mainit v. Bandoy, 14 Phil. 730; Marigsa v. Macabuntuc, 17 Phil. 107; Cabuniag v. Magundayao, 26 Phil. 248; Dancel v. Dancel, 29 Phil. 25.
3. The estate left by a deceased person to several heirs is considered held in co-ownership by the heirs until a partition is proven to have been legally made. Alcala v. Alcala, 35 Phil. 679.
4. A sale of personal property by a co-owner conveys only his share. Punsalan v. Boon Liat, 44 Phil. 320.

ART. 400. No co-owner shall be obliged to remain a party to the community. Each may, at any time, demand the partition of the thing held in common.

Nevertheless, an agreement to keep the thing undivided for a specified length of time, not exceeding ten years, shall be valid. This period may be extended by a new agreement.

1. See Arts. 269, 1005, 1051 et seq., 1060, 1069, 1100 and 1965, Civil Code; Secs. 181 and 196, Code of Civil Procedure.
2. The right of a co-owner to ask for partition of the thing held in common, unless there has been an agreement to the contrary, is recognized both by the Civil Code and by the Code of Civil Procedure. Jackson v. Blum, 1 Phil. 4; Garciax de Lara v. Gonzalez de Lara, 2 Phil. 294; Toribio v. Toribio, 5 Phil. 520; Gallemit v. Tabiliran, 20 Phil. 241; Dancel v. Dancel, 29 Phil. 25.
3. The sale of real estate held *pro indiviso* will not be decreed unless it appears that it cannot be partitioned without great inconvenience to the parties. Tell v. Tell, 48 Phil. 70.

ART. 401. Notwithstanding the provisions of the next preceding article, the co-owners cannot require a division of the thing owned in common when to do so would render it unserviceable for the use for which it is intended.

[404]

1. See Art. 404, Civil Code; Sec. 187, Code of Civil Procedure.
2. In force as to personalty, but repealed as to realty (Willard).

ART. 402. The partition of a thing owned in common may be effected by the parties in interest or by arbitrators or friendly adjusters appointed at the will of the co-owners.

In case the partition is effected by arbitrators or friendly adjusters, they shall divide the thing into parts proportionate to the interest of each co-owner, endeavoring to avoid payments of balances in cash as far as possible.

1. See Arts. 279 (No. 12), 274 and 392, and notes under Art. 405, Civil Code; Secs. 184 and 196, Code of Civil Procedure.
2. An arbitration clause depriving courts of jurisdiction is invalid. Cordoba v. Conde, 2 Phil. 445.

3. Courts have as complete jurisdiction to make partition of movable property as of immovable property. Del Val v. Del Val, 29 Phil. 534; Custodio v. Calinawan, 17 Off. Gaz. 789.

ART. 403. Creditors or grantees of the co-owners may take part in the partition of the thing owned in common and oppose any division made without their concurrence; but they cannot contest a partition already made except in case of fraud or when it has been made despite a formal protest against such partition; provided, that in case of such contest, the debtor or the grantor may always defend the validity of the partition.

1. See Arts. 643 and 1297, Civil Code.

ART. 404. If the thing is essentially indivisible and the co-owners do not agree that it be allotted to one of them, upon compensation by him to the others, it shall be sold and the proceeds distributed.

1. See Arts. 392, 403, 405, 522, 821 et seq., 1062, 1513, and notes under Arts. 401 and 403, Civil Code; and Art. 592; Code of Commerce.

ART. 405. The partition of property held in common shall not affect strangers who shall retain any rights of mortgage, easement, or any other real rights, which they may have had before the partition was made. Any rights of action *in personam* held by a stranger against the community shall also remain in force, notwithstanding the partition.

[490, 528, 535]

1. See notes under Arts. 402, 403, Civil Code.
2. See Sec. 196, Code of Civil Procedure.

ART. 406. The rules relating to the partition of inheritances shall be applicable to the partition of property held in common.

1. See Arts. 1051 to 1067, and notes under Art. 403, Civil Code; and Secs. 181 to 196, Code of Civil Procedure.
2. The action for partition can be brought by one or more of the co-owners only. Salvacion v. Salvacion, 13 Phil. 366.
3. The possession of a co-owner cannot be the foundation of prescription in his favor as against the other co-owners, until and after his possession becomes adverse and is known to the other co-owners to be such. Fernandez v. Tria, 22 Phil. 603; Cortes v. Oliva, 33 Phil. 480; Caballo v. Dandoy, 27 Phil. 606.
4. A co-owner cannot bring suit for the recovery of property held in co-ownership without including the other co-owners either as plaintiffs or as defendants. Palarca v. Baguisi, 38 Phil. 177; Birondo v. Mier, 34 Phil. 575.
5. The remedy of a co-owner who desires that his share be adjudicated to him in severalty is by an action for partition. Donato v. Mendoza, 25 Phil. 57; Cornista v. Ticson, 27 Phil. 80; Ferrer v. De Inchausti, 38 Phil. 905.

TITLE IV.

SPECIAL PROPERTIES.

CHAPTER I.

Smith, Bell & Co. v. Natividad, 40 Phil. 148; Sideco v. Sarenas, 41 Phil. 81.

WATERS.

SECTION I. *Ownership of Water.*

ART. 407. The following are of public ownership:

1. Rivers and their natural channels;

2. Continuous or intermittent waters from springs or brooks running in their natural channels and the channels themselves;

3. Waters rising continuously or intermittently on lands of public ownership;

4. Lakes and ponds formed by nature on public lands, and their beds;

5. Rain waters running through ravines or sand beds, the channels of which are of public ownership;

6. Subterranean waters on public lands;

7. Waters found within the zone of operation of public works, even though constructed under contract;

8. Waters which flow continuously or intermittently from lands belonging to private persons, to the State, to provinces, or to towns, from the moment they leave such lands;

9. The waste waters of fountains, sewers, and public institutions.

1. See Arts. 408 and 412, Civil Code.

2. An estero, although affected by the ebb and flow of the tides, if without a definite current, is not of public ownership. Palma v. Fernandez, 7 Phil. 154.

3. But an estero was held to be of public ownership in the following cases. Samson v. Dionisio, 11 Phil. 538; Bautista v. Alarcon, 23 Phil. 631.
4. Mangrove swamps may be the subject of private ownership. Montano v. Insular Gov't, 12 Phil. 572.
5. The laws regarding waters in force in the Philippine Islands at the time of the change of sovereignty were Arts. 407 to 425, Civil Code and the Law of Waters of 1866. Montano v. Insular Gov't, 12 Phil. 572; Mantile v. Cajucom, 19 Phil. 563.
6. All public waters are for the use of the public, and no one may use them to the exclusion of others having an equal right to their enjoyment. Mangaldan v. Manaoag, 38 Phil. 455; Ayson v. Rizal Prov. Board, 39 Phil. 931.

ART. 408. The following are of private ownership:

1. Waters, either continuous or intermittent rising on private estates, while they run through them;

2. Lakes and ponds and their beds when formed by nature on such estates;

3. Subterranean waters found therein;

4. Rain waters falling thereon as long as they remain within their boundaries;

5. The channels of flowing streams, continuous or intermittent, formed by rain water, and those of brooks crossing estates which are not of public ownership.

The water, bed, banks, and floodgates of a ditch or aqueduct are deemed to be an integral part of the estate or building for which the waters are intended. The owners of estates through or along the boundaries of which the aqueduct passes can assert no ownership over it, nor any right to make use of its beds or banks, unless they base their claim on title deeds which specify the right or the ownership claimed.

1. See Arts. 334, 345, 353, 370, 372, 407, 412 et seq., and notes under Art. 407, Civil Code.

SECTION II. *Use of Public Waters.*

ART. 409. The use of public waters is acquired—

1. By administrative concession;

2. By prescription of twenty years.

The extent of the rights and obligations pertaining to such use shall be that established in the first case by the terms of the concession, and, in the second, by the manner and form in which the waters have been used.

1. See Arts. 407, 410 and 425, and notes under Arts. 407 and 412, Civil Code.
2. In force, except as to period of prescription which is now ten years (Willard).
3. Under the Civil Code and the Law of Waters, the ownership of public waters may be acquired for irrigation purposes by prescription of twenty years. Magno v. Castro, 30 Phil. 585; Sideco v. Sarenas, 41 Phil. 81.
4. Water rights acquired by prescription prior to the enactment of the Irrigation Act are not affected by the provisions of that Act. Eusebio v. Aguas, 47 Phil. 567.
5. See Irrigation Act (2152) and amendments.

ART. 410. Every concession of the use of waters is understood to be without prejudice to the rights of third parties.

1. See Sec. 51, Philippine Bill.

ART. 411. The right to make use of public waters is extinguished by the lapse of the concession, and by non-user for twenty years.

1. See notes under Arts. 407, 409 and 412, Civil Code.
2. In force, except that prescription period has been changed to ten years (Willard).

SECTION III. *The Use of Waters of Private Ownership.*

ART. 412. The owner of an estate containing a spring or the source of a brook, continuous or intermittent, may use its waters while they run through the estate; but the overflow is public and the use thereof is governed by the special Law of Waters.

1. See notes under Arts. 407, 409 and 425, Civil Code.

ART. 413. The private ownership of the channels of rain

waters does not confer the right to construct works which change their course to the damage of a third party, nor those, the destruction of which by the force of floods, may cause such damage.

ART. 414. No one may enter private property in search of waters or make use of them without permission from the owner.

1. See Art. 348, Civil Code; and Arts. 599 (No. 4), 593 (No. 2), 594 and 603, Penal Code.

ART. 415. The ownership which the proprietor of an estate has in the waters rising on the same shall not be exercised in any manner prejudicial to the rights which owners of lower estates may have legally acquired to the use of such waters.

ART. 416. Every land owner is entitled to construct reservoirs for rain water on his property, provided he does no damage thereby to the public or to third persons.

SECTION IV. *Subterranean Waters.*

ART. 417. Only the owner of an estate, or another person with his permission, may make explorations thereon for subterranean waters.

Explorations for subterranean waters on lands of public dominion can be made only with the permission of an administrative authority.

1. See Arts. 350, 414, 418 et seq., Civil Code.

ART. 418. Waters artificially brought to the surface in accordance with the special Law of Waters belong to the persons by whom they have been developed.

1. See notes under Art. 425, Civil Code.

ART. 419. When the owner of waters artificially developed abandons the same to their natural course they become public property.

SECTION V. *General Provisions.*

ART. 420. It shall be the duty of the owner of an estate upon which defensive works to check waters have been constructed or upon which by reason of any variation in the course of such waters it shall be necessary to reconstruct such works, either to do the necessary work or make the necessary repairs himself, or to permit it to be done, in such a manner as to cause him no damage, by the owners of estates which have been or clearly may be damaged by the waters.

ART. 421. The provisions of the next preceding article are applicable to cases in which it may be necessary to remove from an estate any material, the accumulation or fall of which, may obstruct the course of water in such a way as to damage or endanger a third person.

ART. 422. All property owners who participate in the benefits arising from the works referred to in the two next preceding articles shall contribute to the cost of their construction in proportion to their respective interests. Those to whose fault the damage may be attributable shall be liable for the expenses.

ART. 423. The ownership and use of waters belonging to corporations or private persons are subject to the law of eminent domain.

1. See Arts. 344 et seq., and notes under Art. 349, Civil Code.

ART. 424. The provisions of this title shall not affect rights previously vested, nor the private ownership of waters, aqueducts, fountains, or springs, by virtue of which the owners thereof may use, sell, or exchange them as private property.

1. The Irrigation Act as well as the Organic Act provides that vested rights are to be protected. Sideco v. Sarenas, 41 Phil. 81.

ART. 425. All matters not expressly covered by the provisions of this chapter shall be governed by the special Law of Waters.

1. See notes under Arts. 412, 407, 409, Civil Code.
2. Not in force (Willard).

CHAPTER II.

MINERALS.

ART. 426. Any Spaniard or foreigner may, without restriction, make prospect pits or excavations not exceeding ten meters in length or depth on lands of public ownership for the purpose of prospecting for minerals, but must first give notice to the local authorities. On land of private ownership no prospect pits can be sunk without the previous permission of the owner or of the person representing him.

1. See Arts. 339 et seq. and 350, Civil Code.
2. Arts. 426 and 427, Civil Code, have been repealed by the Philippine Bill (Willard).
3. Mining laws; see Act of Congress of July 1, 1902, and Acts 624, 777, 859, 1134 and 1399.

ART. 427. The limitations of the right mentioned in the next preceding article, the formalities to be first complied with, the conditions to which the exercise of the right is subject, the designation of the substances which are to be considered as minerals, and the determination of the respective rights of the owner of the land and of the discoverer of the minerals in case a concession is granted, shall be governed by the Special Law of Mines.

1. See notes under Art. 426, Civil Code.

CHAPTER III.

INTELLECTUAL PROPERTY.

ART. 428. The author of any literary, scientific, or artistic work is entitled to profit by it and dispose of it at will.

1. See notes under Art. 429, Civil Code.
2. See New Copyright Act No. 3134, app'd Mar. 6, 1924.
3. Dictionaries are not common property, but the property of the author, whose right is recognized by Art. 2 and Art. 7 of the Spanish Law of Intellectual Property of January 10, 1879. Serrano v. Paglinawan, 44 Phil. 855.
4. As to right to reproduce "news items, editorial paragraphs, and articles in periodicals," see Phil. Ed. Co. v. Sotto et al., XXVII Off. Gaz. 2897.

ART. 429. The Law of Intellectual Property determines the persons to whom such right pertains, the manner of exercising it, and the period of its duration. In cases not provided for or determined by such special law, the general rules with respect to property established by this code shall be observed.

1. See notes under Art. 428, Civil Code; and Act 3134.
2. Under the Treaty of Paris, the American Government is bound to protect patents, copyrights, and trademarks granted under the former sovereignty. Gsell v. Veloso, 6 Phil. 143.
3. See unpublished decision of Supreme Court, R. G. No. 11,280, Wise v. Harvey; Act No. 1851; Adm. Code of 1917, Secs. 1689 (h), and 1692; and opinions of the Attorney General of November 11th, 1902, April 21, 1904, December 28, 1906, April 15, 1907, July 3, 1907, and September 4, 1907.
4. The Law of January 10, 1879, on Intellectual Property, was extended to the Philippine Islands by royal decree of May 5, 1887, was published in the Gaceta de Manila, with the approval of the Governor General, on June 15, 1887, and took effect in the Philippines six months after its promulgation or publication. Serrano v. Paglinawan, 44 Phil. 855.

TITLE V.

POSSESSION.

CHAPTER I.

THE DIFFERENT KINDS OF POSSESSION.

ART. 430. Natural possession is the holding of a thing or the enjoyment of a right by any person. Civil possession is such holding or enjoyment, coupled with the intention on the part of the possessor of claiming the thing or right as his own.

1. See notes under Art. 438, Civil Code; Sec. 334, Code of Civil Procedure.
2. Natural possession may be had by the person asserting possession or by another in his behalf; without natural possession there can be no civil possession. Repide v. Astuar, 2 Phil. 757; Reyes v. Limjap, 15 Phil. 420.
3. Civil possession defined. Arnedo Cruz v. De Leon, 21 Phil. 210.
4. Mere natural possession may be protected by the action of forcible entry and detainer. Mediran v. Villanueva, 37 Phil. 752.

ART. 431. Possession of things or rights may be exercised either by the same person who holds and enjoys them or by another in his behalf.

1. See Arts. 437 et seq., and notes under Art. 430, Civil Code.
2. Article applied. Simpao v. Dizon, 1 Phil. 261; Repide v. Astuar, 2 Phil. 757; Alo v. Rocamora, 6 Phil. 197; Chinchilla v. Rafel, 39 Phil. 888.

ART. 432. The possession of things or rights may be had in one of two concepts: either that of ownership, or that of a tenancy of the thing or right to preserve it or enjoy it, the ownership pertaining to another person.

1. See Arts. 348, 447, and notes under Arts. 430 and 431, Civil Code.

ART. 433. One who is unaware of any flaw in his title, or mode of acquisition, by which it is invalidated, shall be deemed a possessor in good faith.

One who is aware of such flaw is deemed a possessor in bad faith.

1. See Arts. 361, 362, 363, 364, 442 and 1950, and notes under Arts. 430 to 434, and 451, Civil Code.
2. Facts examined, and possession held to be in bad faith in the following cases. Javier v. Javier, 6 Phil. 493; Lerma v. De la Cruz, 7 Phil. 581; Catholic Church v. Municipalities, 10 Phil. 1; Salacup v. Rambac, 17 Phil. 21; Berses v. Villanueva, 25 Phil. 473.
3. Bad faith of a possessor must be alleged and proved. Tablante v. Aquino, 28 Phil. 35.
4. Good faith defined and explained. Arriola v. Gomez de la Serna, 14 Phil. 627.
5. See note 4 under Art. 436, and Longpre v. Diaz y Quiñonez, 237 U. S. 512, 59 L. ed. 1080.

ART. 434. Good faith is always presumed, and the burden of proving bad faith on the part of the possessor rests upon the person alleging it.

1. See Arts. 69, 361, 1951, and notes under Arts. 433 and 451, Civil Code; Sec. 334 (No. 17), Code of Civil Procedure.
2. Possession presumed to be in good faith until the contrary is proven. U. S. v. Rapiñan, 1 Phil. 294; Gabriel v. Bartolome, 7 Phil. 699; Sideco v. Pascua, 13 Phil. 342; Cea v. Villanueva, 18 Phil. 538.
3. One who knowingly buys a house from the lessee thereof, acquires no better title than that of his vendor. Guzman v. Rivere, 4 Phil. 620.
4. One who originally took possession of a house in good faith is not obliged to pay rent until after he is advised of the defect in his title. Valencia v. Jimenez, 11 Phil. 492.
5. Possession in good or bad faith is a question of intention, to be deduced from the facts in each case. Leung Yee v. Strong, 37 Phil. 644.

6. See note 4 under Art. 436.
7. See also Robles v. Lizarraga Hnos, 42 Phil. 588.

ART. 435. Possession acquired in good faith does not lose this character except in case, and from the moment that, acts take place which show that the possessor is not unaware that his possession of the thing is wrongful.

1. See Arts. 1950 and 1951, Civil Code.
2. Possession which began in good faith is presumed to continue to be in good faith until the possessor acquires knowledge of facts showing defect in his title. Valencia v. Jimenes, 11 Phil. 492; Cea v. Villanueva, 18 Phil. 538; Ortiz v. Fuentebella, 27 Phil. 537.

ART. 436. In the absence of proof to the contrary, possession shall be presumed to continue in the same character in which it was acquired.

1. See Arts. 460, 1936, Civil Code; Sec. 334, Code of Civil Procedure.
2. See notes under Arts. 434 and 435, Civil Code.
3. In the absence of proof to the contrary, a possessor is presumed to be in good faith. Doliendo v. Biarnes, 7 Phil. 232; Gabriel v. Bartolome, 7 Phil. 699.
4. One who acquires property by a deed, conveyance, or proceeding which is absolutely void, because in violation of prohibitory laws, *e. g.*, the purchaser of a minor's property, or the purchaser of property in defiance of the provisions of Art. 1459, cannot allege good faith, because no one is permitted to plead ignorance of the law. Longpre v. Dias y Quiñones, 237 U. S. 512, 59 L. ed. 1080.

ART. 437. Only things and rights susceptible of being appropriated can be the objects of possession.

1. See Arts. 333 and 1936, Civil Code.

CHAPTER II.

ACQUISITION OF POSSESSION.

ART. 438. Possession is acquired by the actual occupan-

cy of the thing or right possessed, or by the fact that it is subjected to the action of our will, or by the appropriate acts and legal formalities established for acquiring such right.

1. See Arts. 430 et seq., 437, 439 et seq., 444, 460, 610–617, 1095, 1404, 1462, 1473, 1968 and notes under Art. 430, Civil Code.
2. Different ways of acquiring possession. Examples:
   a. Through the sheriff, by a purchaser at public sale. Repide v. Astuar, 2 Phil. 757; Muyco v. Montilla, 7 Phil. 498.
   b. By the delivery of the keys of a warehouse where pledged goods were deposited. Spanish-Filipino Bank v. Peterson, 7 Phil. 409.
   c. By government grant. Kincaid v. Cabututan, 35 Phil. 383.
3. See also Bishop of Cebu v. Mangaron, 6 Phil. 286; Sanchez v. Ramos, 40 Phil. 614.

ART. 439. Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by a third person, without any mandate whatsoever; but in the last case possession shall not be deemed to be acquired until the person in whose name the act of possession has been executed has ratified the same.

1. See Arts. 431, 443 and notes under Arts. 430 et seq., and 440 et seq., Civil Code.

ART. 440. The possession of hereditary property is deemed to be transmitted to the heir without interruption and from the instant of the death of the decedent, in case the inheritance be accepted.

One who validly repudiates an inheritance is deemed never to have possessed it.

1. See Arts. 194, 657, 661, 882, 912, 988, 1001, 1006 and 1016, Civil Code; Secs. 704, 754, Code of Civil Procedure.
2. Possession of property transmitted by inheritance is acquired from the moment of the death of the person from whom it descends. Repide v. Astuar, 2 Phil. 757; Lubrico v. Arbado, 12 Phil. 391.

ART. 441. In no case may the possession of a thing be forcibly acquired against the opposition of another already in possession of it. One who believes himself to be entitled to deprive another of the tenancy of a thing must invoke the aid of the competent authority whenever the holder refuses to make delivery.

1. See Arts. 430 et seq., 438 et seq., 444 et seq., 615, 616, 885, 1267, Civil Code; Arts. 502 et seq. and 591 et seq., Penal Code.
2. "Competent authority" as used in this Article means a court of competent jurisdiction. Repide v. Astuar, 2 Phil. 757.
3. The illegality of the possession of one who wrongfully withholds land or other property from the lawful owner thereof will not justify the forcible eviction of the trespasser. Bishop of Cebu v. Mangaron, 6 P. R. 286; Padin v. Humphreys, 19 P. R. 254.
4. But Sec. 3748 of the Revised Statutes of the United States being one of the supreme laws of the land, the summary seizure of army uniforms found in possession of a person without right thereto is not without due process of law, because the statute authorizes it. Tan Te v. Bell, 27 Phil. 354.
5. See also Yuzon v. Diaz, 42 Phil. 27.

ART. 442. The successor by an hereditary title shall not suffer the consequences of a wrongful possession on the part of the decedent, unless it is proved that he had knowledge of the faults affecting it; but the effects of possession in good faith shall not benefit him except from the date of the death of the decedent.

1. See Arts. 659, 661, and notes under Art. 430 et seq., Civil Code.
2. A wife who succeeds her deceased husband in the possession of land, without knowledge of any defect in her husband's title thereto, is presumed to be a possessor in good faith, and may acquire title by prescription by virtue of such possession. Arriola v. Gomez de la Serna, 14 Phil. 627.
3. See also De Dios Chua Soco v. Veloso, 2 Phil. 658; Puruganan v. Martin, 8 Phil. 519.
4. See note 4 under Art. 436.

ART. 443. Minors and incapacitated persons may acquire the possession of things; but they shall require the assistance of their legal representatives to make use of the rights in their favor arising from such possession.

1. See Arts. 262, 317, 626, 1263 and 1329, Civil Code.

ART. 444. Acts which are merely tolerated, and those executed by stealth, and without the knowledge of the possessor of a thing, or by force, do not affect possession.

1. See Arts. 464, 1463, 1941, 1942, 1952, Civil Code; Sec. 41, Code of Civil Procedure.
2. Cases in which possession has been held to be merely tolerated. Cortes v. Yu Tivo, 2 Phil. 24; Ayala de Roxas v. Maglonso, 8 Phil. 745; Moreno v. Gaco, 26 Phil. 469; Cuaycong v. Benedicto, 37 Phil. 781; Nueva Caceres v. Dtor. of Lands, 24 Phil. 485.
3. One whose possession of land has been physically interrupted by the forcible entry of another, but who recovers the same by appropriate action, is deemed to have enjoyed uninterrupted possession. Mediran v. Villanueva, 37 Phil. 752; Bishop of Lipa v. San Jose, 27 Phil. 571; Rodriguez v. Taiño, 16 Phil. 301; Oligan v. Mejia, 17 Phil. 494.

ART. 445. Possession as a fact cannot be recognized in favor of two different personalities, with the exception of the cases in which property is held in common. Should a question arise as to the fact of possession, the actual possessor shall be preferred.

When there are two persons in possession the one whose possession commenced first shall be preferred; if the possession of each has continued for an equal period, the one presenting a title shall be preferred; if all these conditions are equal the thing shall be placed in the custody or care of the court until the question as to its possession or ownership has been decided in the proper manner.

1. See Arts. 448, 450, 1462, 1473, 1762, 1785–1789, 1933, 1952, Civil Code.
2. Although an unrecorded lease of real estate is held not to be binding on the purchaser thereof, the possession as a fact

remains in the lessee until appropriate proceedings are taken. Saul v. Hawkins, 1 Phil. 275.

3. The right of possession, independently of title, may be determined by the *accion publiciana* notwithstanding the bar by the statute of limitations of the ordinary possessory actions. Bishop of Cebu v. Mangaron, 6 Phil. 286.
4. The possession of an agent is presumed to be held on behalf of the principal. Mediran v. Villanueva, 37 Phil. 752.
5. One who enters into the possession of a tract of land without the consent or knowledge of the rightful owner, and without claim of right or title, is a possessor in bad faith, and his right to compensation for expenditures will be governed accordingly. Rivera v. Roman Catholic Archbishop, 40 Phil. 717.

CHAPTER III.

EFFECTS OF POSSESSION.

ART. 446. Every possessor is entitled to be respected in his possession; and should he be disturbed therein he shall be protected, or possession shall be restored to him, by the means established by the laws of procedure.

1. See Arts. 349, 441, 1559 and 1560, and notes under Art. 448, Civil Code.
2. A possessor, however he may have acquired his possession, cannot be deprived thereof without legal proceedings. Simpao v. Dizon, 1 Phil. 261; Hermitaño v. Clarito, 1 Phil. 609; Repide v. Astuar, 2 Phil. 757; Inchausti & Co. v. Commanding General, 6 Phil. 556; Rojas v. Mijares, 9 Phil. 252; Belen v. Belen, 13 Phil. 202; Rodriguez v. Taiño, 16 Phil. 301; Padin v. Humphreys, 19 Phil. 254; U. S. v. Garcia, 26 Phil. 289; Kincaid v. Cabututan, 35 Phil. 383.
3. See also Bishop of Cebu v. Mangaron, 6 Phil. 286; Tan Te v. Bell, 27 Phil. 354; Bachrach Motor Co. v. Summers, 42 Phil. 7.
4. See Quimson v. Suarez, 45 Phil. 901.

ART. 447. Only that possession which has been acquired and enjoyed under claim of ownership may serve as a title for acquiring dominion.

1. See Arts. 1930, 1939, 1941, Civil Code.

2. Possession merely tolerated cannot be the basis of prescription. Mas v. Lanuza, 5 Phil. 457.
3. Possession held in the name of another, as by a lessee, depository, agent, etc., cannot be the basis of prescription. Cumagun v. Allingay, 18 Phil. 415.
4. See also Veloso v. Naguit, 3 Phil. 604; Kincaid v. Cabututan, 35 Phil. 383.
5. A registered possessory information title does not ripen into a record of ownership, even after the lapse of twenty years, if the requirements of Section 393 of the Mortgage Law are not complied with. Querol v. Querol, 48 Phil. 90.

ART. 448. Every person in possession of a thing under claim of ownership has in his favor the legal presumption that he possesses under a just title, and he shall not be required to exhibit it.

1. See Arts. 230 et seq. and 1950 et seq., and notes under Art. 430, Civil Code; Art. 35, Mortgage Law.
2. A possessory information title is prima facie evidence of ownership. City of Manila v. Del Rosario, 5 Phil. 227.
3. In an action for the recovery of property, the *onus probandi* is on the plaintiff. Belen v. Belen, 13 Phil. 202; Jumero v. Lizares, 17 Phil. 112; Padin v. Humphreys, 19 Phil. 254; Enriquez v. Olaguer, 25 Phil. 641.
4. If it is agreed that the plaintiff's parents were at one time the owners of certain property in the possession of the defendant, the presumption of ownership arising from possession is rebutted and the burden of proving ownership shifts to the defendant. Sarita v. Candia, 23 Phil. 443.
5. A mere *acta notarial* had without the sanction of an oath or the presence of the parties concerned is not evidence against a defendant in possession. Palang v. Clavano, 25 Phil. 348.
6. One who enters into possession by inheritance enjoys the benefit of the presumption of good faith and that his possession is under claim of ownership. Bondad v. Bondad, 34 Phil. 232.
7. Subject to a few exceptions, it is the rule that possession of part of a given unit of property is possession of the whole, unless the part not actually occupied is in the adverse possession of another. Ramos v. Director of Lands, 39 Phil. 175.

8. See Quilop v. Cottong, 44 Phil. 803; Ruiz v. Dalio, 45 Phil. 532.
9. Every presumption of ownership is in favor of one in actual occupancy of land for many years. Abaoag v. Director of Lands, 45 Phil. 518.

ART. 449. The possession of real property implies that of the furniture and other things contained therein, until it appears or is proved that they should be excluded.

1. See Arts. 334, 432 and 464, Civil Code.

ART. 450. Each one of the participants in a thing possessed in common shall be deemed to have been in exclusive possession of the part which is allotted to him on the partition thereof for the entire period during which the co-ownership endured. The interruption of the possession of the whole or any part of a thing held in common shall affect all the possessors equally.

1. See Arts. 393, 399, 1933 and 1943, Civil Code.
2. The same rule applies with respect to property held in common by co-heirs. Beltran v. Doriano, 32 Phil. 66.

ART. 451. Fruits received by one in possession in good faith before possession is legally interrupted become his own.

Natural and industrial fruits are deemed to have been received as soon as they are gathered or severed.

Civil fruits are deemed to accrue from day to day, and belong to the possessor in good faith in this proportion.

1. See Arts. 354–357, 434, 435, 463, 1943, and notes under Arts. 433 et seq., Civil Code.
2. Fruits derived from the property belong to the possessor in good faith, until good faith ceases and bad faith begins. Saul v. Hawkins, 1 Phil. 275; Cleto v. Salvador, 11 Phil. 416; Valencia v. Jimenez, 11 Phil. 492; Araujo v. Celis, 16 Phil. 329; Veguillas v. Jaucian, 25 Phil. 315; Alcala v. Hernandez, 32 Phil. 628; Tolentino v. Vitug, 39 Phil. 126; Aquino v. Tañedo, 39 Phil. 517; Rivera v. Catholic Archbishop, 40 Phil. 717.

3. The possessor in good faith is entitled to the rent of the property, which is considered to be earned by the day, although paid by the tenant by the month or by the year. Waite v. Williams, etc. Co., 5 Phil. 571.
4. See note 4 under Art. 436.

ART. 452. If, at the time when good faith ceases, any natural or industrial fruits are ungathered, the possessor shall be entitled to recover the expenses he may have incurred in their production, and, furthermore, to a part of the net proceeds of the crop proportionate to the time of his possession.

The expenses shall be distributed *pro rata*, in the same manner, between the two possessors.

The owner of the thing may, if he desires, grant to the possessor in good faith, the right to finish the cultivation and collection of the growing fruits as an indemnity for the part of the cost of cultivation and net proceeds belonging to him; the possessor in good faith who, for any reason whatsoever, is not willing to accept this concession shall lose the right to be indemnified in any other manner.

1. See Arts. 334, 353, 361 et seq., 433, 453 et seq., Civil Code.
2. See Muyco v. Montilla, 7 Phil. 498; Veguillas v. Jaucian, 25 Phil. 315.
3. As to right of a legatee or heir who takes possession of real property pending administration of decedent's estate to the revenue derived from it, see Arayata v. Joya, 51 Phil. 655.

ART. 453. Necessary expenditures shall be refunded to every possessor; but only the possessor in good faith may retain the thing until they are repaid to him.

Useful expenditures shall be paid the possessor in good faith with the same right of retention, the person who has defeated him in his possession having the option of refunding the amount of such expenditures or paying him the increase in value which the thing has acquired by reason thereof.

1. See Arts. 45, par. 1, 487, 500, 522, 1368, 1600, 1730, 1780, 1866 and 1883, Civil Code.
2. If a possessor builds a house with the knowledge of the owner, he is considered a builder in good faith, and may enforce his rights in accordance with Art. 361, Civil Code. Javier v. Javier, 7 Phil. 261.
3. The filling in of a vacant lot is not a "necessary expense" or a "repair." The building of a house is not a "necessary expense." Alburo v. Villanueva, 7 Phil. 277; Valencia v. Ayala de Roxas, 13 Phil. 45; Rivera v. Catholic Archbishop, 40 Phil. 717.
4. Necessary and useful expenses distinguished in reference to improvements made in a house. Additions of a toilet, stable, etc., were considered useful, but not necessary. Robles v. Lizarraga Hnos., 42 Phil. 587.
5. A railroad company, without instituting condemnation proceedings, took possession of a tract of land and laid its roads thereon. Held, that ejectment will not lie, the owner's remedy being the recovery of damages. Ynchausti v. Manila E. R. & L. Co., 26 Phil. 908.
6. One who makes improvements in good faith on the land of another must set up his rights thereto in the proceedings for the registration of the land, otherwise they will be barred. Blas v. De la Cruz, 37 Phil. 1.
7. See also Javier v. Javier, 6 Phil. 493; Veguillas v. Jaucian, 25 Phil. 315; Martinez v. Baganus, 28 Phil. 500; Mina v. Pascual, 25 Phil. 540; Aringo v. Arena, 14 Phil. 263.
8. A purchaser of real estate at a sheriff's sale on execution who takes possession thereof before the expiration of the period of redemption is not entitled to recover the cost of permanent improvements made by him on the property if the judgment debtor elects to redeem it. Flores v. Lim, 50 Phil. 738.
9. One who attempts to establish a homestead, under the Public Land Act, upon land privately owned, under the mistaken but bona fide belief that it is part of the public domain, is in possession in good faith and is entitled, as such, to possession of the land until he has been reimbursed for his outlay for useful improvements. Valenzuela v. Lopez, 51 Phil. 279.

ART. 454. Expenditures purely for ostentation or mere pleasure shall not be repaid the possessor in good faith; but he may remove the ornaments with which he has em-

bellished the principal thing if it does not suffer injury thereby and if the successor in the possession does not prefer to refund the amount expended.

1. See notes under Arts. 437, 453 and 455, Civil Code.

ART. 455. A possessor in bad faith shall pay for the fruits received and for those which the lawful possessor might have received, and shall be entitled only to reimbursement for the necessary expenditures incurred for the preservation of the thing. The expenses incurred in improvements for ostentation and pleasure shall not be repaid the possessor in bad faith; but the latter may remove the objects upon which such expenditures have been made, provided the principal thing suffers no damage thereby and the lawful possessor does not prefer to retain them by paying their value at the time of taking possession.

1. See Arts. 353 et seq., 361 et seq., 375 et seq., and 382 et seq., Civil Code.
2. A possessor in bad faith is under obligation to pay for fruits received, trees cut, and other damages, but not for what the owner believes he might have obtained during the time the property was not in his possession. Sparravohn v. Fisher, 2 Phil. 676; Alo v. Rocamora, 6 Phil. 197; Lerma v. De la Cruz, 7 Phil. 581.

ART. 456. The improvements caused by nature or time shall always inure to the benefit of the person found to be lawfully entitled to possession.

ART. 457. A possessor in good faith is not liable for the deterioration or loss of the thing possessed, with the exception of cases in which it is proved that he has acted with fraudulent intent. A possessor in bad faith is liable for such deterioration or loss in any event, even if caused by *force majeure,* when he has maliciously delayed the delivery of the thing to its lawful possessor.

1. A possessor in good faith is not bound to pay for carabaos which died in his possession. Eced v. Ocampo, 4 Phil. 664.

2. A possessor in good faith of a tract of land is liable only for such damages as may be due to his negligence. Cea v. Villanueva, 18 Phil. 538.

ART. 458. The person obtaining possession is not bound to pay for improvements which have ceased to exist at the time of his acquisition of the thing.

ART. 459. Any present possessor who proves his possession at a prior period is presumed also to have had possession during the intermediate period, in the absence of proof to the contrary.

1. See Sec. 334 (No. 30), Code of Civil Procedure.
2. See Padin v. Humphreys, 19 Phil. 254; Sideco v. Sarenas, 41 Phil. 85.

ART. 460. The possessor may lose his possession—

1. By the abandonment of the thing;

2. By its transfer to another gratuitously or for a valuable consideration;

3. By the destruction or total loss of the thing possessed or by its withdrawal from commerce;

4. By the possession of another, even against the will of the former possessor, if the new possession has lasted more than one year.

1. See Arts. 1274, 1698, 1943 and 1944, Civil Code.
2. After one year, possession as a fact is considered lost; but the person dispossessed may bring an *accion publiciana,* or an *accion reivindicatoria* (which may be for the possession, the title, or both), in the Court of First Instance. Simpao v. Dizon, 1 Phil. 261; Bishop of Cebu v. Mangaron, 6 Phil. 286; Muyco v. Montilla, 7 Phil. 498; Ledesma v. Marcos, 9 Phil. 618; Rodriguez v. Taiño, 16 Phil. 301; Lao Simbieng v. Palencia, 18 Phil. 325.
3. What constitutes abandonment. U. S. v. San Jose, 7 Phil. 604; U. S. v. Rey, 8 Phil. 500; Aragon v. Insular Gov't, 19 Phil. 223.
4. If one year has not expired since possession was lost, the action which may be brought to recover it is that provided for in Sec. 80 of the Code of Civil Procedure. Del Rosario v. Celosia, 26 Phil. 404.

ART. 461. The possession of personal property is not deemed lost while it is under the control of the possessor, even though he may casually be ignorant of its whereabouts.

ART. 462. The possession of real property and real rights is not deemed lost or transferred for the purposes of prescription to the prejudice of a third person, except in accordance with the provisions of the Mortgage Law.

1. See Arts. 334, 396, 430 et seq., 460, 1949 and 1960, Civil Code; Arts. 23 et seq., 29 et seq., and 77 et seq., Mortgage Law, and Sec. 41, Code of Civil Procedure.
2. This article not in force (Willard).

ART. 463. Acts relating to possession either done or consented to by the person possessing a thing belonging to another as a mere holder for its enjoyment or custody in any capacity, do not bind or prejudice the owner, unless the latter should have granted to the former express powers to perform such acts or unless he ratifies them subsequently.

1. See Art. 432, Civil Code, and Sec. 41, Code of Civil Procedure.
2. Arts. 463 to 466, Civil Code, are in force, with the change introduced by Sec. 41, Code of Civil Procedure (Willard).

ART. 464. The possession of personal property acquired in good faith is equivalent to a title thereto. Nevertheless, one who has lost personal property or has been unlawfully deprived of it may recover it from any person possessing it.

If the possessor of personal property lost or stolen has acquired it in good faith at a public sale, the owner cannot recover it without reimbursing the price paid therefor.

Neither can the owner of things pledged in pawn shops, (Montes de Piedad) established under authority of the Government, recover them, whoever may have been the person pledging the same, without previously refunding to the in-

stitution the amount of the loan and the interest due thereon.

With respect to things acquired on exchange, or at fairs or markets, or from a merchant legally established and habitually engaged in dealing in such things, the provisions of the Code of Commerce shall be observed.

1. See Arts. 348, 615, 1938, 1955, 1956 and 1962, and notes under Art. 463, Civil Code; Arts. 64, 67 et seq., 83–87, 195, 320, 324, 545, 548, 560 and 573, Code of Commerce.
2. Any person (with the exception of Montes de Piedad established by the Government) who receives as a pledge personal property belonging to another, without his consent, is under obligation to return the same to its lawful owner without right to compensation or indemnity from the latter. Del Rosario v. Lucena, 8 Phil. 535; Varela v. Matute, 9 Phil. 479; Varela v. Finnick, 9 Phil. 482; U. S. v. Soriano, 12 Phil. 512; Arenas v. Raymundo, 19 Phil. 46; Reyes v. Ruiz, 27 Phil. 458; U. S. v. Sotelo, 28 Phil. 147.

ART. 465. Wild animals are possessed only while they are under one's control; wild animals domesticated or tamed are considered as tame or domestic if they are accustomed to return to the home of their possessor.

1. See Arts. 610 et seq., and notes under Art. 463, Civil Code.

ART. 466. Any person who legally recovers possession wrongfully lost shall be deemed for all purposes which may redound to his benefit, to have enjoyed it without interruption.

1. See Arts. 1943–1949, and notes under Art. 463, Civil Code.
2. Cited and applied. Bishop of Cebu v. Mangaron, 6 Phil. 286; Hashim v. Kernan, 11 Phil. 435.

TITLE VI.

USUFRUCT, USE, AND HABITATION.

CHAPTER I.

USUFRUCT.

SECTION I. *Usufruct in General.*

ART. 467. Usufruct gives a right to enjoy another's property under the obligation of preserving its form and substance, unless the title creating it or the law provide otherwise.

1. See Arts. 640, 787 and 820, Civil Code.

ART. 468. Usufruct may be constituted by law, by the will of private persons expressed by acts *inter vivos*, by will, and by prescription.

1. See Arts. 460 et seq., 640, 787, 820, par. 3, 834 et seq., 1930, 1940, 1947 and 1959, Civil Code.

ART. 469. Usufruct may be created on the whole or a part of the fruits of a thing, in favor of one or more persons, simultaneously or successively, and in any case from or to a certain day, conditionally or unconditionally. It may also be constituted on a right, provided the same is not absolutely personal or unassignable.

1. See Arts. 490, 515 and 1113 et seq., Civil Code; Art. 2, Mortgage Law.

ART. 470. The rights and obligations of the usufructuary shall be those specified in the title creating the usufruct; in its default, or if it be deficient, the provisions contained in the two following sections shall be observed.

SECTION II. *Rights of the Usufructuary.*

ART. 471. The usufructuary shall be entitled to receive all the natural, industrial, and civil fruits of the property in usufruct. With regard to any treasures which may be found on the estate, he shall be deemed a stranger.

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ART. 472. Natural or industrial fruits pending at the time of the beginning of the usufruct belong to the usufructuary.

Those growing at the time the usufruct expires belong to the owner.

In the preceding cases, the usufructuary, at the beginning of the usufruct, is not bound to pay to the owner any of the expenses incurred; but the owner is bound to defray from the proceeds of the growing fruits, at the expiration of the usufruct, the ordinary cost of cultivation, seed, and other similar expenses incurred by the usufructuary.

The provisions of this article shall not prejudice the rights of a third person, acquired at the beginning or expiration of the usufruct.

1. See Arts. 355, 356, 451 and 1380, Civil Code.

ART. 473. If the usufructuary has leased the lands or estates given in usufruct, and the latter should expire before the lease, he or his heirs and successors shall receive only their proportional part of the rent to be paid by the lessee.

ART. 474. Civil fruits are deemed to accrue day by day, and belong to the usufructuary in proportion to the time the usufruct may last.

1. See notes under Art. 451, Civil Code.
2. Rents are civil fruits, and are considered to be earned from day to day. Waite v. Williams, Chandler & Co., 5 Phil. 571.

ART. 475. When a usufruct is created on the right to receive an income or periodical revenue, either in money

or fruits, or the interest on bonds or securities payable to bearer, each matured payment shall be considered as the proceeds or fruits of such right.

When it consists of the enjoyment of the benefits arising from an interest in any industrial or commercial enterprise, the profits of which are not distributed at fixed periods, such profits shall have the same consideration.

In either case they shall be distributed as civil fruits, in accordance with the rules prescribed by the next preceding article.

ART. 476. The usufructuary of an estate containing mines is not entitled to the proceeds of those denounced, granted, or which are being worked at the beginning of the usufruct, unless they are expressly granted to him by the title creating the latter, or it is universal.

The usufructuary, however, may take stones, lime, and chalk from the quarries for repairs or works which he may be obliged to make or which may be necessary.

1. See Arts. 355 et seq., and 40 et seq., Civil Code.

ART. 477. Notwithstanding the provisions of the next preceding article, the usufructuary, if the usufruct is created by law, may work any mines on the estate, either denounced, granted, or in operation, retaining one half of the profits which may be obtained after deducting the expenses, which he shall share equally with the owner.

ART. 478. The status of a usufructuary does not deprive the person possessing it of the right granted to every person by the Law of Mines to denounce and obtain the concession of mines existing on the estate in usufruct in the form and under the conditions established by said law.

1. Repealed (Willard).

ART. 479. The usufructuary shall have the right to enjoy any increase which the thing in usufruct may receive

by accession, as well as any easements existing in its favor, and in general all the benefits inherent therein.

ART. 480. The usufructuary may personally enjoy the thing in usufruct, lease it to another person, or alienate his right to the usufruct, even gratuitously; but all the contracts he may make as such usufructuary shall terminate at the expiration of the usufruct, except that of lease of rural estates, which shall be considered as subsisting during the agricultural year.

1. See Arts. 473, 498, 1537, 1548, 1577, and 1874, Civil Code; Arts. 107 (No. 2), 108 (No. 7), Mortgage Law.
2. Cited and applied. Reyes v. Grey, 21 Phil. 73; Edroso v. Sablan, 25 Phil. 295.

ART. 481. When the usufruct includes things which, without being consumed, gradually deteriorate by use, the usufructuary shall be entitled to make use of the same in accordance with the purpose for which they are intended, and shall not be obliged to return them at the expiration of the usufruct, except in their condition at that time; but he shall be obliged to indemnify the owner for any deterioration they may have suffered by reason of his wilful misconduct or his neglect.

1. See Arts. 497, 500, Civil Code.

ART. 482. When the usufruct includes things which cannot be used without being consumed, the usufructuary shall be entitled to make use of them under the obligation of paying their appraised value at the expiration of the usufruct, if they were appraised when given to him. When they have not been appraised he shall have the right to restore other things equal thereto in quantity and quality, or to pay the market value thereof at the time of the cessation of the usufruct.

1. Money, being a fungible thing, cannot be made subject to usufruct. Alunan v. Veloso, XXVII Off. Gaz. 3581.

ART. 483. The usufructuary of vineyards, olive orchards, or other trees or shrubs, may make use of dead stumps and of parts cut or torn off by accident, under the obligation of replacing them by others.

ART. 484. If in consequence of any misfortune or extraordinary event the vines, olive trees, or other trees or shrubs should have disappeared in such a considerable number that the replanting of them should be impossible, or too laborious, the usufructuary may place the dead, fallen, or broken trunks at the disposal of the owner and oblige him to remove them and leave the land clear.

ART. 485. The usufructuary of woodland may enjoy all the profits which it may produce according to its nature.

If the woodland be ready for felling, or contains building timber, the usufructuary may take such wood or timber as the owner may have been in the habit of taking or felling; in default of this criterion he may do so in accordance with the custom of the place with respect to the manner, amount, and season of cutting such wood or timber.

In any case the cutting of trees shall be done in such a manner as not to be injurious to the preservation of the estate.

In nurseries of trees the usufructuary may make such thinnings as may be required in order that the remaining trees may properly develop.

With the exception of the provisions contained in the preceding paragraphs, the usufructuary shall not fell any trees unless it be to restore or improve some of the things held in usufruct, and in such case he must previously inform the owner of the necessity for the work.

1. See Arts. 467, 470, 480, 491, 497 et seq., Civil Code.

ART. 486. The usufructuary of an action to recover an estate or real right, or personal property, is entitled to bring the action and to require the owner thereof to permit

him to appear in the name of the latter and to furnish him any proofs he may have. When, by reason of the enforcement of such action he recovers the thing claimed, the usufruct shall be limited to the fruits thereof, the ownership vesting in the proprietor.

1. See notes under Art. 480, Civil Code.

ART. 487. The usufructuary may make on the property held in usufruct any improvements, useful or recreative, which he may deem proper, provided he does not change its form or substance; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without injury to the property.

1. See Arts. 337, 454, Civil Code.
2. A lessee or usufructuary who makes improvements on the thing leased or under usufruct cannot, under Act No. 496, register his rights to such improvements independently of the thing leased or under usufruct. *In re* Building & Loan Ass'n., 13 Phil. 575.
3. Article cited and applied. Alburo v. Villanueva, 7 Phil. 277; Enriquez v. Watson & Co., 22 Phil. 623.
4. This article is applicable to a lessee. Rivera v. Trinidad, 48 Phil. 396.

ART. 488. The usufructuary may set off any damages to the property with the improvements he may have made thereon.

ART. 489. The owner of property, the usufruct of which is held by another, may alienate it, but may not change its form or substance or do anything prejudicial to the usufructuary.

1. See Arts. 348, 350, 388, 467, 503 and 595, and notes under Art. 487, Civil Code; Art. 107 (No. 3), Mortgage Law.

ART. 490. The usufructuary of a part of a thing held in common shall exercise all the rights corresponding to

the owner thereof with regard to the management and the receipt of fruits or interest. Should the community cease by reason of the partition of the thing possessed in common, the usufruct of the part allotted to the owner shall appertain to the usufructuary.

1. See Arts. 393 to 399, Civil Code.
2. The partition among the co-owners of the property held in common, a part of which is subject to the right of usufruct of a certain person, will be binding upon the latter although he has not taken part in the partition. Pichay v. Querol, 11 Phil. 386.

SECTION III. *Obligations of the Usufructuary.*

ART. 491. The usufructuary, before entering upon the enjoyment of the property, is obliged—

1. To make an inventory of all the property, after notice to the owner or his lawful representative, to have the personal property appraised, and the condition of the real property described therein;

2. To give bond to secure the performance of the obligations imposed upon him by this section.

1. See Arts. 470 et seq., 481 et seq., 492 et seq., and 522, Civil Code.

ART. 492. The provisions of paragraph 2 of the next preceding article are not applicable to the vendor or donor who has reserved to himself the usufruct of the property sold or bestowed as a gift, or to parents who are the usufructuaries of the property of their children, or to the surviving spouse with respect to the hereditary portion granted to him or her by Articles 834, 836, and 837, except in case the parents or spouse contract a second marriage.

1. See notes under Art. 160, Civil Code; Art. 168, Civil Code.
2. That part of this article regarding the right of usufruct that parents have over the property of their children has been repealed (Willard).
3. See Ibañez de Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 228.

ART. 493. Whatever may be the title under which the

usufructuary holds the usufruct, he may be relieved from the obligation of making an inventory or giving security when no one will be injured thereby.

1. See Art. 470, Civil Code.

ART. 494. Should the usufructuary fail to give bond in cases in which he should do so, the owner may require that the real property be placed under administration, the personal property sold, that any public securities, stocks or bonds payable to order or to bearer be registered in his name or deposited in a bank or public institution, and that any capital or sums in cash, or the price received from the sale of personal property, be invested in safe securities.

Interest on money received from the sale of personal property, interest on public securities and bonds, and the proceeds of property placed under administration, belong to the usufructuary.

During such time as the usufructuary fails to give security or until he is excused from so doing, the owner may, if he so prefers, retain in his possession the property subject to usufruct as an administrator, subject to the obligation of delivering the net proceeds to the usufructuary after deducting such sums as may be agreed upon or may be judicially determined as compensation for the management of the property.

1. See Arts. 334, 335, 471, 491 and 507, Civil Code.

ART. 495. If a usufructuary who has not given security offers to take oath to obey any order the court may give him and claims delivery of the furniture required for his use and asks that he and his family be permitted to live in some house included in the usufruct, the judge may grant his petition after due consideration of the facts of the case.

The same rule shall apply with respect to any implements, tools, or other personal property required for the industry in which the usufructuary is engaged.

If, on account of the artistic merit of any of the furniture

or because it has a sentimental value for him, the owner should not wish to have it sold, he may demand that it be delivered to him upon his giving security for the payment of interest at the legal rate on its appraised value.

1. See Art. 520, Civil Code.

ART. 496. After the security has been given by the usufructuary he shall be entitled to all the proceeds from the day on which he should have commenced to receive them, in accordance with the title constituting the usufruct.

ART. 497. The usufructuary must take care of the property given in usufruct as a good father of a family would do.

1. See Arts. 470, 481, 485, 487, 500 et seq., 1104, Civil Code.

ART. 498. A usufructuary who sells, conveys, or leases his right of usufruct shall be liable for any damage suffered by the property in usufruct through the fault or neglect of the person who substitutes him.

ART. 499. If the usufruct should be created on a flock or herd of domestic animals, the usufructuary shall be obliged to replace with the young thereof such of the animals as die each year from ordinary causes and those lost by the rapacity of beasts of prey.

If the animals on which the usufruct is created should all perish, without fault of the usufructuary, by reason of some contagious disease or any other uncommon event, the usufructuary shall fulfill his duty by delivering to the owner the remains which may have been saved from this misfortune.

Should the herd partially perish, by accident and without the fault of the usufructuary, the usufruct shall continue with respect to the part saved.

Should the usufruct be on sterile stock, it shall be con-

sidered for all its purposes as created on consumable things.

1. See Arts. 337, 467, 470, 481 et seq., 513 et seq., 514, Civil Code.

ART. 500. The usufructuary is bound to make any ordinary repairs required by the thing given in usufruct.

As ordinary repairs shall be considered those required by the ordinary wear and tear caused by the natural use of things, and which are indispensable for their preservation. Should the usufructuary fail to make them after being requested to do so by the owner, the latter may make them at the expense of the usufructuary.

ART. 501. Extraordinary repairs shall be chargeable to the owner. The usufructuary shall be required to give him notice in case such repairs should be urgently necessary.

ART. 502. If the owner should make the extraordinary repairs he shall be entitled to demand of the usufructuary the legal interest on the amount invested in them during the continuance of the usufruct.

Should he not make such repairs when they are indispensable for the preservation of the thing, the usufructuary may make them; but he shall be entitled to demand of the owner, upon the expiration of the usufruct, any increase in value which the estate may have acquired by reason of such works. Should the owner refuse to pay their value, the usufructuary shall be entitled to retain the thing until he has reimbursed himself from the proceeds thereof.

1. See Arts. 453, 487, 500, 501 and 517, Civil Code.
2. Cited and applied. Cruz v. Co-Cuaco, 4 Phil. 489.

ART. 503. The owner may do any work or make any improvement which may be appropriate on the estate in usufruct, or make new plantations thereon, if it be rural

property, provided the value of the usufruct is not reduced thereby nor the rights of the usufructuary impaired.

1. See Arts. 487, 489 and 595, Civil Code.

ART. 504. The payment of all annual charges and taxes and of those which constitute a lien on the fruits, shall be at the charge of the usufructuary during the existence of the usufruct.

ART. 505. Any taxes which may be imposed directly upon the capital, during the usufruct, shall be at the charge of the owner.

If paid by the latter, the usufructuary shall pay him the proper interest on any sums he may have disbursed by reason thereof; if the usufructuary should advance the amounts of such taxes he shall recover them upon the expiration of the usufruct.

1. See Arts. 356, 502, 504 and 518, Civil Code.

ART. 506. If the usufruct should be created on the entire estate of any person, and if, at the time of its creation, the owner has debts, the provisions of Articles 642 and 643 relating to gifts shall be applied, both with respect to the maintenance of the usufruct and to the obligation of the usufructuary to pay such debts.

The same rule shall be applied in case the owner, at the time of the creation of the usufruct, should be under obligation to make any periodical payments, even if not secured by any specific property.

ART. 507. The usufructuary may claim any matured credits which form part of the usufruct if he has given or gives the proper security.

If he has been excused from giving security, or if he cannot do so, or if that given is not sufficient, he shall require the authority of the owner, or, in his default, that of the judge, to collect such credits.

A usufructuary who has given security may invest the money he collects in any manner he may deem fit. A usufructuary without bond must invest such capital at interest, upon agreement with the owner, or, in default of such agreement, with judicial authorization and, in every case, upon security sufficient to insure the preservation of the capital in usufruct.

ART. 508. A universal usufructuary shall pay in full any legacy of a life annuity or any allowance for support chargeable upon the estate.

The usufructuary of an aliquot part of the estate shall pay in proportion to his share.

In neither case shall the owner be obliged to make any reimbursements.

The usufructuary of one or more specified things shall pay the legacy only when the annuity or allowance is expressly charged upon them.

1. See Arts. 467 et seq., 504, 859 and 891, Civil Code.
2. Partly repealed. See Secs. 721, 727 to 733, Code of Civil Procedure (Willard).

ART. 509. The usufructuary of a mortgaged estate shall not be obliged to pay the debt for the security of which the mortgage was created.

If the estate is attached or judicially sold for the payment of the debt, the owner shall be liable to the usufructuary for whatever he may lose by reason thereof.

ART. 510. Should the usufruct be of the whole or of an aliquot part of an inheritance, the usufructuary may advance the sums chargeable upon the property in usufruct in payment of the debts of the estate, and shall be entitled to demand their return from the owner, without interest, at the expiration of the usufruct.

Should the usufructuary refuse to make this advance, the owner may request the sale of such part of the property in usufruct as may be necessary to pay such sums, or pay

them with his own money, being entitled in such case to demand the proper interest of the usufructuary.

1. See notes under Art. 508, Civil Code.
2. Repealed (Willard).

ART. 511. The usufructuary is obliged to notify the owner of any act of a third person, of which he may have knowledge, which may be prejudicial to the rights of the owner, and shall be liable, should he fail to do so, for any damages resulting as if caused by his own fault.

ART. 512. Any expenses, costs, or judgments resulting from litigation concerning the usufruct shall be at the charge of the usufructuary.

SECTION IV. *Manner of Extinguishing the Usufruct.*

ART. 513. Usufruct is extinguished—

1. By the death of the usufructuary;
2. By the expiration of the period for which it was created or by the fulfillment of any condition subsequent established by the instrument creating it;
3. By the merger of the usufruct and ownership in the same person;
4. By the waiver of the usufructuary;
5. By the total loss of the property in usufruct;
6. By the termination of the right of the person by whom it is constituted;
7. By prescription.

1. See Arts. 499, 515 et seq., 521, 791, 793, 1123 et seq., 1182, 1192, 1932, 1957, Civil Code.
2. Usufruct is a real right, which includes *jus utendi* and *jus fruendi*. When the usufructuary is a natural person it expires at his death. A usufruct created for the benefit of a corporate entity cannot continue for more than thirty years. Eleizegui v. Manila Lawn Tennis Club, 2 Phil. 309.
3. The fact that a usufructuary has claimed to be the owner of the property held in usufruct does not constitute a waiver within the meaning of subparagraph No. 4 of this Article. City of Manila v. Monte de Piedad, 5 Phil. 234.

4. There is a merger when the widower, who is the usufructuary of one half of his deceased wife's estate, succeeds to have bare ownership of that half upon the death of the other heirs of the wife. Chingen v. Arguelles, 7 Phil. 296.

ART. 514. If a part only of the thing given in usufruct should be lost, the usufruct shall continue with respect to the remainder.

ART. 515. A usufruct cannot be created for more than thirty years in favor of any town, corporation, or association. Should it have been so created and before the expiration of such period the town becomes deserted or the corporation or association is dissolved, the usufruct shall be thereby extinguished.

1. See notes under Art. 513, Civil Code; Sec. 75, Philippine Bill.
2. In force (Willard).

ART. 516. A usufruct granted for a period to expire when some third person attains a certain age shall continue during the number of years specified, even though the third person dies before, unless such usufruct has in terms been granted only in consideration of the existence of such person.

ART. 517. If the usufruct is created on an estate of which a building forms part, and the latter should be destroyed in any manner whatsoever, the usufructuary shall be entitled to enjoy the use of the land and materials.

The same rule shall be applied if the usufruct be created upon the building only and the latter should be destroyed. But, in such case, if the owner desires to construct another building he shall be entitled to occupy the ground and to make use of the materials, being obliged to pay the usufructuary during the continuance of the usufruct the interest upon a sum equivalent to the value of the ground and of the materials.

ART. 518. If the usufructuary shares with the owner the cost of insuring a building given in usufruct, he shall continue in case of its destruction, in the enjoyment of the new building, should one be constructed, or shall receive the interest on the proceeds of the insurance if the owner does not wish to rebuild.

If the owner should have refused to contribute to the insurance of the estate, and the usufructuary insures it alone, the latter shall acquire the right, in case of loss, to collect in full the amount of the insurance, but with the obligation of investing it in the reconstruction of the building.

If the usufructuary should have refused to contribute to the insurance and the owner insures alone, the latter shall receive, in case of loss, the full amount of the insurance, subject to the right granted the usufructuary in the next preceding article.

ART. 519. If the thing in usufruct should be taken in the exercise of the right of eminent domain, the owner shall be obliged either to replace it with another of the same value and similar conditions, or to pay the usufructuary interest at the legal rate on the amount of the compensation received during the term for which the usufruct was established. If the owner chooses the latter alternative he shall give security for the payment of the interest.

ART. 520. A usufruct is not extinguished by improper use of the thing in usufruct; but if the abuse causes a considerable loss to the owner, the latter may request that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting expenses and the compensation which may be allowed him for its administration.

ART. 521. A usufruct created in favor of several persons living at the time of its creation shall not be extinguished until the death of the last survivor.

ART. 522. Upon the expiration of the usufruct the thing in usufruct shall be delivered to the owner, subject to the right of retention appertaining to the usufructuary or his heirs for any disbursements which should be repaid. After the delivery is made the bond or mortgage shall be canceled.

1. See Arts. 467 et seq., 472, 502, 505 and 510, Civil Code; Arts. 77, 107, Mortgage Law.

CHAPTER II.

USE AND HABITATION.

ART. 523. The rights and obligations of usuaries and of persons having the right of habitation shall be governed by the instruments creating such rights, and, in default thereof, by the following provisions.

ART. 524. Use gives the right to receive, out of the fruits of another's property, whatever may be required to provide for the needs of the usuary and of his family, even should the latter increase.

Habitation entitles the person having this right to occupy in another's house the apartments he may require for himself and for the members of his family.

ART. 525. The rights of use and habitation cannot be leased or transferred to another person in any manner whatsoever.

1. See Arts. 480, 523 et seq., Civil Code; Art. 108 (No. 8), Mortgage Law.

ART. 526. Any person having the use of a flock or herd of domestic animals may avail himself of such of the young, milk, and wool thereof, as may be required for consumption by himself and his family, as well as of the dung required for manuring the land he may cultivate.

ART. 527. If the usuary consumes all the fruits of the thing subject to use, or if the person having the right of habitation should occupy the whole house, he shall be obliged to pay all the expenses of cultivation, and of ordinary repairs for upkeep, as well as the taxes, in the same manner as a usufructuary.

If he receives a part of the fruits only, or dwells in a part of the house, he need make no payments, provided that a part of the fruits or benefits sufficient to cover the expenses and charges remains to the owner. Should it not be sufficient, the former shall make up the deficiency.

1. See Relova v. Lavarez, 9 Phil. 149.

ART. 528. The provisions established for usufructs are applicable to the rights of use and habitation, in so far as they do not conflict with those contained in this chapter.

1. See notes under Art. 527, Civil Code.

ART. 529. The rights of use and habitation are extinguished by the same causes as those which terminate usufruct, and, furthermore, by serious abuse of the thing or dwelling.

1. See Arts. 513 et seq., Civil Code.

TITLE VII.

EASEMENTS.

CHAPTER I.

EASEMENTS IN GENERAL.

SECTION I. *Different Kinds of Easements Which May Be Established on Estates.*

ART. 530. An easement is a burden imposed upon real property for the benefit of other real property belonging to a different owner.

The real property in favor of which the easement is established is called the dominant estate, and the one subject to it the servient estate.

1. See Arts. 334, 542, 543 and 545, Civil Code; Secs. 50 and 51, Philippine Bill; Sec. 11, Act No. 2719, and Sec. 2 (J) Act No. 2832.
2. "Benefit" (beneficio) as used in this article defined. Relova v. Lavarez, 9 Phil. 149.
3. See also Cortes v. Yu-Tibo, 2 Phil. 24; Lunod v. Meneses, 11 Phil. 128.

ART. 531. Easements may also be established for the benefit of one or more persons or of a community to whom the encumbered estate does not belong.

ART. 532. Easements may be continuous or intermittent, apparent or non-apparent.

Continuous easements are those the use of which is or may be incessant without the intervention of any act of man.

Intermittent easements are those used at more or less lengthy intervals and which depend upon acts of man.

Apparent easements are those which are made known and kept continually in view by external signs which show the use and enjoyment of the same.

Non-apparent easements are those which disclose no external sign of their existence.

1. See Arts. 541, 561 and 564, and notes under Art. 533, Civil Code.
2. See Cortes v. Yu-Tibo, 2 Phil. 24.

ART. 533. Easements are, furthermore, positive or negative.

A positive easement is one which imposes upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself, and a negative easement that which forbids the owner of the servient estate to do something which he might properly do if the easement did not exist.

1. See Art. 538, Civil Code.
2. An easement of light through windows opened in one's own wall is a negative easement. Cortes v. Yu-Tibo, 2 Phil. 24; Fabie v. Lichauco, 11 Phil. 14.

ART. 534. Easements are inseparable from the property to which they actively or passively belong.

1. See Art. 108 (par. No. 6), Mortgage Law.

ART. 535. Easements cannot be divided. If the servient estate should be divided among two or more persons the easement shall not be modified, but each must bear it on the part allotted to him.

If the dominant estate is divided among two or more persons, each allottee may use the easement in its entirety, provided the place of its use be not changed, or the burden of the easement increased in any manner whatsoever.

1. See Arts. 541, 546, Civil Code.

ART. 536. Easements are established either by law or

by the will of the owners. The former are called legal and the latter voluntary.

1. See Art. 549, Civil Code.
2. See Cortes v. Yu-Tibo, 2 Phil. 24.

SECTION II. *Manner of Acquiring Easements.*

ART. 537. Continuous and apparent easements are acquired either by title or by prescription of twenty years.

1. See Arts. 432, 600, 1930, 1940 and 1949, Civil Code; Art. 35, Mortgage Law.
2. According to Art. 334 (No. 10), Civil Code, easements are real property. Therefore, following Sec. 41 of the Code of Civil Procedure, the prescriptive period is ten years instead of twenty years (Willard).

ART. 538. In order to acquire by prescription the easements referred to in the next preceding article, the time of the possession shall be computed, in the case of positive easements, from the day on which the owner of the dominant estate or the one who has made use of the easement has commenced to exercise the right on the servient estate; and in negative easements, from the day on which the owner of the dominant estate has, by a formal act, forbidden the owner of the servient estate to perform any act which would be lawful without the easement.

1. See notes under Art. 537, Civil Code.
2. This article, in force. The prescription of negative easement begins from the moment that by a formal act the dominant owner prohibits the servient owner from performing acts which would be licit without the easement. Cortes v. Yu-Tibo, 2 Phil. 24; Fabie v. Lichauco, 11 Phil. 14.

ART. 539. Continuous non-apparent easements and intermittent easements, whether apparent or not, can only be acquired by virtue of a title.

1. *Quære,* whether these easements may now be acquired by prescription. Guaycong v. Benedicto, 37 Phil. 781.
2. See also Bargayo v. Camumot, 40 Phil. 857.

ART. 540. The lack of a title establishing an easement which cannot be acquired by prescription can only be supplied by a deed of acknowledgment executed by the owner of the servient estate, or by a final judgment.

1. See Arts. 536, 539, 1218, 1220 et seq., Civil Code.

ART. 541. The existence of an apparent sign of an easement between two estates established by the owner of both shall be considered, should one of them be alienated, as a title for the active and passive continuation of the easement, unless, at the time of the division of the ownership of the two properties, the contrary should be expressed in the deed of conveyance of either of them, or the sign is obliterated before the execution of the instrument.

1. See Cortes v. Yu-Tibo, 2 Phil. 24; Fabie v. Sichauco, 11 Phil. 14.

ART. 542. Whenever an easement is established, all the rights required for its use and enjoyment are deemed to be granted.

1. See Arts. 556 and 598, Civil Code.

SECTION III. *Rights and Obligations of Owners of Dominant and Servient Estates.*

ART. 543. The owner of the dominant estate may do, at his own expense, on the servient estate, any work necessary for the use and preservation of the easement, but without changing it or rendering it more onerous.

He must select therefor the most suitable time and manner in order to cause the least possible inconvenience to the owner of the servient estate.

ART. 544. Should there be several dominant estates, the owners of all of them shall be obliged to contribute to the expenses referred to in the next preceding article, in proportion to the benefit each may obtain from the work. Any one not wishing to contribute may exempt himself by re-

nouncing his interest in the easement for the benefit of the others.

If the owner of the servient estate should make use of the easement, in any manner whatsoever, he shall be obliged to contribute to the expenses in the proportion above stated, unless there is an agreement to the contrary.

ART. 545. The owner of the servient estate cannot impair, in any manner whatsoever, the use of an established easement.

Nevertheless, if by reason of the place originally assigned, or the mode established for the use of the easement it should become very inconvenient for the owner of the servient estate, or should prevent him from carrying out any important works, repairs or improvements thereon, it may be changed at his expense, provided he offers another place or mode equally convenient, so that no detriment is caused the owner of the dominant estate, or those who may have a right to the use of the easement.

1. See Arts. 542, 587, 598, and notes under Art. 552, Civil Code.
2. The owner of land through which a stream of water passes may use the water, but not in such a way as to cause damage to lower riparian owners. His rights and obligations as such owner of land upstream discussed. Magno v. Castro, 30 Phil. 585.
3. The grant to a sugar mill company of an easement of way for the transportation of sugar cane to its mill cannot be construed to limit the right of transportation to cane grown on the servient estate, in the absence of a specific agreement that the use of the easement shall be so limited. Valderrama v. North Negros Sugar Co., 48 Phil. 492.

SECTION IV. *Extinguishment of Easements.*

ART. 546. Easements are extinguished:

1. By merger in the same person of the ownership of the servient and dominant estates;

2. By non-user for twenty years;

This period shall be computed with respect to intermittent easements from the day on which the easement has

ceased to be used; and, with respect to continuous easements, from the day on which an act in opposition to the easement may have taken place.

3. When the estates fall into such condition that the easement cannot be used; but it shall revive if the subsequent condition of the estates should permit its use, unless, when the use becomes possible, sufficient time has elapsed for the prescription of the right in accordance with the provisions of the next preceding paragraph;

4. When the term expires, or the condition occurs, if the easement be temporary or conditional;

5. By the renunciation of the owner of the dominant estate;

6. By redemption agreed upon between the owners of the dominant and servient estates.

1. See Arts. 530, 535, 541, 568, 599, 602 et seq., 1182, 1187 et seq., 1192, 1280, 1930 and 1932, and notes under Art. 537, Civil Code; Sec. 40, Code of Civil Procedure.
2. Period of prescription under par. No. 2 is now ten years (Willard).

ART. 547. The mode of using the easement may be lost by prescription, like the easement itself, and in the same way.

1. See note under Art. 537, Civil Code.

ART. 548. If the dominant estate belongs to several persons in common, the use of the easement by one of them prevents its prescription with respect to the others.

CHAPTER II.

LEGAL EASEMENTS.

SECTION I. *General Provisions.*

ART. 549. The object of easements imposed by law is either public utility or the interest of private persons.

ART. 550. All matters concerning easements established for the benefit of the public or of a community shall be governed by the special laws and regulations pertaining thereto or, in default thereof, by the provisions of this title.

1. See Arts. 530, 531, 536, 549, 570, Civil Code.

ART. 551. Easements established by law for the benefit of private persons or for public utility shall be governed by the provisions of this title, without prejudice to the provisions of general or local laws, regulations or ordinances concerning the exercise of the police power in cities or country districts.

These easements may be modified by agreement between the parties in interest whenever the law does not forbid such agreement and it causes no damage to any third person.

1. See opinion of Attorney General of Nov. 17, 1903.

SECTION II. *Easements Relating to Waters.*

ART. 552. Lower estates must receive the waters which naturally and without the intervention of man descend from higher estates, as well as the stone or earth which they carry with them.

The owner of the lower estate shall not construct works to impede the enjoyment of this easement, nor the owner of the higher estate works which increase the burden.

1. See notes under Art. 425, Civil Code.
2. See Lunud v. Meneses, 11 Phil. 126.

ART. 553. The banks of rivers throughout their entire length, even if of private ownership, and a strip three meters wide along the margins are subject to the easement of public use in the general interest of navigation, flotage, fishing and salvage.

Estates adjoining the banks of navigable or floatable rivers are furthermore subject to the easement of a towpath for the exclusive service of river navigation and floatage.

Should it be necessary to occupy lands of private ownership for such purpose, the proper indemnity must first be paid.

1. Arts. 553 and 554 in force (Willard).
2. The easement established by this article does not apply to canals (esteros); nor can riparian owners be required to subject their property to the easement, for the benefit of the public, without compensation. Ayala de Roxas v. Manila, 6 Phil. 251; Chang Hang Ling v. Manila, 9 Phil. 251.

ART. 554. Whenever it may be necessary to build a dam to divert or take water from any river or brook or to make use of any other continuous or intermittent stream and the person who has occasion to build such dam is not the owner of the banks of the stream or of the land upon which the dam is to be constructed he may establish the easement of buttress of the dam, upon paying the proper indemnity.

1. See notes under Arts. 553 and 555, Civil Code.

ART. 555. Compulsory easements for drawing water or watering animals may be imposed only for reasons of public utility in favor of a town or village after payment of the proper indemnity.

1. See Arts. 351, 536, 542, 549 et seq., 556, 563 and 570, and notes under Art. 349, Civil Code.
2. In the introduction (exposición de motivos) to the law of Waters of 1866, "caserio" (village) is defined as a group of persons not less than ten in number (Willard).

ART. 556. Easements for drawing water and for watering animals subject the servient estate to the obligation of giving passage to persons and animals to the place from which the water is to be taken, and the indemnity shall include this service.

1. See notes under Art. 555, Civil Code.
2. Arts. 556 to 558 are in force, with the exception of par. No. 3 of Art. 558 (Willard).

ART. 557. Any person who wishes to use upon his own land any water of which he may have the control is entitled to take it through the intervening estates, subject to the obligation of indemnifying the owners thereof, as well as the owners of any lower estates upon which the water may filter or descend.

1. See notes under Arts. 555 and 556, Civil Code.
2. One who has obtained from the Government a grant to use water from a river for irrigation is entitled to construct his irrigation canal over the intervening lands of other private owners upon payment of indemnity. Gonzalez v. Banzon, 51 Phil. 15.

ART. 558. Any person desiring to make use of the right granted in the foregoing article shall be obliged—

1. To prove that he has a right to dispose of the water, and that it is sufficient for the use for which he intends it;
2. To show that the right of way he requests is the most convenient and the least onerous to third persons;
3. To indemnify the owner of the servient estate in the manner prescribed by the laws and regulations.

1. See notes under Arts. 555 and 556, Civil Code.

ART. 559. The easement of aqueduct for purposes of private interest cannot be imposed on buildings, their yards or dependencies, or on gardens or orchards already in existence.

ART. 560. The easement of aqueduct does not prevent the owner of the servient estate from closing and fencing it, or from building over the aqueduct in such manner as not to cause the latter any harm, and not to make it impossible to clean and repair it when necessary.

ART. 561. The easement of aqueduct, for all legal purposes, shall be deemed continuous and apparent even though the passage of the water is not continuous, or even

if its use depends on the requirements of the dominant estate or is limited to certain days or hours.

1. See notes under Art. 539, Civil Code.

ART. 562. Any person who for the purpose of irrigating or improving his estate has to construct a diverting dam or weir in the bed of the stream from which the water is to be taken may require the owners of the margins to permit its construction by paying for any damage occasioned, including compensation to such owners and to the other irrigators for the establishment of the new easement.

1. See Arts. 330, 413, 542 and 543, and notes under Art. 555, Civil Code.

ART. 563. The establishment, extent, form and conditions of the easements of waters to which this section refers shall be governed by the special law relating thereto in everything not provided for in this code.

1. See notes under Art. 552, Civil Code.
2. The special law referred to in this article is the Law of Waters of 1866. Lunod v. Meneses, 11 Phil. 126.

SECTION III. *Right of Way.*

ART. 564. The owner of any estate or property which is surrounded by others belonging to different owners and has no access to any public road, is entitled to demand a right of way over the neighboring estates upon paying the proper indemnity.

If this easement is constituted in such manner that its use may be continuous for all the requirements of the dominant estate, and a permanent way is established, the indemnity shall include the value of the land occupied and the amount of the damage caused the servient estate.

When it is limited to the passage required for the cultivation of the estate surrounded by others, and for the transportation of its crops through the servient estate without a permanent way, the indemnity shall consist in the payment of the damage caused by such easement.

1. Under the Partidas, immemorial use of the servitude must be proved by witnesses over sixty years of age. Whether this requirement has been supplanted by the new Code of Procedure, or how the use may be proved at present, *quære*. Ayala de Roxas v. Case, 8 Phil. 197.
2. Easement of right of way cannot be acquired by prescription if the use relied upon as basis for the prescription was tolerated for convenience. Archbishop of Manila v. Roxas, 22 Phil. 450.
3. The owner of a servient estate subject to an easement of right of way cannot obstruct the use of the easement, and he cannot move the path to another part of his land if the proposed new location is not as convenient as the original path. Resolme v. Lazo, 27 Phil. 416.
4. This article refers to the establishment of a new easement. Mere use tolerated by the owner of an estate, however necessary to the user, cannot be the basis for the prescription of an easement of right of way. Cuaycong v. Benedicto, 37 Phil. 781.

ART. 565. The right of way must be established at the point least prejudicial to the servient estate, and in so far as is consistent with this rule, where the distance from the dominent estate to the public road may be the shortest.

ART. 566. The width of the right of way shall be such as is sufficient for the requirements of the dominant estate.

ART. 567. When an estate acquired by purchase, exchange, or partition is surrounded by other estates of the vendor, exchanger, or co-owner, the latter shall be obliged to grant a right of way without indemnity, in the absence of an agreement to the contrary.

1. The Church of Dumangas was held to have a right of way by prescription across the public plaza, acquired both by immemorial use and through necessity for without it there would be no passage available for people coming in and out on one side of the Church. Municipality of Dumangas v. Bishop of Jaro, 34 Phil. 541.

ART. 568. If the right of way granted to an inclosed

estate ceases to be necessary because the owner thereof has joined it to another abutting on the public road, the owner of the servient estate may demand the extinguishment of the easement upon returning what he may have received by way of indemnity.

The same rule shall apply in case a new road is opened giving access to the inclosed estate.

ART. 569. Whenever it is indispensable for the construction or repair of a building to carry the materials over another's estate, or place thereon scaffolding or other things to be used in the work, the owner of such estate shall be obliged to permit it upon receiving an indemnity proportional to the damage caused him.

ART. 570. Existing easements of right of way for the passage of stock, known under the names of sheep path, cattle trail, footpath, or any other, and those for watering and resting places and sheepfolds shall be governed by the ordinances and regulations relating thereto, or, in their default, by the uses and customs of the locality.

Without prejudice to rights legally acquired, a sheep path shall not exceed 75 meters in width; a trail, 37 meters 50 centimeters, and a footpath, 20 meters.

Whenever it is necessary to establish a compulsory easement of right of way or for a watering place for cattle, the provisions of this section and of Articles 555 and 556 shall be observed. In this case the width shall not exceed 10 meters.

1. See Arts. 550, 555 et seq., Civil Code.

SECTION IV. *Easements of Party Walls and Fences.*

ART. 571. The easement of party walls shall be governed by the provisions of this title, and by the local ordinances and customs, in so far as they do not conflict with the same or relate to matters for which no provision is made herein.

1. See Arts. 392 (Nos. 5 and 6), 393 to 406, and 590, Civil Code.
2. In force (Willard).

ART. 572. The easement of party walls is presumed, unless there is a title or exterior mark or proof to the contrary—

1. In dividing walls of adjoining buildings up to the point of elevation common to both;
2. In dividing walls of gardens or yards situated in towns or in the country;
3. In fences, walls, and live hedges dividing rural estates.

1. A dividing wall between two buildings held not to be a party wall, if as in this case it has been built on land belonging exclusively to one adjoining owner, and there are other signs indicating that it is not a party wall. Lao et al. v. Heirs of Alburo, 33 Phil. 48.
2. See also Case v. Heirs of Tuason, 14 Phil. 521; Valenzuela v. Unson, 32 Phil. 19.

ART. 573. It is understood that there are exterior signs which rebut the presumption of the easement of party walls:

1. When there are windows or openings in the dividing walls of buildings;
2. When the dividing wall is, on one side, true and plumb in all its facement and on the opposite side is the same on the upper part, but the lower part slants outward or is stepped;
3. When the entire wall is built on land belonging to one of the estates and not half on one and half on the other of the two abutting properties;
4. When it bears the burden of the binding beams, floors and roof frame of one of the houses, but not that of the adjoining one;
5. When the dividing walls between yards, gardens, and fields are so constructed that the coping sheds the waters upon one only of the estates;
6. When the dividing wall is built of masonry and some

of the stones project at intervals on one side but not on the other;

7. When properties inclosed by fences or hedges abut on others which are not inclosed.

In all these cases the ownership of the walls, fences, or hedges shall be deemed to be vested exclusively in the owner of the property or estate who has in his favor the presumption based on any one of these signs.

1. See Arts. 388, 580 et seq. and 593, and notes under Art. 572, Civil Code.

ART. 574. Ditches or conduits opened between estates are also to be deemed common to the owners of both if there is no title or sign proving the contrary.

It shall be a sign that the ownership is not common when the earth or débris removed to open or clean the ditch has been deposited on one side only thereof, in which case the ownership of the ditch shall be vested exclusively in the owner of the estate having this exterior sign in its favor.

ART. 575. The cost of repairing and constructing party walls and of the preservation of walls, hedges, ditches and conduits held in common shall be borne by all the owners of the estates who are interested therein in proportion to the interest of each.

Nevertheless, any owner may be relieved of his obligation to contribute to this charge by renouncing his right, unless the party wall supports a building belonging to him.

ART. 576. If the owner of a building supported by a party wall desires to demolish the building he may renounce his part ownership of the wall, but the cost of all repairs and work necessary to prevent any damage which such demolition may cause the party wall, on this occasion only, shall be defrayed by him.

ART. 577. Every owner may, at his own expense, increase the height of any party wall upon paying for any

damage which may be caused by the work, even if only temporary.

He shall also be required to pay the expenses of maintaining that part of the wall above its original elevation and of any increased depth of its foundation, and of such other increased expense as may be necessary for the preservation of the party wall by reason of its greater height or depth.

If the party wall will not bear the increased height, the owner desiring to raise it shall be obliged to reconstruct it at his own expense, and, should it be necessary to make it thicker, he shall give the space required from his own land.

ART. 578. The other owners who have not contributed to give the increased height, depth, or thickness to the wall may, nevertheless, acquire therein the right of part ownership by paying the value of the work and one-half of that of the land appropriated for its increased thickness, in proportion to the interest of each.

ART. 579. Every part owner of a party wall may use it in proportion to the interest he may have in its co-ownership. He may, therefore, support his building on the party wall or insert joists therein up to one-half its thickness, but without interfering with its use in common by the other part owners.

In order that the part owner may make use of this right he must first obtain the consent of the other persons interested in the part ownership.

Should he not obtain it, the conditions upon which the new structure may be built without injury to the rights of the other participants shall be determined by experts.

SECTION V. *Easement of Light and View.*

ART. 580. No part owner may, without the consent of the other, make any window or opening whatsoever in the party wall.

1. See Arts. 394, 397, 572 and 579, and notes under Art. 551, Civil Code.
2. Cited and applied. Cortes v. Yu-Tibo, 2 Phil. 24.

ART. 581. The owner of a wall which is not a party wall, but which abuts upon another's estate, may make windows or openings in it thirty centimeters square to admit light at the height of the ceiling joists or immediately under the roof, and, in all cases, covered with an iron grating imbedded in the wall, and a wire screen.

Nevertheless, the owner of the house or estate adjoining the wall in which the openings are made may close them if he acquires the part ownership of the wall should there be no agreement to the contrary.

He may also obstruct them by building on his land or by raising a wall adjacent to that having such opening or window.

1. See notes under Art. 551, Civil Code.
2. The rights of adjoining owners to open windows in the walls of their respective buildings discussed. Cortes v. Yu-Tibo, 2 Phil. 24.
3. Once it is established by the evidence, that a house has been built within two meters of the dividing line, no other windows than those provided in this article may be opened in its wall. Saenz v. Figueras Hnos., 13 Phil. 666.
4. If a house consists of more than one story, each story may have the same openings which are provided by law for one house. Choco v. Santamaria, 21 Phil. 132.

ART. 582. No windows or balconies or other similar projections which directly overlook the adjoining property may be opened or built without leaving a distance of not less than two meters between the wall in which they are built and such adjoining property.

Neither may side or oblique views be opened over such property at a distance of less than sixty centimeters therefrom.

1. See notes under Art. 551, Civil Code.

2. The watershed of a window is not a projection (voladizo) within the meaning of that word as used in this article. Cortes v. Yu-Tibo, 2 Phil. 24.
3. The wall of the house in question being within two meters of the dividing line, no windows may be opened therein, other than those authorized by Art. 581, Civil Code, and no easement can be acquired by opening windows of another kind with direct views on the land adjoining. Saenz v. Figueras Hnos., 13 Phil. 666.
4. The fact that the eaves of a house and the iron grating of its windows, which are directly above the land in question, were allowed to remain in that position without objection for a long time by the claimant, was held to be proof tending to show that he was not the owner of the said land. Perez v. Gonzalez, 17 Phil. 343.
5. By failure to object to the opening of the windows for thirteen years, plaintiff's action to have the windows closed prescribed. Soriano v. Sternberg, 41 Phil. 212.
6. See also Choco v. Santamaria, 21 Phil. 132.

ART. 583. The distances referred to in the next preceding article shall be measured, with respect to direct views, from the outer line of the wall when there are no projections, from the line of the latter when such exist, and with respect to oblique views from the dividing lines of both estates.

1. See notes under Art. 551, Civil Code.

ART. 584. The provisions of Article 582 are not applicable to buildings separated by a public thoroughfare.

1. See notes under Art. 551, Civil Code.

ART. 585. When by any title the right has been acquired to have direct views, balconies, or belvederes overlooking adjacent property, the owner of the servient estate cannot build thereon at less than three meters' distance, to be measured in accordance with the provisions of Article 583.

1. See notes under Art. 551, Civil Code.
2. This article does not apply when the existence of the easement is in question. Cortes v. Yu-Tibo, 2 Phil. 24.

SECTION VI. *Drainage of Buildings.*

ART. 586. The owner of a building shall be obliged to construct the roof or covering thereof in such a manner that rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor. Even if it falls on his own land, the owner shall be obliged to dispose of the water in such way that it will not cause damage to the adjoining estate.

1. See Arts. 348, 850 et seq., and notes under Art. 582, Civil Code.
2. See Perez v. Gonzales, 17 Phil. 343.

ART. 587. The owner of an estate subject to the easement of receiving the water falling from roofs may build in such manner as to receive the waters upon his own roof, or give them another outlet in accordance with the local ordinances or customs and not burdensome or detrimental to the dominant estate in any manner whatsoever.

ART. 588. When the yard or court of a house is inclosed between others and it is not possible to give an outlet through the house itself to the rain water collected therein, the establishment of an easement of drainage may be demanded upon payment of the proper indemnity, so as to give an outlet to the waters at the part of the abutting property where its egress may be the easiest. The conduit for the drain shall be established in such manner as to cause the least possible damage to the servient estate.

1. See Arts. 348, 850 et seq., 540, 543, 553 and 564 et seq., Civil Code.
2. In force (Willard).

SECTION VII. *Rules Concerning the Distances at Which Certain Buildings, Plants and Trees Must Be Kept from Other Property.*

ART. 589. No buildings can be constructed or trees planted near fortified places or fortresses without compli-

ance with the conditions established by the special laws, ordinances, and regulations relating thereto.

1. In force (Willard).

ART. 590. No one shall construct near any wall belonging to another, or near a party wall, any well, sewer, aqueduct, furnace, forge, chimney, or stable, or make deposits of corrosive material, or erect machines operated by steam, or factories which, in themselves or because of their products are dangerous or noxious, at a less distance than that prescribed by the regulations and customs of the locality, and without erecting the necessary protective structures, subject, as to method, to the conditions prescribed by such regulations.

In the absence of regulations, such precautions shall be taken as may, in the opinion of experts, be deemed necessary in order to avoid any damage to the neighboring estates or buildings.

1. In force (Willard).

ART. 591. Trees shall not be planted near another's estate except at the distance authorized by the ordinances or customs of the locality, or, in the absence of such, at a distance of two meters from the dividing line of the estates if tall trees are planted, and at fifty centimeters if shrubs or small trees are planted.

Every property owner shall be entitled to require that any trees hereafter planted at a less distance from his estate be removed.

ART. 592. Should the branches of any tree extend over a neighboring field, garden, or yard, the owner of the latter shall be entitled to demand that they be cut off in so far as they extend over his property; and should the roots of the neighboring trees extend into another's land the owner of such land may himself cut them within his estate.

ART. 593. Trees in a party hedge shall be deemed party trees, and either of the owners shall be entitled to demand that they be felled.

Trees serving as boundary marks are excepted, and may be felled only by common consent of the owners of the adjoining estates.

CHAPTER III.

VOLUNTARY EASEMENTS.

ART. 594. The owner of an estate may burden it with such easements as he may deem fit, and in such manner and form as he may consider desirable, provided he does not violate the law or public policy.

1. See Arts. 348, 530 et seq., 536, 541 et seq.
2. The right to maintain an irrigation canal upon the land of another being a voluntary easement, it is extinguished by the registration of the dominant estate under the Torrens system without the registration of the easement. Gonzalez v. Banzon, 51 Phil. 15.

ART. 595. The owner of any estate the usufruct of which belongs to another may impose thereon, without the consent of the usufructuary, any easements not prejudicial to the right of usufruct.

1. See Art. 503, Civil Code.

ART. 596. When the *dominium directum* of an estate belongs to one person and the *dominium utile* to another, no perpetual voluntary easement can be established thereon without the consent of both owners.

ART. 597. In order to impose an easement on an undivided estate the consent of all the co-owners shall be required.

Consent granted by part of the owners only shall be inoperative until the consent of the last participant has been obtained.

But the consent given by any one of the co-owners severally shall bind the grantor and his successors, even if they be so by singular title, not to impede the exercise of the right granted.

1. See Art. 399, Civil Code.

ART. 598. The title, or, if easement has been acquired by prescription, possession shall determine the rights of the dominant estate and the obligations of the servient estate. As to matters not determined thereby the easement shall be governed by such provisions of this title as may be applicable.

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ART. 599. If the owner of the servient estate has bound himself at the time of creating the easement to defray the cost of any work required for the use and preservation thereof he may free himself from this liability by abandoning his estate to the owner of the dominant estate.

ART. 600. Common of pasturage may only be acquired hereafter by an express grant from the owners of the lands subject thereto, by contract or by will, and shall not be made in favor of an indeterminate group of persons, or in general terms, upon all the grantor's property, but in favor of certain individuals, and upon definite and specified lands.

Any easement established in accordance with this article shall be governed by the instrument by which it is created.

1. See Sec. 41, Code of Civil Procedure.
2. There is an apparent conflict between this Article and Sec. 41 of the Code of Civil Procedure (Willard).

ART. 601. Common of pasturage on public lands, whether belonging to municipalities or the State, shall be governed by the administrative laws.

1. See Arts. 330 et seq., 343 et seq., and 392, Civil Code; and Act No. 2176.

ART. 602. If the easement of common of pasturage exists between residents of one or more towns, any landowner who incloses his estate with a fence or hedge shall hold it free from the easement. Nevertheless, any other easements established thereon shall continue.

The owner who incloses his estate shall preserve his right to the common pasturage on estates which are not inclosed.

ART. 603. The owner of any land encumbered by the easement of pasturage may redeem it by paying the value thereof to those entitled thereto.

In the absence of an agreement the principal to be paid for the redemption shall be determined upon the basis of four per cent of the annual value of the pasturage, as determined by expert appraisal.

1. See Art. 535, Civil Code.

ART. 604. The provisions contained in the next preceding article are applicable to easements established for the gathering of firewood and other products of woodlands which are private property.

TITLE VIII.

THE REGISTER OF DEEDS.

SOLE CHAPTER.

ART. 605. The purpose of the Register of Deeds is to note or record therein instruments and contracts relating to the ownership of real property and other real rights affecting it.

1. See Art. 334, Civil Code; Arts. 2 et seq., Mortgage Law; Sec. 124, Act No. 496; Sec. 174, Adm. Code of 1917.

ART. 606. Titles of ownership or of other rights affecting real estate which are not properly recorded or noted in the registry of deeds shall not prejudice third persons.

1. See Art. 1473, and notes under Art. 605, Civil Code; Arts. 23 to 38, Mortgage Law.
2. Registration is not an essential requisite to establish ownership. There is no law requiring that a deed of sale be registered; but a mortgage must be registered. Alo v. Rocamore, 6 Phil. 197; Legarda v. Saleeby, 31 Phil. 590.
3. The transfer by the lessee to a third person of his right of lease is a contract concerning real rights to immovable property, within the meaning of this article. Valdes v. Central Altagracia, 225 U. S. 58, 56 L. ed. 980.

ART. 607. The registry of deeds shall be public for those who have a known interest in ascertaining the status of any real property or rights affecting it recorded or noted therein.

1. See notes under Art. 605, Civil Code; and Arts. 279 to 296, Mortgage Law.

ART. 608. The provisions of the Mortgage Law shall govern for the purpose of determining what titles are subject to record or notation, the form, effect, and cancellation of such records or notes, the method of keeping the Register and the weight to be given the entries in the books.

1. See notes under Art. 605, Civil Code.

BOOK THIRD.

DIFFERENT MODES OF ACQUIRING OWNERSHIP.

PRELIMINARY PROVISION.

ART. 609. Ownership is acquired by occupancy.

The ownership of property and other rights therein are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition; they may also be acquired by prescription.

1. See Arts. 1068, 1095 and 1462, Civil Code.
2. The ownership of real or personal property is not transmitted without delivery. Fidelity, etc., Co. v. Wilson, 8 Phil. 51; Yatco v. Gana, 13 Phil. 305; Keunzle & Streiff v. Macke & Chandler, 14 Phil. 610; Gonzalez v. Rojas, 16 Phil. 51; Easton v. Diaz, 32 Phil. 180; Cruzado v. Bustos, 34 Phil. 17.
3. If the transfer is evidenced by a public instrument this is equivalent to delivery. Viegelman v. Perez, 37 Phil. 678; Florendo v. Foz, 20 Phil. 388.
4. A will duly probated transmits the title to the inheritance to the legatee. Bautista v. Jimenez, 24 Phil. 111.
5. See also Martinez v. Martinez, 1 Phil. 686; U. S. v. Cerna, 21 Phil. 144.

TITLE I.

OCCUPANCY.

ART. 610. Things which by their nature are susceptible of appropriation, but which have no owner, such as living creatures which may be taken by hunting or fishing, hidden treasures, and abandoned personal property, may be acquired by occupancy.

1. See notes under Arts. 609, 611 and 615, Civil Code; Secs. 538 to 544, Administrative Code of 1917, and Opinions of the Atty. Gen., of April 19, 1902, and September 6th, 1905.
2. One who goes into a ship that has been stranded on the shore, and takes away money contained in sealed boxes, which were torn open by force, is guilty of robbery. U. S. v. Rey, 8 Phil. 500.
3. Title to real estate cannot be acquired by mere occupation. Villanueva v. Claustro, 23 Phil. 54.
4. Salvors of a wrecked ship rightfully in possession thereof may hold it against its owner until proper compensation for their services is paid to them. Wallace v. Pujalte & Co., 34 Phil. 511.
5. Municipalities have the power to promulgate ordinances regarding animals found astray in the streets or public plazas of the municipality. U. S. v. Neri, 36 Phil. 313.
6. The finding of amber-gris by several fishermen creates a tendency in common by occupancy. Punsalan v. Boon Liat, 44 Phil. 320.

ART. 611. The right to hunt and fish is governed by special laws.

1. See Arts. 608 and 615, Penal Code; Acts Nos. 2590, 1499, 1685, 2584, 2604, and Secs. 2321 to 2324, 1712, 882, and 2156, Administrative Code of 1917.
2. See Customs Regulations Nos. 25 and 31. Doubtful if in force.
3. See Opinions of the Attorney General of November 18, 1904; July 18, 1905; September 1, 1904; August 22, 1910; January 5, 1909; September 20, 1907; May 6, 1908; January 27, 1904; March 4, 1904; November 29, 1904; April 18, 1908; March 7, 1908; April 15, 1908; August 21, 1907, and October 10, 1908.

4. To hold a municipality liable for the issuance of fishing licenses covering areas which overlap each other, clear proof of negligence is essential. Palma v. Fernandez, 7 Phil. 154; Mumar v. Dieparine, 18 Phil. 74; Castro v. Reyes, 37 Phil. 29.
5. A municipality has the power to issue ordinances regulating fisheries, and sufficient executive power to enforce them. U. S. v. Garing, 28 Phil. 199; U. S. v. Sumulong, 30 Phil. 381; U. S. v. Hernandez, 31 Phil. 342; Bautista v. Angeles, 34 Phil. 57.
6. See also Magno v. Bugayong, 6 Phil. 71; U. S. v. Cerna, 21 Phil. 144; Ayson v. Rizal Prov. Board, 39 Phil. 931.
7. Regulation of hunting and fishing; see Acts 1499, 1685, 2590, 2711, 3012, and 2079.

ART. 612. The owner of a swarm of bees shall be entitled to pursue them on another's estate, indemnifying the possessor of the latter for the damage caused. Should the estate be inclosed, he shall require the consent of the owner to enter the same.

Should the owner not have pursued the swarm, or should he abandon its pursuit for two consecutive days, the possessor of the estate may take or retain it.

The owner of tamed animals may also claim them within twenty days from the date of their occupancy by another. After this period has elapsed they shall belong to the person who may have caught and kept them.

1. See Arts. 388, 465 and 610, Civil Code; Arts. 592, 594 and 600, Penal Code.
2. This article cannot be applied to a case in which the owner of a domestic animal delivers it to another for safe-keeping. Catabian v. Tungcul, 11 Phil. 49.
3. One who has found a domestic animal and kept it for six years cannot be held guilty of theft, unless he knew who was the owner. U. S. v. Cerna, 21 Phil. 144.

ART. 613. Pigeons, rabbits, and fish, which from their respective breeding places should pass to another belonging to a different owner shall be the property of the latter, provided they have not been enticed away by means of some trickery or fraud.

1. See Arts. 465 and 610, and notes under Arts. 610 and 615, Civil Code.

ART. 614. Any person who by chance finds a treasure hidden on another's property shall enjoy the right granted him by Article 351 of this code.

1. See Arts. 351 and 352, Civil Code.

ART. 615. He who finds any personal property other than treasure must return it to its former possessor. Should the latter be unknown he must deliver it immediately to the mayor of the town where the find was made.

The mayor shall make public announcement thereof in the usual manner on two consecutive Sundays.

Should it not be possible to keep such personal property without deterioration or without incurring expenses which would greatly reduce its value, it shall be sold at public auction, after eight days have elapsed from the second advertisement without the owner having appeared, and the proceeds shall be deposited.

After two years have elapsed from the date of the second advertisement without the owner having appeared, the thing found or its value shall be awarded to the person who found it.

The latter, or the owner, in the respective cases, shall be obliged to pay the expenses.

1. See notes under Art. 610; Art. 517, Penal Code.
2. Repealed, as to duties of alcalde (Willard).
3. See Secs. 9 to 26 of the Revised Ordinances of the City of Manila.
4. The failure of the finder to deliver the thing to the alcalde as provided in this Article does not render the finder guilty of theft, unless he knows who the owner is. U. S. v. Cerna, 21 Phil. 144.

ART. 616. Should the owner appear in time, he shall be obliged to pay to the finder of the thing as a reward a tenth part of the sum or of the value of the article found.

If the value of the find exceeds 2,000 pesetas, the reward shall be reduced to a twentieth part thereof in respect to any excess over that amount.

1. See Arts. 619, 1334, and notes under Art. 615, Civil Code.

ART. 617. The rights to goods jettisoned, or to those cast ashore by the waves, whatever may be their nature, or to plants and herbs growing on the seashore, are determined by special laws.

1. See Secs. 1325 to 1328, Administrative Code of 1917; Act No. 2616, and Opinion of the Attorney General of September 11, 1905.
2. The Law of Ports of 1880 was never in force in the Islands. But the Law of Waters of 1866 and the Law of Stray Animals (Ley de Mostrendos) are in force (Willard).

TITLE II.

DONATIONS.

CHAPTER I.

NATURE OF GIFTS.

ART. 618. A donation is an act of liberality by which a person disposes gratuitously of a thing in favor of another, who accepts it.

1. See Arts. 633 and 654 (par. 2), Civil Code.
2. No valid transfer of title by way of donation is effected unless the requirements of the law in regard to donations are complied with, especially those established by Arts. 618 and 623, Civil Code. Mendoza v. Fulgencio, 8 Phil. 243.
3. If property is donated for a particular purpose, and it has been devoted to that purpose without objection on the part of the donors, it is presumed that the donation has become absolute. Roman Cath. Church v. Caloocan, 12 Phil. 639.
4. Property donated to heirs before the death of the donor does not form part of the latter's inheritance, and no partition thereof can be asked by the heirs, unless the donation is first successfully attacked as invalid in an action brought for that purpose. Segui v. Segui, 14 Phil. 102; Lopez v. Olbes, 15 Phil. 540.
5. No donation may be made in favor of the public in general; it must be in favor of a definite person or entity. Worcester v. Ocampo, 22 Phil. 42.
6. A donation made in consideration of services rendered is an onerous donation, valid and irrevocable. Manalo v. De Mesa, 29 Phil. 495.
7. A gift in pledge of future marriage (*arras*) promised by a suitor to his fiancée, and a donation *propter nuptias* promised before but made after the marriage, were valid under the law prior to the Civil Code. Villanueva v. Standard Oil, 34 Phil. 370.
8. See also Martinez v. Martinez, 1 Phil. 182; Delgado v. Riesgo, 10 Phil. 438; Garcia v. Reyes, 17 Phil. 127; Ventura v. Felix, 26 Phil. 500; Santos v. Robledo, 28 Phil. 245.

ART. 619. A thing given to a person in consideration of his merits, or for services rendered to the donor, provided that they do not constitute recoverable debts, is also a donation; and so is a gift which imposes upon the donee a burden inferior in value to the thing given.

1. See notes under Art. 618, Civil Code.
2. If the charge is less than the value of the property given away, the act is a donation, and not a contract. Castillo v. Castillo, 23 Phil. 364.
3. When by the terms of a deed of gift the donee is required to support the donor for life the donation is not pure but conditional. Di Siock Jian v. Sy Lioc Suy, 43 Phil. 562.

ART. 620. Donations which are to become effective upon the death of the donor partake of the nature of disposals of property by will and shall be governed by the rules established for testamentary successions.

1. See Arts. 744 to 891, Civil Code.
2. These donations are called donations *mortis causa*. Lopez v. Olbes, 15 Phil. 540.
3. A dowry which is to take effect after the death of the person granting it is considered a donation *mortis causa* and governed by the rules of testamentary succession. Gonzalez v. Gonzalez, 35 Phil. 105.
4. Donations *mortis causa* distinguished from donations *inter vivos* and from advancements. Pineda v. Posadas, XXVII Off. Gaz. 3620.

ART. 621. Donations which are to produce their effects *inter vivos* shall be governed by the general provisions concerning contracts and obligations in all matters not determined by this title.

1. See Arts. 642, 1263 and 1264, and notes under Art. 644, Civil Code; Art. 42, Penal Code.
2. Under Art. 704, Code of Civil Procedure, only heirs and devisees are included—not donees, whose rights under a donation *inter vivos* are governed by the rules of contract. Lopez v. Olbes, 15 Phil. 540.

3. Although there was evidence to show that the donation was made to effect a retransfer of the property donated from the donor to the donee, yet the donation having been accepted, the donee becomes subject to the rules of donation. The donation was declared revoked by the subsequent birth of children to the donor. Escario v. Regis, 31 Phil. 618.
4. A donation consisting of a monthly pension of ₱100 held inofficious considering the state of the donor's finances and his obligations to his family, consisting of a wife and fifteen children. Gonzalez v. Gonzalez, 35 Phil. 105.
5. Acceptance of an onerous donation may be implied from conduct. Tabar v. Becada, 44 Phil. 619.

ART. 622. Donations upon valuable consideration shall be governed by the rules concerning contracts, and remunerative ones by the provisions of this title with respect to the part by which they exceed the value of the charge imposed.

1. See Art. 1274, Civil Code.
2. A donation made in consideration of services to be rendered is an onerous contract and is governed by the ordinary rules of contract. Carlos v. Ramil, 20 Phil. 183; Manalo v. De Mesa, 29 Phil. 495.
3. See note No. 2 under Art. 619, Civil Code.
4. Facts examined and held to constitute a donation for valuable consideration. Tabar v. Becada, 44 Phil. 619.
5. See Abrogan v. Centenera, 46 Phil. 213.

ART. 623. A donation is perfected as soon as the donor knows that it has been accepted by the donee.

1. See Art. 629, and notes under Art. 633, Civil Code.
2. A donation is perfected by acceptance in due form. Acceptance is essential to the existence of a donation. Mendoza v. Fulgencio, 8 Phil. 243; Lopez v. Olbes, 15 Phil. 540; Castillo v. Castillo, 23 Phil. 364.
3. After a document of donation was made and accepted in due form, another deed was made by the donor correcting an error in the original deed. Held, that the failure of the donee to formally accept the correction did not invalidate the donation. Osorio v. Osorio, 41 Phil. 540.
4. A donation of realty to a minor, accepted in his behalf by his mother, held valid. Laureta v. Mata, 44 Phil. 668.

CHAPTER II.

PERSONS WHO CAN MAKE OR RECEIVE DONATIONS.

ART. 624. All persons capable of making contracts and of disposing of their property may make donations.

1. See Arts. 188, 275, 1263, 1264, 1328, 1334, 1335, 1413 and 1677, Civil Code.
2. See Martinez v. Martinez, 1 Phil. 182; Lopez v. Olbes, 15 Phil. 540.

ART. 625. All persons who are not especially disqualified therefor by law may accept donations.

1. See Arts. 50, 61 (No. 2), 745 and 1329, Civil Code.

ART. 626. Persons who cannot enter into contracts cannot accept conditional or onerous donations without the intervention of their lawful representatives.

1. See Arts. 1334 and 1335, Civil Code.
2. An onerous donation in favor of a minor is not perfected unless accepted by the duly appointed guardian of his property. Di Siock Jian v. Sy Lioc Suy, 43 Phil. 562.

ART. 627. Donations made to children conceived but yet unborn may be accepted by the persons who would lawfully represent them had their birth occurred.

1. See Art. 29, Civil Code.

ART. 628. Donations made to persons disqualified to receive them are void, even if made by simulation under the guise of some other contract and through an intermediary.

ART. 629. A donation does not bind the donor or produce any effect until after acceptance.

1. See Arts. 623 and 1330, and notes under Art. 633, Civil Code.
2. A donation without acceptance in due form is null and void. Castillo v. Castillo, 23 Phil. 364; Santos v. Robledo, 28 Phil. 245.

3. Article cited and applied. Di Siock Jian v. Sy Lioc Suy, 43 Phil. 562.

ART. 630. The donee must accept the donation personally or by means of an agent authorized by special power for such purpose, or one holding a general and sufficient power of attorney, otherwise the donation shall be void.

1. See Arts. 60, 262, 623, 625 et seq. and 1330, and notes under Art. 629, Civil Code.

ART. 631. It shall be the duty of the person who accepts a donation on behalf of another who is unable to do so for himself to give the notice and make the annotation prescribed by Article 633.

ART. 632. Donations of personal property may be made verbally or in writing.

Verbal donation requires the simultaneous delivery of the gift. In the absence of this requisite the donation shall produce no effect, unless made in writing and accepted in the same form.

ART. 633. In order that a donation of real property be valid it must be made by public instrument in which the property donated must be specifically described and the amount of the encumbrances to be assumed by the donee expressed.

The acceptance must be made in the deed of gift or in a separate public writing; but it shall produce no effect if not made during the lifetime of the donor.

If the acceptance is made by separate public instrument, authentic notice thereof shall be given the donor, and this proceeding shall be noted in both instruments.

[654, par. 2] Act 496. Sec. 50 (Land Registration Act.)

1. See notes under Arts. 623, 629 and 1280, Civil Code; and Art. 23, Mortgage Law.

2. In force (Willard).
3. It is of the essence of a donation of real estate that the same be made by public instrument, and that it be accepted with like formality. Martinez v. Martinez, 1 Phil. 182; Camagay v. Lagera, 7 Phil. 397; Perizuelo v. Benedicto, 9 Phil. 621; Velazques v. Biala, 18 Phil. 231; Santos v. Robledo, 28 Phil. 245; Sison v. Ambalada, 30 Phil. 118; Tiamson v. Tiamson, 32 Phil. 62; Abellara v. Balanag, 37 Phil. 865.
4. As to donations made under the law prior to the Civil Code, a public instrument was not an indispensable requisite for their validity. Barretto v. City of Manila, 7 Phil. 416.
5. An onerous donation is subject to the rules of contract, and not to those of an ordinary donation. Manalo v. De Mesa, 29 Phil. 495.
6. See also Lopez v. Olbes, 15 Phil. 540; Castillo v. Castillo, 23 Phil. 364.
7. This article applies to donations *propter nuptias*. Solis v. Barroso, XXVII Off. Gaz. 2716.
8. A verbal donation of real estate is insufficient to vest title in the donee; but if followed by adverse possession such holding may be proved as a basis for prescriptive acquisition of title to the land. Pensader et al. v. Pensader et al., 47 Phil. 959.
9. See Cristobal v. Gomez, 50 Phil. 810, cited under Art. 1257.

CHAPTER III.

EFFECTS AND LIMITATIONS OF DONATIONS.

ART. 634. A donation may include all the present property of the donor or a part thereof, provided he reserves, in full ownership, or in usufruct, an amount sufficient to support him in a manner appropriate to his station.

1. See Arts. 347, 633 and 636, 654, Civil Code.
2. No other restrictions can be applied to donations than those established by law. Martinez v. Martinez, 1 Phil. 182.
3. A donation which does not comply with the restrictions established by law is not void *ab initio*, but only voidable. Andrada v. Sevilla, 19 Phil. 441.

4. A dowry consisting of an indefinite sum of money to be paid from time to time is equivalent to a donation *inter vivos*, and the court may limit the amount to that which is reasonably within the means of the donor. Gonzalez v. Gonzalez, 35 Phil. 105.
5. See Lopez v. Olbes, 15 Phil. 540.

ART. 635. A donation cannot include future property.

By future property is understood that of which the donor cannot dispose at the time of making the donation.

1. After the death of her husband, the widow made a donation of her husband's share in a certain business, which was adjudicated to her subsequent to the donation. Held, that the husband's share in the business was not "future property" and that the donation was valid. Osorio v. Osorio, 41 Phil. 537.
2. See Laureta v. Mata, 44 Phil. 668.

ART. 636. Notwithstanding the provisions of Article 634, no person can give or receive by donation more than that which he can give or receive by will.

The donation shall be inofficious in so far as it exceeds these limitations.

1. See Arts. 651, 654 et seq., 808, 809, 813, 818 et seq., 823, 834 et seq., and 1036, and notes under Art. 634, Civil Code.

ART. 637. When a donation has been made to several persons jointly, it shall be understood that each is to have an equal share. There shall be no right of accretion between them, unless the donor has otherwise provided.

Donations made jointly to husband and wife are excepted from this rule, and the right of accretion shall exist between them unless the donor has otherwise provided.

ART. 638. The donee is subrogated to all the rights and actions which, in case of eviction, would correspond to the donor. The latter, however, is not a warrantor of the things bestowed as a donation, unless the donation is onerous, in

which case the donor shall be liable for eviction to an amount equal to that of the burden assumed by the donee.

1. See Arts. 622, 1474 et seq., Civil Code.

ART. 639. The donor may reserve to himself the right to dispose of some of the property bestowed as a gift or to encumber it with a charge for the payment of money; but should he die without having made use of this right, the property or the sum which may have been reserved shall belong to the donee.

1. See Art. 492, Civil Code.

ART. 640. The ownership of a thing may also be donated to one person, and the usufruct to another or others, subject to the limitations established by Article 781 of this code.

1. See Art. 492, Civil Code.

ART. 641. A provision that the gift is to revert to the donor under certain conditions or circumstances is valid; but the reversion cannot be stipulated in favor of any other person, except in the cases and subject to the same limitations prescribed by this code for testamentary substitutions.

Any condition established by the donor for the reversion of the gift in favor of a third person in contravention of the provisions of the next preceding paragraph, shall be void, but shall not make the donation itself void.

1. See Art. 774, Civil Code.

ART. 642. If the donation has been made upon condition that the donee shall pay the debts of the donor, if the conditional clause contains no other declaration, the donee shall be bound to pay only debts contracted before the bestowal of the gift.

ART. 643. Should there be no stipulation as to the pay-

ment of debts, the donee shall be liable for them only in case the gift has been made in fraud of creditors.

A donation shall always be presumed to have been made in fraud of creditors, when, at the time of bestowing it, the donor has not reserved to himself property sufficient to pay the debts contracted by him prior thereto.

1. See Arts. 1291 (No. 3), 1295, 1297, 1706, and notes under Art. 634, Civil Code; Art. 880, Code of Commerce; Arts. 537 and 538 (No. 2), Penal Code.
2. A donation made in fraud of creditors is invalid. Santos v. Robledo, 28 Phil. 245.

CHAPTER IV.

REVOCATION AND REDUCTION OF DONATIONS.

ART. 644. Every donation *inter vivos* made by a person having no legitimate children or descendants, nor children legitimated by subsequent marriage is revoked by the mere fact of the occurrence of any of the following cases:

1. When the donor, after making the donation, has any legitimate or legitimated or acknowledged natural children, even should they be posthumous.

2. When the child of the donor whom he supposed dead when he made the donation, is found to be alive.

1. See Arts. 108 et seq., 125, 126, 129 et seq., 618 et seq. and 623, and notes under Art. 621, Civil Code; Art. 38, Mortgage Law.

ART. 645. If the donation is rescinded by the subsequent birth of children, the things bestowed shall be returned to the donor, or their value, if the donee has sold them.

Should they be mortgaged, the donor may discharge the mortgage, paying the sum secured by it, and shall be entitled to recover from the donee the sum so paid.

When the things cannot be restored they shall be ap-

praised at the price they were worth when the donation was made.

1. See note under Art. 644, Civil Code.

ART. 646. The action of revocation by reason of the subsequent birth of children shall prescribe upon the lapse of five years counted from the birth of the last child, or from the legitimation or acknowledgment of such child, or from the time information was received of the existence of the child who was believed dead.

This action cannot be renounced, and shall be transmitted on the death of the donor to his children and to their legitimate descendants.

1. See Chapter III. of the Code of Civil Procedure as to period of prescription. The last part of this article is still in force (Willard).

ART. 647. A donation may be revoked at the instance of the donor if any of the conditions imposed by him upon the donee have not been complied with.

In such case the things donated shall revert to the donor and any alienation thereof by the donee and any mortgages he may have placed thereon shall be void, subject to the limitations with respect to third parties established by the Mortgage Law.

1. See Arts. 25, 27, 29, 31, 35 et seq., 97, Mortgage Law.
2. When a donation of land is made upon condition subsequent, the action to revoke the donation prescribes ten years from the time within which the donee should have performed the condition. Parks v. Tarlac Province et al. 49 Phil. 142.

ART. 648. A donation may also be revoked at the instance of the donor, by reason of ingratitude, in the following cases:

1. When the donee commits any crime against the person, honor, or property of the donor.

2. When the donee charges the donor with any of the crimes which may be prosecuted by the government on its

own motion, even though he proves the charge, unless the crime should have been committed against the donee himself, his wife, or the children under his authority.

3. When the donee unduly refuses him support.

ART. 649. When a gift is revoked by reason of ingratitude, any alienations or mortgages made prior to the annotation of the complaint for revocation in the Registry of Deeds shall, nevertheless, be valid.

Those subsequent shall be void.

ART. 650. In the cases referred to in the first paragraph of the next preceding article, the donor shall be entitled to recover from the donee the value of any property alienated which he cannot recover from the third persons, or the amount for which they have been mortgaged.

Such property shall be appraised at its value at the time the donation was made.

1. See Archbishop of Manila v. Barrio of Sto. Cristo, 39 Phil. 1.

ART. 651. If the gift should be revoked upon any of the grounds mentioned in Article 644, or for ingratitude, or if it should be reduced on account of being inofficious, the donee shall not return the fruits, except from the date of the commencement of the action.

If the ground for the revocation be the failure to comply with any of the conditions to which the donation was made subject, the donee shall, besides the property, return the fruits he may have received after the breach of the condition.

ART. 652. The action of revocation by reason of ingratitude cannot be renounced in advance. This action prescribes in one year, counted from the time the donor had knowledge of the fact and was able to institute the action.

1. See Chapter III. Code of Civil Procedure.

ART. 653. This action shall not be transmitted to the

heirs of the donor if the latter could have brought it himself but did not do so.

Neither can it be maintained against the heirs of the donee, unless at the time of his death the suit had already been commenced.

1. See Arts. 119 and 653, Civil Code.

ART. 654. Donations which, in accordance with the provisions of Article 636, are found to be inofficious upon computing the net value of the property of the donor at the time of his death, shall be reduced as to the excess; but such reduction shall not prevent them from being effectual during the lifetime of the donor nor prevent the donee from making the fruits of the thing donated his own.

The reduction of donations shall be governed by the provisions of this chapter and by Articles 820 and 821 of this code.

ART. 655. The reduction of donations can be demanded only by persons entitled to a legitime or to an aliquot part of the estate and their heirs or successors in interest.

The persons included in the next preceding paragraph cannot renounce their right during the lifetime of the donor either by an express statement or by giving their consent to the donation.

Donees, legatees (other than those to whom an aliquot part of the estate has been bequeathed), and creditors of the deceased cannot demand such reduction or derive any benefit therefrom.

1. See Arts. 4, 636, 654, 656, 806 and 807, Civil Code.
2. See Art. 643, Civil Code, and Sec. 713, Code of Civil Procedure, It seems that sec. 713, just cited, does not affect Art. 655, Civil Code (Willard).

ART. 656. If there are two or more gifts and all cannot be covered by the disposable portion of the estate, those of later date shall be canceled or reduced with respect to the excess.

TITLE III.

SUCCESSIONS.

General Provisions.

ART. 657. The rights to the succession of a person are transmitted from the moment of his death.

1. See Arts. 32 et seq., 193, 658 et seq., 784, 799, 881 et seq., 989, 1006, 1026, 440, 759, and transitory provision No. 12; and notes under Arts. 658 and 661, Civil Code.
2. The heirs' rights to the succession vest in them immediately upon the death of the owner of an estate. Mijares v. Nery, 3 Phil. 195; Suiliong & Co. v. Chio-Tayasan, 12 Phil. 13; Lubrico v. Albardo, 12 Phil. 391; Inocencio v. Gat-Pandan, 14 Phil. 491; Aliasas v. Alcantara, 16 Phil. 489; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Irlanda v. Pitargue, 22 Phil. 383; Nable Jose v. Uson, 27 Phil. 73; Beltran v. Doriano, 32 Phil. 66; Bona v. Briones, 38 Phil. 276.
3. Effect upon the conjugal partnership of the death of either spouse; who is to liquidate; relation between the heirs and the surviving spouse. Coronel v. Ona, 33 Phil. 456; Nable Jose v. Nable Jose, 41 Phil. 713; Laxamana v. Losano, 41 Phil. 855; Madrigal v. Rafferty, 38 Phil. 414.
4. See also Guioc-co v. Del Rosario, 8 Phil. 546; Ilustre v. Frondosa, 17 Phil. 321; Marin v. Nacianceno, 19 Phil. 238; Malahacan v. Ignacio, 19 Phil. 438; Santos v. Manarang, 27 Phil. 209; Rocha v. Tuazon, 39 Phil. 976; Osorio v. Osorio, 41 Phil. 538.
5. Article cited and applied. Velasco v. Vizmanos, 45 Phil. 675; Fule v. Fule, 46 Phil. 317.
6. The fact that the procedural law provides for the appointment of an executor or administrator empowered to liquidate the estate of a decedent and distribute his *haereditas jacens* among his heirs does not deprive them of the right to intervene in the administration of the property for the protection of their interests. Diaz v. Court of First Instance of Capiz, XXVI Off. Gaz. 3545.
7. As to right of heir to possession of real estate pending administration, see Arayata v. Joya, 51 Phil. 654.

ART. 658. Succession is effected either by the will of man expressed by testament or, in the absence of a testament, by operation of law.

The first is called testamentary, the second legal succession.

It may also be effected partly by the will of man and partly by operation of law.

1. See Arts. 33, 667, 668, 806 et seq., Civil Code.
2. Title to the property of the ancestor descends to and vests in the heirs immediately upon his death, and if there are no debts, they may go into posssession at once. Escuin v. Escuin, 11 Phil. 332; Lubrico v. Arbado, 12 Phil. 391; Ilustre v. Frondosa, 17 Phil. 321; Baldemor v. Malangyaon, 34 Phil. 367.
3. See also Irlanda v. Pitargue, 22 Phil. 383; Fernandez v. Tria, 22 Phil. 603.

ART. 659. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.

[442, 790, 808, 1026, 1082]

1. See notes under Arts. 657, 658 and 661, Civil Code.
2. Actions to compel legitimation or acknowledgment of children are not transmitted by inheritance to the heirs of the latter. Conde v. Abaya, 13 Phil. 249.
3. See also Pascual v. Angeles, 4 Phil. 604; Lubrico v. Arbado, 12 Phil. 391; Fernandez v. Tria, 22 Phil. 603; Fabie v. Yulo, 24 Phil. 240.

ART. 660. An heir is a person who succeeds by universal title; and a legatee one who succeeds under a particular title.

1. See Arts. 442, 506, 508, 510, 1067, and notes under Art. 661, Civil Code.
2. Repealed. Under the Code of Civil Procedure, one who inherits by will is called a devisee, if of real property, and a legatee, if of personal property (Willard).

3. The distinction established by the Civil Code between "heredero" and "legatario" no longer obtains. See Secs. 597, 644, 695, 727, 729, 731, 733 and 749, Code of Civil Procedure. Del Rosario v. Del Rosario, 2 Phil. 321; Llorente v. Rodriguez, 10 Phil. 585; Suiliong & Co. v. Chio-Taysan, 12 Phil. 13; Ilustre v. Frondosa, 17 Phil. 321.

ART. 661. Heirs succeed to all the rights and obligations of the decedent by the mere fact of his death.

1. See Arts. 440, 653, 790, 807, 808, 902, 910, 928, 999, 1005, 1010, 1014–1016, 1068, 1257, Civil Code; Secs. 597, 644, 695, 729, 731, 733, 749, 596–598 (these last three as amended by Act No. 2331), and 727, Code of Civil Procedure; Sec. 13 of Act No. 2793.
2. See Suiliong v. Chio-Taysan, 12 Phil. 13.
3. Article cited. Gabriel et al. v. Bartolome, 7 Phil. 699; Ramos v. Marquez, 10 Phil. 722; Lubrico v. Arbado, 12 Phil. 391; Ilustre v. Frondosa, 17 Phil. 321; Irlanda v. Pitargue, 22 Phil. 383; Coronel v. Ona, 33 Phil. 456.
4. The heirs of a party to a contract are not "third persons" with reference to that contract. Barrios v. Dolor, 2 Phil. 44; Mojica v. Fernandez, 9 Phil. 403.
5. Prescription acquired by the parents is transmitted to their heirs without interruption; and any interruption of the prescription as to one heir will operate equally as to all of the other heirs. Veloso v. Fontanosa, 13 Phil. 79; Perez v. Cortes, 15 Phil. 211.
6. The rights and obligations of a lessee under a lease at will are personal with him, and are not transmitted to his heirs upon his death. Soriano v. Roxas, 4 Phil. 638; Lerma v. De la Cruz, 7 Phil. 581.
7. Upon the death of a Chinese merchant, his quality as a merchant is not transmitted to his widow and heirs. Lao Hu Niu v. Col. of Customs, 36 Phil. 433.
8. The heirs of a deceased person may be compelled to perform a contract for the sale of land entered into by the deceased during his lifetime. Araneta v. Montelibano, 14 Phil. 117.
9. See also Pavia v. De la Rosa, 8 Phil. 70; Inocencio v. Gat-Pandan, 14 Phil. 491; Aliasas v. Alcantara, 16 Phil. 489; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Fabie v. Yulo, 24 Phil. 240; Beltran v. Doriano, 32 Phil. 66; Rocha v. Tuason, 39 Phil. 976; Osorio v. Osorio, 41 Phil. 538.

10. Upon sufficient proof that certain persons are the heirs of the deceased, it becomes the duty of the court to order the distribution of the estate to them in due course of the administration proceedings whether such persons have formally appeared in the proceedings or not. Velasco v. Vizmanos, 45 Phil. 675.

11. If a cause of action accrues to a minor or other person under disability, and, while the disability continues, is transmitted by inheritance to another person under disability, the right is barred unless vindicated by action within the term available to the person to whom it accrued; disabilities cannot be tacked. The successor cannot be in a better position than his predecessor. Quijano et al. v. Gomez Cabale, 49 Phil. 263.

12. See Diaz v. Court of First Instance of Capiz, XXVI Off. Gaz. 3545, cited under Art. 657.

CHAPTER I.

WILLS.

SECTION I. *Capacity to Dispose by Will.*

As to all Articles in this section, see C. C. P. 614 and Act 2645.

ART. 662. Every person who is not expressly forbidden to do so by law may make a will.

1. See notes under Art. 666, Civil Code; Sec. 614, Code of Civil Procedure, as amended by Act No. 1934.
2. The rights of forced heirs are not affected by the probate of a will. Probate does not affect the intrinsic validity of the provisions of the will. Sahagun v. De Gorostiza, 7 Phil. 347.
3. Capacity to make a will defined. Capacity is presumed until the contrary is shown. Blindness does not incapacitate one from making a will. *In re* Estate of Cabigting, 14 Phil. 463; Bugnao v. Ubag, 14 Phil. 163; Avelino v. De la Cruz, 21 Phil. 521.

ART. 663. The following are incapable of making wills:

1. Persons of either sex under fourteen years of age.

2. Persons who, either permanently or temporarily, are not of sound mind.

1. See notes under Arts. 662 and 666, Civil Code.

ART. 664. A will made before mental derangement is valid.

1. See notes under Art. 661, Civil Code.

ART. 665. Whenever a lunatic desires to make a will during a lucid interval, the notary shall appoint two physicians who shall examine him previously and the notary shall not authenticate the will unless they assume responsibility for the capacity of the testator. The fact that such opinion has been given shall be stated in the will, which shall be signed by the physicians as well as the witnesses.

1. See Art. 695 (No. 3) and notes under Arts. 661 and 666, Civil Code.
2. This requirement regarding examination by experts before an alleged lunatic can make a will applies only to cases in which lunacy has been judicially established. Hernaez v. Hernaez, 1 Phil. 689.

ART. 666. In determining the capacity of the testator, inquiry shall be limited to his condition at the time of making the will.

1. See notes under Arts. 661 and 665, Civil Code.
2. There is a strong presumption that a testator was in his sound mind when he made his will, unless he was previously judicially declared insane, and this presumption can be overthrown only by clearly convincing proof of his mental incapacity. Hernaez v. Hernaez, 1 Phil. 689; *In re* Will of Butalid, 10 Phil. 27; *In re* Will of Cabigting, 14 Phil. 463; Bagtas v. Paguio, 22 Phil. 227; Galvez v. Galvez, 26 Phil. 243.

SECTION II. *Wills in General.*

ART. 667. The act by which a person disposes of all his property or a portion of it, to take effect after his death, is called a will.

[737, 1089, 1261]

1. A person who has executed a will may die partially intestate. *In re* Estate of Saavedra, XXVI Off. Gaz. 1627.

ART. 668. The testator may dispose of his property either under title of inheritance or under that of legacy.

In case of doubt, even if the testator has not actually used the word "heir," if his intention is clear on this point, the estate shall descend as granted by universal title or by inheritance.

1. See Arts. 750, 764 and 768, and notes under Art. 660, Civil Code.
2. The will designates the heir as legatee. Distinction between legatee and heir under the Civil Code, applied. Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 669. Two or more persons cannot make a will conjointly or in the same instrument, either for their reciprocal benefit or for the benefit of a third person.

1. See Arts. 687, 732 and 733, Civil Code.
2. Joint wills were valid under the laws in force prior to the Civil Code. Cabigting v. Samia, 35 Phil. 284.

ART. 670. The making of a will is a strictly personal act; it cannot be left in whole or in part to the discretion of a third person, or accomplished through the instrumentality of an agent or attorney.

Neither can the permanency of the appointment of heirs or legatees, or the designation of the portions which they are to take, when instituted by name, be left to the discretion of a third person.

[674, 776, 785, 830, 834, 876, 909]

1. See Government v. Abadilla, 46 Phil. 642.

ART. 671. The testator may entrust to a third person the distribution of any sums he may leave in general to specified classes, such as relatives, the poor, or charitable institutions, and also the designation of the persons or institutions to which such sums are to be given.

1. See Arts. 670, 747 et seq., 907, 992, 993 and 1057, Civil Code.

ART. 672. Any provision relating to the institution of heirs, bequests, or legacies, which the testator may make by referring to private memoranda or papers which after his death are found in his domicile or elsewhere, shall be void if such memoranda or papers do not satisfy all the requirements prescribed by law for holographic wills.

1. See notes under Arts. 673 and 738, Civil Code.
2. Arts. 672 and 673, repealed. See Sec. 634, Code of Civil Procedure (Willard).

ART. 673. A will executed under duress, deceit, or fraud, shall be void.

1. See Arts. 1265, 1267 et seq. and 1291 (No. 3), and notes under Art. 672, Civil Code; Arts. 497, 535 (No. 7) and 541, Penal Code; and Sec. 634, Code of Civil Procedure.
2. Defects in the making of a will under the Civil Code and the earlier law which were not considered vital. Hernaez v. Hernaez, 1 Phil. 689; Matias v. Alvarez, 10 Phil. 398.
3. A will which is invalid for lack of compliance with legal formalities is not validated by being recorded in the register of a notary. Araujo v. Celis, 16 Phil. 329.
4. See also Caguioa v. Calderon, 20 Phil. 400.

ART. 674. Any person who, by deceit, fraud, or violence, prevents another person of whom he is the legal heir, from freely executing a will, shall be deprived of his right to the inheritance, without prejudice to any criminal liability he may have incurred.

1. See Art. 1267, Civil Code.

ART. 675. Every testamentary provision shall be understood in the literal sense of its words, unless it clearly appears that the intention of the testator was different. In case of doubt, the interpretation which appears to be the one most nearly in accord with the intention of the testator, according to the tenor of the will, shall be adopted.

A testator cannot prohibit the contest of his will in the cases in which the law declares it to be void.

C. C. P. 286.

1. See Arts. 4, 346 et seq., 668, 765, 769 et seq., 747, 749, 751, 779 et seq., 859 and 880, Civil Code.
2. The intention of the testator as expressed in his will is the law, and the instrument will be so interpreted as to give effect to that wish. Benedicto v. Javellana, 10 Phil. 197; Postigo v. Borjal, 13 Phil. 240; *In re* Will of Calderon, 26 Phil. 333; Natividad v. Gabino, 36 Phil. 663.
3. The power of a testator to dispose of his property by will is subject to three limitations. (1) The rights of forced heirs cannot be impaired; (2) his debts and obligations must be respected; and (3) the testamentary disposition must not be against public policy. Montaño v. Suesa, 14 Phil. 676; Santos v. Manarang, 27 Phil. 209; Natividad v. Gabino, 36 Phil. 663.
4. In order to determine the testator's intention, the court should place itself as nearly as possible in his position, and hence, where the language of the will is ambiguous or doubtful, it should take into consideration the situation of the testator and the facts and circumstances surrounding him at the time the will was executed. Solla v. Ascueta, 49 Phil. 333.

SECTION III. *Form of Wills.*

As to all Articles in this section, see C. C. P., Chapter 31.

ART. 676. Wills are either ordinary or special. Ordinary wills may be holographic, open or closed.

1. See notes under Art. 695, Civil Code; Secs. 617 and 618, Code of Civil Procedure.
2. Arts. 676 to 731 have been repealed by Chapter 31 of the Code of Civil Procedure (Willard).
3. Formalities in the making of a will:
   a. Signing by the testator, or someone in his place, how and when. *Ex parte* Santiago, 4 Phil. 692; Guison v. Concepcion, 5 Phil. 551; Abaya v. Zalamero, 10 Phil. 357; *Ex parte* Ondevilla, 13 Phil. 470; Macapinlac v. Alimurong, 16 Phil. 41; Caluya v. Domingo, 27 Phil. 330; Yap Tua v. Yap Ca Kuan, 27 Phil. 579; Leaño v. Leaño, 30 Phil. 612.
   b. Witnesses, number of; meaning of "in the presence of each other," etc. Jaboneta v. Gustilo, 5 Phil. 541; *In re* Will of Siason, 10 Phil. 504; Gillesania v. Menasalvas, 13 Phil. 116; Nera v. Rimando, 18 Phil. 450; Bona v. Briones, 38 Phil. 276.

c. Attestation clause, what it shall contain, etc. *In re* Will of Nepomuceno, 28 Phil. 638; *In re* Estate of Saguinsin, 41 Phil. 875.
d. The formalities to be observed in the making of a will are governed by the law in force at the time of its execution. *In re* Estate of Riosa, 39 Phil. 23.
e. Signing the pages of a will. Abangan v. Abangan, 40 Phil. 476; Matias v. Alvarez, 10 Phil. 398; Kalaw v. Virrey, 38 Phil. 498.
f. In general. *In re* Garces, 1 Phil. 156; Castañeda v. Alemany, 3 Phil. 426; U. S. v. Angeles, 4 Phil. 597; Bugnao v. Ubag, 14 Phil. 163; Bagtas v. Paguio, 22 Phil. 227; Perry v. Elio, 29 Phil. 134.

ART. 677. Military and maritime wills and those executed in foreign countries are deemed special.

1. See notes under Art. 676, Civil Code.

ART. 678. A will is called holographic when the testator writes it himself in the form and with the requisites prescribed in Article 688.

1. See notes under Art. 676, Civil Code.
2. Holographic will made in the P. I. by a citizen of California, valid under law of that state, may be probated here. Templeton v. Babcock, XXVII Off. Gaz. 153.

ART. 679. An open will is one in which the testator expresses his last will in the presence of the persons who must authenticate the act, they being informed of its provisions.

1. See notes under Art. 676, Civil Code.

ART. 680. A closed will is one in which the testator, without revealing his last will, declares that it is contained in the cover which he presents to the persons who are to authenticate the act.

1. See notes under Art. 676, Civil Code.

ART. 681. The following cannot be witnesses to a will;
1. Women, with the exception of the provisions of Article 701;

2. Males under age, with the same exception;

3. Persons who are not citizens of or domiciled in the place where the will is executed, saving the cases excepted by law;

4. Blind persons and those totally deaf or dumb;

5. Persons who do not understand the language of the testator;

6. Persons of unsound mind;

7. Persons who have been found guilty of the crimes of falsification of public or private instruments, or of giving false testimony, and those undergoing the penalty of civil interdiction;

8. The clerks, amanuenses, servants, or relatives within the fourth degree of consanguinity or the second of affinity of the notary who authenticates the will.

1. See Arts. 40, 320, 915 et seq., and notes under Arts. 676 and 695, Civil Code; Arts. 42, 54 and 56, Penal Code; Sec. 620 to 622, Code of Civil Procedure.

2. The witnesses were proved to know the same dialect as the testator. The will was in Spanish. It was proved that the will was interpreted to the testator. *Held,* sufficient. Hernaez v. Hernaez, 1 Phil. 718; Timbol v. Manalo, 6 Phil. 254.

3. A devisee is not disqualified to act as an attesting witness; but the devise to such witness is void. Caluya v. Domingo, 27 Phil. 330.

ART. 682. Neither can the heirs or legatees named in an open will, nor the relatives of the same within the fourth degree of consanguinity or second of affinity, be witnesses thereto.

This prohibition shall not apply to legatees and their relatives when the legacy consists of a movable object or a sum of small importance as compared with the amount of the estate.

1. See notes under Art. 676, Civil Code.

ART. 683. In order that a witness may be declared dis-

qualified, the cause of his disqualification must exist at the time of the execution of the will.

[705, 715]

1. See notes under Art. 676, Civil Code.

ART. 684. In order that a will may be made in a foreign language, it shall be made in the presence of two interpreters designated by the testator, who shall translate the will into Spanish. The will shall be written in the two languages.

1. See notes under Art. 676, Civil Code.
2. The Visayan dialect is not a foreign language under this article. Hernaez v. Hernaez, 1 Phil. 718.

ART. 685. The notary and two of the witnesses who authenticate the will must be acquainted with the testator; or, should they not know him, he must be identified by two witnesses who are acquainted with him and are known to the notary and to the attesting witnesses. The notary and the witnesses shall also endeavor to assure themselves that the testator has, in their judgment, the legal capacity required to make a will.

Witnesses authenticating a will without the attendance of a notary, in cases falling under Articles 700 and 701, are also required to know the testator.

1. See Arts. 662 et seq., and notes under Arts. 665 and 676, Civil Code.

ART. 686. Should it not be possible to identify the testator in the manner prescribed in the next preceding article, this circumstance shall be stated by the notary, or by the witnesses, as the case may be, and mention shall be made of the documents which the testator may present for such purpose, and a personal description of him included in the will.

If the will should be contested upon this ground, the

burden of proving the identity of the testator shall rest upon the person maintaining its validity.

1. See Art. 685 and notes under Art. 676, Civil Code.

ART. 687. Any will, in the execution of which the formalities respectively established by this chapter have not been observed, shall be void.

1. See Arts. 685, 688 and 715, and notes under Art. 676, Civil Code.
2. All the requisites prescribed by the Civil Code must be complied with, or the will is invalid. No distinction is made in the Civil Code between essential and unessential requisites. Velasco v. Lopez, 1 Phil. 720.

SECTION IV. *Holographic Wills.*

As to all Articles in this section, see C. C. P., Chapter 31.

ART. 688. Holographic wills can only be executed by persons of full age.

In order that the will be valid it must be drawn on stamped paper corresponding to the year of its execution, written in its entirety by the testator and signed by him, and must contain a statement of the year, month and day of its execution.

If it should contain any erased, corrected, or interlined words, the testator must identify them over his signature.

Foreigners may execute holographic wills in their own language.

1. See Arts. 678, 732 and 715, and notes under Art. 676, Civil Code.
2. Requisites of a holographic will under the Civil Code. Velasco v. Lopez, 1 Phil. 720; Fernando v. Villalon, 3 Phil. 386.

ART. 689. Holographic wills must be protocoled and shall be presented for this purpose to the judge of first instance of the last domicile of the testator, or to the one of the place where he died within five years from the day

of the testator's death. Without this requisite it shall not be valid.

1. See notes under Art. 676, Civil Code.

ART. 690. The person with whom such will may have been deposited shall present it to the court as soon as he receives notice of the death of the testator, and should he fail to do so within the ten days following, he shall be liable for any damage which may be caused by the delay.

It may also be presented by any person who may have an interest in the will as heir, legatee, executor, or in any other capacity whatsoever.

1. See Art. 736, and notes under Art. 676 and 712, Civil Code.
2. Except in ordinary proceedings for the settlement of estates of deceased persons, courts cannot order the imprisonment of the custodian of a will, who has refused to produce the same within the time fixed by sec. 629 of the Code of Civil Procedure. U. S. v. Chiu Guimco, 36 Phil. 917.

ART. 691. After the holographic will has been presented and the death of the testator has been proven, the judge shall open it if it should be under cover, shall rubricate, together with the clerk, all the leaves, and shall require its identity to be established by the testimony of three witnesses acquainted with the handwriting and signature of the testator, and who depose that they have no reasonable doubt that the will was written and signed by the testator's own hand.

In the absence of competent witnesses, or if those examined should be in doubt, or should the judge consider it desirable, handwriting experts shall be employed for the purpose of comparing the writing.

1. See Art. 1220, and notes under Art. 676, Civil Code.

ART. 692. Before carrying out the proceedings mentioned in the next preceding article, the surviving spouse if there be one, the legitimate ascendants and descendants

of the testator, or in default of all these, his brothers and sisters shall be cited with the least possible delay.

If these persons do not reside within the judicial district, or their existence is unknown, or they are minors or incapacitated persons who have no lawful representative, the prosecuting officer shall be cited. The persons cited may be present at the proceedings and may then make orally any statement they may desire to submit with respect to the authenticity of the will.

1. See notes under Art. 676, Civil Code.

ART. 693. If the judge considers that the identity of the will has been proven, he shall order that it be filed, together with a report of the proceedings, in the registry of the proper notary, who shall give the parties in interest such copies or transcripts as they may be entitled to demand. Otherwise, the judge shall refuse to allow the will to be filed.

Whatever may be the decision of the judge it shall be carried into effect, notwithstanding any opposition; this without prejudice to the exercise, by appropriate action, of the rights of the parties in interest.

1. See notes under Art. 676, Civil Code.
2. A holographic will becomes a public document only after entry in a notarial registry. Fernando v. Villalon, 3 Phil. 386.

SECTION V. *Open Wills.*

ART. 694. An open will shall be executed before a notary qualified to act at the place of its execution and three competent witnesses who see and understand the testator, one of whom at least must know how and be able to write.

No cases except those expressly mentioned in this section shall be excluded from this rule.

1. See Arts. 700 and 701, and notes under Art. 676, Civil Code.
2. See Opinion of the Atty. Gen. of January 11, 1905.

3. Article cited and applied. Wills executed in accordance with the Civil Code and prior to the promulgation of Act 190, held valid and enforceable. Abello v. Kock, 3 Phil. 558; Timbol v. Manalo, 6 Phil. 254; Gomez Medel v. Avecilla, 15 Phil. 465; Amancio v. Pardo, 20 Phil. 313.
4. The authority of a notary public is limited to the district to which he is appointed. Feliciano v. Fernandez, 1 Phil. 177.
5. Under the Code of Civil Procedure, the intervention of a notary is not necessary in the making of a will. Valera v. Puruganan, 4 Phil. 719.

ART. 695. The testator shall state his last will to the notary and to the witnesses. The testament shall be drawn up in accordance with the same, including a statement of the place, year, month, day and hour of its execution, after which it shall be read aloud in order that the testator may state if it is in accordance with his wishes. If so, it shall be signed immediately by the testator and by the witnesses who are able to do so.

Should the testator declare that he does not know how or is not able to sign, one of the attesting witnesses or some other person shall do so for him at his request, the notary certifying the fact. The same thing shall be done if any one of the witnesses is unable to sign.

The notary shall always state that, in his judgment, the testator has the legal capacity to execute the will.

1. See Arts. 665 and 685, and notes under Art. 676, Civil Code.
2. The sanity of a testator is presumed until the contrary is clearly proven. Hernaez v. Hernaez, 1 Phil. 718; Castro v. Martinez, 10 Phil. 306.
3. Under the Civil Code, the statement of the hour when the will is made is an essential requisite to its validity. Velasco v. Lopez, 1 Phil. 720; Timbol v. Manalo, 6 Phil. 254.
4. In signing a will for a testator who does not know how to write, it is essential that the testator's name be written in full. *Ex parte* Arcenas, 4 Phil. 700; Barut v. Cabacungan, 21 Phil. 461.

ART. 696. When a testator who intends to make an open will presents his testamentary provisions in writing, the

notary shall draft the will in accordance with the same, and shall then read it aloud in the presence of the witnesses in order that the testator may state whether or not its contents are the expression of his last will.

1. See notes under Art. 676, Civil Code.

ART. 697. If the testator is totally deaf, he shall read the will himself; if he does not know how or cannot do so he shall designate two persons to read it in his name, always in the presence of the witnesses and of the notary.

1. See Art. 709, and notes under Art. 676, Civil Code.

ART. 698. If the testator is blind, the will shall be read twice, once by the notary, in accordance with the provisions of Article 695, and once in the same manner by one of the witnesses or by another person designated by the testator.

1. See notes under Arts. 676 and 695, Civil Code.

ART. 699. All the formalities mentioned in this section shall take place consecutively, and no interruption shall be allowed except such as may be caused by some trifling occurrence.

The notary shall certify at the end of the will that all such formalities have been complied with and that he is acquainted with the testator or with the witnesses of identification, as the case may be.

1. See Arts. 685 and 705, and notes under Arts. 676 and 700, Civil Code.
2. Formalities in the making of a will under the laws prior to the Civil Code, held to have been complied with in the following cases: Velasco v. Lopez, 1 Phil. 720; Matias v. Alvarez, 10 Phil. 398; Timbol v. Manalo, 6 Phil. 254.

ART. 700. If the testator is in imminent danger of death, the will may be executed before five competent witnesses without the necessity of a notary.

1. See Arts. 681, 682, 685, 702 and 703, and notes under Art. 676, Civil Code.

ART. 701. In case of an epidemic, the will may also be executed without the intervention of a notary, before three witnesses over 16 years of age, male or female.

1. See Arts. 685 and 702, and notes under Art. 676, Civil Code.

ART. 702. In cases falling under the two next preceding articles, the will shall be written, when possible; if not possible, the will shall be valid, even though the witnesses do not know how to write.

1. See notes under Arts. 676 and 700, Civil Code.

ART. 703. Any will executed in accordance with the provisions of the three next preceding articles shall become void two months after the danger of the testator's death has passed or the epidemic ceased.

If the testator dies within this period, the will shall also be void, unless application is made within three months following his death to a competent court to have the will, whether it be oral or written, incorporated in a public document.

1. See notes under Art. 676, Civil Code.
2. A will executed in 1900, without the prescribed formalities, because of the then prevailing war conditions, becomes void if not incorporated into a public document within the period fixed by this article. Dimanlig v. Cusi, 48 Phil. 394.

ART. 704. Wills executed without the authentication of a notary shall be void if they are not afterwards incorporated in a public document and filed in a protocol in the manner prescribed by the Law of Civil Procedure.

1. See notes under Art. 676, Civil Code.

ART. 705. When any open will is declared void by reason of noncompliance with the solemnities established for each case, the notary who may have authenticated it shall be liable for the damage caused if the deficiency is the result of his bad faith or inexcusable negligence or ignorance.

1. See Art. 1104, and notes under Art. 676, Civil Code.

SECTION VI. *Closed Wills.*

As to all Articles in this Section, see C. C. P., Chapter 31.

ART. 706. A closed will may be written by the testator or by any other person at his request, on common paper. The place, day, month and year of its execution shall be stated therein.

If the testator writes it in person, he shall rubricate all the sheets and affix his signature at the end, after mentioning all the words corrected, erased, or interlined.

Should another person write it at his request, the testator shall put his full signature on all the sheets and at the foot of the will.

If the testator does not know how to write or is unable to sign, another person, at his request, may sign the same and shall rubricate the sheets, stating the cause of such disability.

1. See notes under Art. 676, Civil Code.

ART. 707. In the execution of a closed will the following formalities shall be observed:

1. The paper on which the will is drawn shall be placed in a closed and sealed envelope in such a manner that the will cannot be taken out without tearing the envelope.

2. The testator shall appear with the will closed and sealed, or shall close and seal it at the time in the presence of the notary who is to authenticate it and of five competent witnesses of whom three, at least, must be able to sign.

3. The testator shall declare, in the presence of the notary and of the witnesses, that the envelope he presents contains his will, and shall state whether it was written, signed, and rubricated by him, or written by another and signed by him at the end and on each of its leaves, or whether, by reason of his not knowing how to sign or being unable to do so, it was signed by some other person at his request.

4. The notary shall draft the proper act of its execution

on the envelope enclosing the will, specifying the number and marks of the seals with which it is closed, and shall certify that the prescribed formalities have been observed, that he is acquainted with the testator or that the latter has been identified in the manner prescribed in Articles 685 and 686, and that the testator had, in his judgment, the necessary legal capacity to execute a will.

5. After the act has been drafted and read it shall be signed by the testator and by the witnesses who know how to sign, and the notary shall authenticate it with his mark and signature.

If the testator does not know how or cannot sign, one of the attesting witnesses, or some other person designated by the testator, shall do so in his name.

6. This circumstance shall also be stated in the act, as well as the place, hour, day, month and year of the execution.

1. See Arts. 715 and 742, and notes under Art. 676, Civil Code.

ART. 708. Blind persons, and those who do not know how to read or cannot do so cannot execute a closed will.

1. See Art. 688, and notes under Art. 676, Civil Code.

ART. 709. Deaf-mutes and other persons who cannot speak but who are able to write may execute a closed will, subject to the following conditions:

1. The will must be written in its entirety by the testator and signed by him and must state the place, day, month, and year of its execution.

2. Upon presenting it the testator shall write on the outside of the envelope, in the presence of the notary and of five witnesses, a statement that such envelope contains his will and that it is written and signed by him.

3. Immediately below the statement written by the testator, the act of execution shall be drawn, the notary certifying that the provisions of the foregoing paragraph have

been complied with, as well as the provisions of Article 707 in so far as they may be applicable to the case.

1. See notes under Art. 676, Civil Code.

ART. 710. After the closed will has been authenticated, the notary shall deliver it to the testator, after placing in the private protocol a certified copy of the act of execution.

1. See notes under Art. 676, Civil Code.

ART. 711. The testator may keep the closed will in his possession or entrust it to the custody of any person in whom he has confidence, or deposit it in the hands of the authenticating notary for safekeeping in his archives.

In the latter case, the notary shall give a receipt to the testator, and shall enter in his secret protocol, on the margin of or immediately below the copy of the act of the execution, a statement that the will has been left in his possession. Should the testator subsequently withdraw it he shall sign a receipt for it immediately below such statement.

1. See notes under Art. 676, Civil Code.

ART. 712. The notary, or the person having a closed will in his possession, shall present it to the proper judge as soon as he hears of the death of the testator.

Should he not do so within ten days, he shall be liable for any damage caused by his neglect.

1. See Arts. 736 and 1902, and notes under Art. 676, Civil Code, and Secs. 626 and 627, Code of Civil Procedure.

ART. 713. A person who with wrongful intent fails to present any closed will which may be in his possession within the period prescribed by the second paragraph of the next preceding article shall, besides incurring the liability mentioned therein, forfeit all right to any inheritance

to which he may be entitled by reason of being the heir, *ab intestate* or testamentary, or a legatee of the testator. [1269]

The same penalty shall be incurred by any person who with wrongful intent shall abstract any closed will from the residence of the testator or of the person who has it in custody or on deposit, or who shall conceal, tear, or destroy it in any other manner whatsoever, without prejudice to his criminal liability.

1. See Art. 1269, and notes under Arts. 676 and 712, Civil Code, and Art. 375, Penal Code.

ART. 714. The provisions of the Law of Civil Procedure on the subject of opening closed wills and filing them in a protocol shall be observed.

1. See notes under Art. 676, Civil Code.

ART. 715. Any closed will executed without the formalities prescribed in this section shall be void, and the notary who authenticates it shall be liable for any damage which may result if it be proven that the deficiency arose from malice, negligence, or inexcusable ignorance on his part. It shall be valid, however, as a holographic will, if written in full and signed by the testator, and provided that it contains all the other requirements established for wills of this class.

1. See Arts. 687 et seq., and notes under Art. 676, Civil Code.

SECTION VII. *Military Wills.*

As to all Articles in this Section, see C. C. P., Chapter 31.

ART. 716. In time of war, soldiers in the field, volunteers, hostages, prisoners, and other persons employed in the army or following it may execute their wills before any officer not below the rank of captain.

This provision shall be applicable to members of an army in a foreign country.

Should the testator be sick or wounded, he may execute it before the chaplain or the physician attending him.

If the testator is with a detachment, he may execute it before the person in command, even if he be a subaltern officer.

In cases falling under this article the presence of two competent witnesses shall always be necessary.

1. See Arts. 719 and 754 (par. 3), and notes under Art. 676, Civil Code.

ART. 717. The persons mentioned in the next preceding article may also execute a closed will before any quartermaster, (*comisario de guerra*), who shall discharge in such case the duties of a notary and shall comply with the provisions of articles 706 et seq.

1. See notes under Art. 676, Civil Code.

ART. 718. Wills executed in accordance with the two next preceding articles shall be forwarded as soon as possible to the general headquarters and by the latter to the Secretary of War.

Should the testator have died, the Secretary shall forward the will to the judge of the last domicile of the deceased, or, should he not know it, to the senior judge of Madrid, in order that he may cite, *ex officio,* the heirs and other persons interested in the succession. The latter shall request that the will be incorporated into a public instrument and be protocoled in the manner prescribed by the Law of Civil Procedure.

Should the will be closed, the judge shall proceed officially to open it in the manner prescribed in said law after citing the prosecuting officer and, after having opened it, shall inform the heirs and other persons concerned of its contents.

1. See notes under Arts. 676 and 712, Civil Code.

ART. 719. The wills mentioned in Article 716 shall lapse

four months after the testator has ceased service in the field.

1. See notes under Art. 676, Civil Code.

ART. 720. During any battle, assault, or engagement, and in general whenever any warlike operation is imminent, a military will may be executed orally before two witnesses. Such will shall become void if the testator is saved from the danger in view of which it was made. Even if he be not saved it shall be void if not formally established before the judge advocate or some other law officer following the army.

The subsequent proceeding shall be conducted in accordance with the provisions of Article 718.

1. See notes under Art. 676, Civil Code.

ART. 721. If the military will should be closed, the provisions of Articles 706 and 707 shall be complied with; but it shall be executed in the presence of the officer and the two witnesses required by Article 716 for an open will, all of them being required to sign the act of the execution, as well as the testator, if he is able to do so.

1. See notes under Art. 676, Civil Code.

SECTION VIII. *Maritime Wills.*

As to all Articles in this Section, see C. C. P., Chapter 31.

ART. 722. Wills, either open or closed, made by persons on board a ship during a sea voyage shall be executed in the following manner:

If the vessel is a man-of-war, before the paymaster or the person discharging his duties in the presence of two competent witnesses who can see and understand the testator. The captain of the vessel or the person occupying his place shall also *visé* it.

On merchant vessels, the captain, or the person occupying his place, shall authenticate the will in the presence of two competent witnesses.

In either case the witnesses shall be selected from the passengers, if there are any; but one of them at least must be able to sign, and he shall do so for himself and for the testator, if the latter does not know how or cannot sign.

If the will be an open one, the provisions of Article 695 shall, furthermore, be observed; and if closed, the provisions of section 6 of this chapter, with the exception of the part which relates to the number of witnesses and to the intervention of a notary.

1. See Art. 730, and notes under Art. 676, Civil Code.

ART. 723. The will of the paymaster of a man-of-war or of the captain of a merchant vessel shall be authenticated by those who are to substitute them in their offices; the provisions of the next preceding Article shall apply as to the other matters.

1. See notes under Art. 676, Civil Code.

ART. 724. Open wills executed on the high seas shall be placed in the custody of the commander or captain and mention shall be made of them in the log book.

Like mention shall be made of holographic and closed wills.

1. See notes under Art. 676, Civil Code; Art. 612, Code of Commerce.

ART. 725. Should the ship arrive at a foreign port where there is a diplomatic or consular agent of Spain, the commander of the man-of-war or the captain of the merchant vessel shall deliver to such agent a copy of the open will or of the act of the execution of the closed one, and of the entry made in the log book.

The copy of the will or of the act must bear the same signatures as the original, if the persons who signed it are alive and on board; otherwise it shall be authenticated by the paymaster or captain who may have received the will, or the person discharging his duties; it shall also be signed

by the other persons on board who took part in the execution of the will.

The diplomatic or consular agent shall make a written record of the fact of the delivery and, after enclosing and sealing the copy of the will or of the act of its execution, if it be a closed will, he shall forward it with the copy of the record in the log book, through the proper channels, to the Secretary of the Navy who shall order it deposited in the archives of his Department.

The commander or captain who delivers it shall obtain from the diplomatic or consular agent a certificate of having done so and shall note the fact in the log book.

1. See notes under Arts. 676 and 712, Civil Code.

ART. 726. When the vessel, whether a man-of-war or a merchantman, arrives at the first port of the kingdom, the commander or captain shall deliver the original will, closed and sealed, to the local maritime authorities, with a copy of the entry made in the log book, and should the testator have died, a certificate of death.

The delivery shall be proven in the manner prescribed in the next preceding article, and the maritime authorities shall forward the papers without delay to the Secretary of the Navy.

1. See notes under Arts. 676 and 712, Civil Code.

ART. 727. If the testator should have died and the will is an open one, the Secretary of the Navy shall proceed in the manner prescribed by Article 718.

1. See notes under Art. 676, Civil Code.

ART. 728. When the will has been executed on a Spanish vessel by a foreigner, the Secretary of the Navy shall forward the will to the Secretary of State in order that it may be sent to its destination through diplomatic channels.

1. See notes under Art. 676, Civil Code.

ART. 729. If the will be holographic and the testator should die during the voyage, the commander or captain shall take possession of the will for the purpose of keeping it in a safe place, mentioning this fact in the log book, and shall deliver it to the local maritime authorities in the manner and for the purposes prescribed by the next preceding article when the vessel arrives at the first port of the kingdom.

The same shall be done should it be a closed will, if the testator had it in his possession at the time of his death.

1. See notes under Art. 676, Civil Code.

ART. 730. Open and closed wills, executed in accordance with the provisions of this section, shall become void after four months, counted from the day on which the testator landed at a place where he could make a will in the ordinary form.

1. See notes under Art. 676, Civil Code.

ART. 731. In all cases of danger of shipwreck, the provisions of Article 720 shall be applicable to the crews and passengers of men-of-war or merchantmen.

1. See notes under Art. 676, Civil Code.

SECTION IX. *Wills Made in Foreign Countries.*

ART. 732. Any Spaniard may make a will, out of the national territory, in the manner prescribed by the laws of the country in which he may be.

He may also make a will on the high seas, during his passage on a foreign vessel, in accordance with the laws of the country to which the vessel belongs.

He may also make a holographic will in accordance with Article 688, without the requisite of stamped paper, even in countries the laws of which do not recognize such wills.

1. See Art. 11, Civil Code; Secs. 635, 636 and 637, Code of Civil Procedure.
2. Arts. 732 to 736, repealed (Willard).

3. The intrinsic validity of the provisions of a will is governed by the laws of the state of which the testator is a citizen or subject. Riera v. Palmaroli, 40 Phil. 105.
4. A probated foreign will cannot be admitted to probate in the Philippine Islands as such, if Section 304 of the Code of Civil Procedure regarding proof of foreign judicial records is not complied with. Yu Chengco v. Tiaoqui, 11 Phil. 598.

ART. 733. Joint wills, prohibited by Article 669, executed by Spaniards in a foreign country shall not be valid in Spain, even though the laws of the country where they may have been executed authorize such wills.

1. See Art. 11, and notes under Art. 732, Civil Code.

ART. 734. Spaniards who are in a foreign country may also execute their wills, open or closed, before any diplomatic or consular agent of Spain residing at the place of their execution.

In these cases such agents shall act as notaries, and all the formalities prescribed by sections fifth and sixth of this chapter shall be respectively observed, except that it shall not be necessary that the witnesses be domiciled in the place of the execution of the will.

1. See Art. 694, and notes under Arts. 732, 676 and 695, Civil Code.

ART. 735. The diplomatic or consular agent shall forward a copy of the will, if it be an open one, or of the act of its execution, if it be a closed will, authenticated with his signature and seal, to the Department of State for deposit in its archives.

1. See notes under Art. 732, Civil Code.

ART. 736. The diplomatic or consular agent with whom a Spaniard shall have deposited his holographic or closed will, shall forward it to the Department of State upon the death of the testator, together with the certificate of death.

The Department of State shall have the notice of the

death published in the *Gaceta de Madrid,* in order that any persons interested in the inheritance may obtain the will and have it protocoled in the manner prescribed.

1. See notes under Art. 732, Civil Code.

SECTION X. *Revocation and Caducity of Wills.*

ART. 737. All testamentary provisions are essentially revocable, even though the testator should state in the will his intention or resolution not to revoke them.

All clauses in derogation of future testamentary dispositions shall be disregarded, as well as those in which the testator may order that the revocation of his will shall not be valid unless done by him with certain words or marks.

1. See notes under Art. 738, Civil Code.
2. See Timbol v. Manalo, 6 Phil. 254.

ART. 738. A will cannot be revoked, either wholly or partially, except with the formalities required for making it.

1. See Arts. 670, 673, 684 et seq., 694 et seq., 716 et seq., and notes under Art. 737, Civil Code; Sec. 623, Code of Civil Procedure.
2. Arts. 738 to 742, repealed by sec. 623, Code of Civil Procedure (Willard).

ART. 739. A prior will is revoked by operation of law by a subsequent and perfect will, unless the testator states in the latter that it is his wish to leave the former in force, in whole or in part.

Nevertheless, the prior will shall be revived if the testator afterwards revokes the subsequent one and expressly declares that it is his desire that the former will be operative.

1. See notes under Art. 738, Civil Code.
2. Before a valid former will may be considered revoked by another subsequent will, it must be shown that the subsequent will is also validly executed. Samson v. Naval, 41 Phil. 840.

ART. 740. The revocation shall be effective, even though the second will becomes inoperative by reason of the incapacity of the heir or of the legatees designated therein or by the renunciation of either.

1. See notes under Art. 748, Civil Code.

ART. 741. The acknowledgment of an illegitimate child does not lose its legal force, even should the will in which it was made be revoked.

1. See Art. 131, and notes under Art. 738, Civil Code.

ART. 742. Any closed will found in the domicile of the testator with the cover torn, or the seals broken, or the signatures authenticating it obliterated, scraped, or amended, is presumed to be revoked.

The will, however, shall be valid should it be proven that the damage was done without the wish or knowledge of the testator, or while the latter was insane; but, if the cover is found torn or the seals broken, it shall also be necessary to prove the authenticity of the will in order that it may be valid.

If the will be found in the possession of another person, it shall be presumed that the damage was caused by such person, and the will shall not be valid unless its authenticity is proven if the cover be torn or the seals broken; if both are intact, but with the signatures obliterated, scraped, or amended, the will shall be valid unless it be proven that the instrument was delivered in this condition by the testator himself.

1. See notes under Art. 738, Civil Code.
2. See Gago v. Mayumac, 49 Phil. 902, cited under Art. 1249.

ART. 743. Wills shall become void or testamentary provisions inoperative, in whole or in part, only in the cases expressly prescribed by this code.

1. See Arts. 669 et seq., 683, 687, 689, 703 et seq., 717 et seq., 730, 742, 755, and 804, and notes under Art. 738, Civil Code.

2. The probate of a will determines the validity of its execution but not the validity of the testamentary provisions. Castañeda v. Alemany, 3 Phil. 426; Pimentel v. Palanca, 5 Phil. 436; Limjuco v. Ganara, 11 Phil. 393; Montaño v. Suesa, 14 Phil. 676; Austria v. Ventenilla, 21 Phil. 180.
3. Duty of clerk of court when the order granting probate of a will is appealed. Querido v. Florendo, 3 Phil. 342.
4. The fact that the witnesses to a will did not identify their signatures is not important. Valera v. Purugganan, 4 Phil. 719.
5. All questions pertaining to the probate of a will, and the settlement of the estate, must be decided in the same probate court and in the same proceedings. Cosio v. Pili, 10 Phil. 72; Benedicto v. Javellana, 10 Phil. 197; Joc-Soy v. Vaño, 8 Phil. 118.
6. All the witnesses to a will must be produced at the hearing or their absence explained. Cabang v. Delfinado, 34 Phil. 291.
7. A mere stranger having no interest in the will, cannot intervene in the proceedings thereon. Paras v. Narciso, 35 Phil. 244.
8. A will made by an American will be governed as to its provisions by the laws of the State of which he was a citizen at the time of his death; Sec. 113 of the Code of Civil Procedure applies to probate proceedings. *In re* Estate of Johnson, 39 Phil. 156.
9. Sec. 513 of the Code of Civil Procedure does not apply to a proceeding for the probate of a will, although no opposition has been made. Riera v. Palmaroli, 40 Phil. 105.

CHAPTER II.

INHERITANCE.

SECTION I. *Capacity to Succeed by Will or by Intestacy.*

ART. 744. All persons not disqualified by law may succeed by will or *ab intestato*.

1. See Arts. 656, 668, 757 and 789, Civil Code.
2. A contract of partnership between co-owners of a certain property held pro-indiviso, does not affect the successional rights of the heirs of one of the partners. Rodriguez v. Ravilan, 17 Phil. 63.

ART. 745. The following are incapable of succession:

1. Abortive infants; by which are understood those who are not included among those described in Article 30.

2. Associations or corporations not permitted by law.

1. See notes under Art. 681, Civil Code; Art. 188, Penal Code; and Sec. 622, Code of Civil Procedure.
2. In force (Willard).

ART. 746. Churches and ecclesiastical chapters, provincial deputations and provinces, municipal councils and municipalities, hospitals, charitable and public educational institutions, associations authorized or recognized by law, and all other legal entities may take property by will, subject to the provisions of Article 38.

ART. 747. Should the testator dispose of the whole or of part of his property for masses and pious works for the benefit of his soul in general terms and without specifying its application, the executors shall sell the property and distribute its proceeds, giving one-half of it to the diocesan to be applied to such masses and to the expenses and necessities of the church, and the other half to the civil governor for the benefit of the charitable institutions of the domicile of the deceased, and, in the absence of such, those of the province.

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1. See Arts. 40, 671, 749, 785 and 788, Civil Code.
2. In force. But the sale must be made in accordance with Chapter 36 of the Code of Civil Procedure (Willard).

ART. 748. A legacy or bequest made in favor of a public institution upon condition or which imposes a charge thereon shall be valid only if approved by the government.

1. The provincial governor is not a "public institution." Government v. Abadilla, 46 Phil. 642.

ART. 749. Testamentary provisions in favor of the poor in general, without the designation of any particular per-

son, or town, shall be deemed limited to the poor of the domicile of the testator at the time of his death should it not clearly appear that his intention was otherwise.

The determination of the persons who are to be considered as poor and the distribution of the property shall be made by the person designated by the testator, in default of such person by the executors, or should there be none, by the parish priest, the mayor, and the municipal judge, who shall decide by a majority of votes any doubts which may arise.

The same action shall be taken if the testator has disposed of his property in favor of the poor of any particular parish or town.

1. In force, except the provision as to the parish priest. See in this connection Art. 133 of the Civil Code (Willard).

ART. 750. Every disposition in favor of a person whose identity is uncertain shall be void, unless by some event his identity becomes certain.

1. See Arts. 670, 764 and 773, Civil Code.
2. See Government v. Abadilla, 46 Phil. 642.

ART. 751. A disposition made in general terms in favor of the testator's relatives shall be understood as made in favor of those nearest in degree.

1. See Art. 925, par. 2, Civil Code.

ART. 752. Testamentary dispositions made by a testator during his last illness in favor of the priest who heard his confession during the same, of the relatives of the latter within the fourth degree, or of his church, chapter, community, or institution, shall be inoperative.

1. See notes under Art. 754, Civil Code; and Sec. 622, Code of Civil Procedure.
2. This Article has not been repealed by Sec. 622 of the Code of Civil Procedure because the two legal provisions may coexist. Implied repeals are not favored. Calderon v. Santisimo Rosario, 28 Phil. 164.

ART. 753. Neither shall any testamentary disposition made by a ward in favor of his guardian before the final accounts of the latter have been approved be valid, even though the testator should die after the approval thereof.

Nevertheless, any disposition made by the ward in favor of the guardian when the latter is his or her ascendant, descendant, brother, sister, or spouse shall be valid.

1. See notes under Art. 752, Civil Code.
2. See Torres v. Lopez, 49 Phil. 504, cited under Art. 982.

ART. 754. The testator cannot dispose of the whole or any part of his estate in favor of the notary who authenticates his will, or of the wife, relatives, or connections by marriage of the latter within the fourth degree, with the exception mentioned in Article 682.

This prohibition shall be applicable to the witnesses to an open will executed with or without the intervention of a notary.

The provisions of this article shall also be applicable to the witnesses and persons before whom special wills are executed.

1. See notes under Art. 752, Civil Code.
2. A will is not invalidated by the intervention of a notary who is the testator's brother. Valera v. Purugganan, 4 Phil. 719.
3. A sale to one of the subscribing witnesses was mentioned and ratified in a will. Held, that it did not invalidate the will, Art. 754 having been repealed by implication. Caluya v. Domingo, 27 Phil. 330.

ART. 755. A testamentary disposition in favor of a disqualified person, even though concealed under the guise of a contract supported by a valuable consideration, or made in the name of an intermediary, shall be void.

1. See Art. 785, Civil Code.

ART. 756. The following are incapable of succession by reason of unworthiness:

1. Parents who have abandoned their children or pros-

tituted their daughters or committed an offense against their modesty.

2. Any person who has been found guilty of a crime against the life of the testator, his spouse, descendants, or ascendants.

If the offender should be a forced heir he shall lose his right to a legitime.

3. Any person who has accused the testator of a crime for which the law prescribes an afflictive penalty, if the accusation has been declared a calumny.

4. Any heir of full age who, having knowledge of the violent death of the testator, shall fail to report it to the officers of justice within a month, unless the latter shall have already taken action upon their own initiative.

This prohibition shall not apply in cases in which, according to law, there is no obligation to make an accusation.

5. Any person convicted of adultery with the wife of the testator.

6. Any person who by threats, fraud, or violence, shall force the testator to make a will or to change it.

7. Any person who by the same means prevents another from making a will or from revoking one already made, or who supplants, conceals, or changes a subsequent will.

1. See Arts. 105, 155, 171, 673, 674, 755, 757, 758, 760 et seq., and 807, and notes under Arts. 848 and 852, Civil Code; Arts. 433, 438, 444 and 588 (No. 5), Penal Code.
2. Art. 756 refers only to testate proceedings, and Art. 914, to intestate proceedings. See also Secs. 614, 684, 753 and 622, Code of Civil Procedure; and Art. 657 of the Civil Code (Willard).
3. The power of disinheritance may be exercised in those cases only in which it is expressly authorized by the Code. Pecson v. Mediavillo, 28 Phil. 81.

ART. 757. The grounds of unworthiness shall produce no effect if the testator had knowledge thereof at the time of making the will, or if, having been informed of them

subsequently, he shall have condoned them in a public instrument.

1. See Art. 853, Civil Code.

ART. 758. For the purpose of determining the capacity of the heir or legatee, inquiry will be limited to the time of the death of the person whose succession is in question.

In cases falling under paragraphs 2, 3, or 5 of Article 756 the determination of the question shall await the rendition of final judgment, and in cases falling under paragraph 4, the expiration of the month allowed for the presentation of the charge.

If the institution or legacy should be conditional, the time of the fulfillment of the condition shall also be taken into consideration.

1. Repealed as to testate successions, but in force as to intestate successions. See Art. 914 of the Civil Code (Willard).
2. A legatee upon condition does not acquire the legacy, if the event on which it depends has not occurred, in which case the legacy will pass to the persons called to succeed the testator by legal or intestate succession. *In re* Estate of Saavedra, 51 Phil. 267.

ART. 759. An heir or legatee who dies before the condition is fulfilled, even though he survive the testator, shall transmit no rights whatsoever to his heirs.

1. See Arts. 791, 799, 881, 1006 and 1125, Civil Code.
2. This Article (759) relates only to cases in which a conditional legacy is made to a person disqualified to receive it. In intestate successions there can be no conditions. With respect to wills only this article has been repealed (Willard).

ART. 760. Any person incapable of succession, who, in contravention of the prohibition of the preceding articles, shall have entered into possession of the hereditary property shall be obliged to restore it together with its accessions and all the fruits and rents he may have received.

1. See Art. 455, Civil Code.

ART. 761. If the person excluded from the inheritance by reason of incapacity should be a child or descendant of the testator and should have children or descendants, the latter shall acquire his right to the legitime.

The person so excluded shall not enjoy the usufruct or administration of the property thus inherited by his children.

1. See Arts. 857, 973 (No. 2), and 160, and notes under Art. 766, Civil Code.
2. The first paragraph of this article, in force; the second, is not in force (Willard).

ART. 762. No action can be brought to obtain a declaration of incapacity after five years have elapsed from the time the disqualified person took possession of the inheritance or legacy.

1. See Art. 752, Civil Code; and Chapter 3 of the Code of Civil Procedure.

SECTION II. *Institution of Heir.*

ART. 763. One who has no forced heirs may dispose by will of all his property or any part of it in favor of any person qualified to acquire it.

One who has forced heirs may dispose of his property only in the manner and subject to the limitations established by Section 5 of this chapter.

1. See Arts. 12, 787, 790, 806, 813 and 814, Civil Code; and Sec. 622, Code of Civil Procedure.
2. Testamentary dispositions and acts *inter vivos* the effect of which would be to deprive forced heirs of their legitime are void. Escuin v. Escuin, 11 Phil. 332; Rodriguez v. Ravilan, 17 Phil. 63.
3. The holder of a certificate of sale of friar lands has no right to dispose by will of his interest in such lands to the prejudice of his surviving widow and children, notwithstanding the Civil Code provisions with respect to the conjugal partnership, which cannot be applied in such case, which is governed by a special law, namely, Act No. 1120. Arayata v. Joya et al. 51 Phil. 655.

ART. 764. A will shall be valid even though it does not contain the institution of an heir, or such institution does not include the entire estate, and even though the person so instituted does not accept the inheritance or is incapable of inheriting.

In such cases the testamentary dispositions made in accordance with law shall be carried out and the remainder of the estate shall go to the legal heirs.

1. See Arts. 658, 660, 745, 750, 752 et seq., 786, 787, 891, 912 et seq., 990, 992 and 997 et seq., Civil Code.
2. A person may die partly testate and partly intestate. Escuin v. Escuin, 11 Phil. 332.

ART. 765. Heirs instituted without designation of shares shall inherit in equal proportions.

1. See Arts. 983 and 1138, Civil Code.

ART. 766. A voluntary heir who dies before the testator, a person disqualified to inherit, and one who renounces the inheritance, shall transmit no rights to his heirs, with the exception of cases falling within Articles 761 and 857.

1. See Arts. 33, 177, 784, 799 and 1006, Civil Code.
2. Divergent opinions of the Supreme Court on the effect of Sec. 758 of the Code of Civil Procedure upon Article 766 and other related Articles of the Civil Code. Marin v. Nacianceno, 19 Phil. 238; Llorente v. Rodriguez, 10 Phil. 585.
3. But Sec. 758 of the Code of Civil Procedure, and other related sections thereof, have been repealed by Act No. 2141.

ART. 767. The statement of a false reason for the institution of an heir, or for the designation of a legatee, shall be considered as not written, unless it appear from the will that the testator would not have made such institution or legacy had he had knowledge of the falsity of such reason.

The statement of a reason contrary to law, even if it be true, shall also be considered as not written.

ART. 768. An heir to whom a certain and specified thing is left shall be considered a legatee.

1. Repealed; distinction between heir and legatee no longer obtains (Willard).
2. Distinction between *heredero* and *legatario* applied. Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 769. When the testator institutes some heirs individually and others collectively, as when he says, "I designate as my heirs N and N, and the children of N," those collectively instituted shall be considered as individually instituted, unless it clearly appears that the will of the testator was otherwise.

1. See Art. 675, Civil Code.

ART. 770. If the testator should institute his brothers or sisters as his heirs, and he has some of full blood and others on the side of the father or mother only, the inheritance shall be distributed as in cases of intestacy.

ART. 771. When the testator calls to the succession any person and his children, it shall be understood that all of them are instituted simultaneously and not successively.

1. See Art. 787, Civil Code.

ART. 772. The testator shall designate the heir by his given name and surname, and when there are two persons having the same names, he shall state some circumstance by which the one instituted may be identified.

Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to what person has been instituted, the institution shall be valid.

1. See Art. 750, Civil Code.

ART. 773. An error in the given name, surname, or circumstances of the heir shall not vitiate the institution when

it may be possible, in any other manner, to know with certainty who is the person instituted.

If the circumstances of the persons having the same given names and surnames are identical, and there are no means by which the person instituted may be determined, neither one of them shall be an heir.

1. See Art. 750, Civil Code.
2. A legacy is made to a person designated as a natural child of a third person. Held, that the designation of natural child is merely descriptive, and does not make the legacy conditional upon the existence of natural relationship. Del Rosario v. Del Rosario, 2 Phil. 321.

SECTION III. *Substitution.*

ART. 774. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or should not wish or should be unable to accept the inheritance.

A simple substitution, without a statement of the cases to which it is to apply, shall include the three mentioned in the next preceding paragraph, unless the testator has otherwise provided.

1. When a will executed jointly by husband and wife provides that in case of the death of the husband before the wife, certain relatives shall inherit certain specified property, and that if any of said relatives die before the husband, the survivor will inherit all, the acquisition of the property by such relatives depends upon the husband's dying before the wife, the last part of such testamentary provision being a substitution of legatees in case some of them die before the husband. *In re* Estate of Saavedra, 51 Phil. 267.

ART. 775. Parents and other ascendants may appoint substitutes for their descendants of both sexes under 14 years of age in anticipation of their death before attaining this age.

ART. 776. Any ascendant may appoint a substitute for his descendant over fourteen years of age who has been

legally declared to be incapacitated on account of being of unsound mind.

The substitution referred to in the next preceding paragraph shall become inoperative upon the execution of a will by the incapacitated person during a lucid interval or after having recovered his reason.

1. See Arts. 33, 177, 665, 759, 784, 799 and 1006, Civil Code.

ART. 777. In cases in which the person for whom a substitute has been appointed has forced heirs, the substitutions to which the two next preceding articles refer shall be valid only in so far as they do not encroach upon the right of such heirs to the legitime.

1. See Arts. 759, 807, 808 et seq., Civil Code.

ART. 778. Two or more persons may be substituted for one, or one person for two or more heirs.

1. See Arts. 774 and 789, Civil Code.

ART. 779. If heirs instituted in unequal portions should be substituted for each other, they shall have the same portions in the substitution as in the institution, unless it clearly appears that the will of the testator was otherwise.

ART. 780. The substitute shall be subject to the same charges and conditions imposed upon the instituted heir, unless the testator has expressly provided the contrary, or the charges or conditions are merely personal with respect to the heir instituted.

ART. 781. Fidei-commissary substitutions by virtue of which the heir is charged to preserve and transmit to a third person the whole or part of the inheritance shall be valid and effective, provided they do not go beyond the second degree, or that they are made in favor of persons living at the time of the death of the testator.

1. See Arts. 640, 785 and 787, and notes under Art. 783, Civil Code; and Secs. 582 to 595, Code of Civil Procedure.

ART. 782. Fidei-commissary substitutions can never impair the legitime. Should they relate to the third destined to the betterment (*mejora*) they can be made in favor of descendants only.

1. See Arts. 808, 813, 835, and notes under Art. 781, Civil Code.
2. Concerning *fideicomisos* and *mayorazgos*, and the effects of the Law of Disentailment of 1864, see Barretto v. Tuason, 50 Phil. 888.

ART. 783. In order for appointments to fidei-commissary substitutions to be valid they must be made expressly.

The fiduciary is bound to deliver the inheritance to the *fidei-commissarius* without any other deductions than those resulting from legitimate expenses, credits, or improvements, except in case the testator has otherwise provided.

1. See Art. 750, and notes under Art. 781, Civil Code.

ART. 784. The right of the *fidei-commissarius* to the succession shall become vested upon the death of the testator even though he should die before the fiduciary. The right of the *fidei-commissarius* shall pass to his heirs.

1. See Arts. 655, 657, 661 and 774, and notes under Art. 781, Civil Code.

ART. 785. The following shall be inoperative:

1. Fiduciary substitutions not made expressly, either by giving them this name or by imposing upon the fiduciary the absolute obligation of delivering the property to a second heir.

2. Dispositions imposing perpetual prohibitions upon alienation, and even temporary prohibitions, if beyond the limits fixed by Article 781.

3. Those imposing upon the heir the charge of paying a certain income or pension to several persons successively beyond the second degree.

4. Those of which the object is to leave to a person the whole or any part of the inheritance to be applied or invested in accordance with secret instructions given him by the testator.

1. See Arts. 671, 747, 749, 755, 786, 849, and note under Art. 781, Civil Code.

ART. 786. The nullity of a fiduciary substitution shall not affect the validity of the institution of the heirs first designated; the *fidei-commissarium* clause shall simply be considered as not written.

1. See Art. 782, and note under Art. 781, Civil Code.

ART. 787. Any disposition by which the testator leaves the whole or any part of the inheritance to one person and the usufruct to another shall be valid. If several persons are designated to enjoy the usufruct, not simultaneously, but successively, the provisions of Article 781 shall govern.

1. See Arts. 506–508, 640, 771, and note under Art. 781, Civil Code.

ART. 788. Any disposition which imposes upon an heir the obligation of periodically devoting specified sums to charitable works, such as dowries for poor maidens or scholarships for students, or in favor of the poor, or any charitable or public educational institution, shall be valid under the following conditions:

If the charge is imposed on real property and is temporary, the heir or heirs may dispose of the encumbered estate, but the lien shall continue until the record thereof is canceled.

If the charge is perpetual, the heir may capitalize it and invest the capital at interest, fully secured by first mortgage.

The capitalization and investment of the principal shall be made with the intervention of the civil governor of the

province after hearing the opinion of the prosecuting officer.

In any case, if the testator should not have laid down any rules for the management and application of the charitable legacy, it shall be done by the executive authorities upon whom this duty devolves by law.

1. See Arts. 37, 38, 671, 747, and note under Art. 781, Civil Code.
2. Paragraphs 4 and 5 of this Article have been repealed. See Sec. 595, Code of Civil Procedure (Willard).

ART. 789. All the provisions of this chapter with respect to heirs shall also be applicable to legatees.

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1. See notes under Art. 660, Civil Code.
2. A legatee cannot require the execution of a will to render him an accounting of the administration. Art. 907 of the Civil Code authorizes the *heredero* to demand such an accounting, but does not confer the same right upon the legatee. Del Rosario v. Del Rosario, 2 Phil. 321.

SECTION IV. *Institution of Heirs; and Legacies Conditional or for a Term.*

ART. 790. Testamentary dispositions, either by universal or particular title, may be made conditionally.

1. See Arts. 748, 789, and notes under Art. 768, Civil Code.
2. The power of a person to dispose of his property by will is subject only to such limitations as are expressly provided by law. Natividad v. Gabino, 36 Phil. 663; Morente v. De la Santa, 9 Phil. 387.

ART. 791. Conditions imposed upon heirs and legatees shall be governed by the rules established for conditional obligations in all matters not provided for by this section.

1. See Arts. 759, 1113 to 1125, Civil Code.
2. See Natividad v. Gabino, 36 Phil. 663.

ART. 792. Impossible conditions and those contrary to law or good morals shall be considered as not imposed and

shall not prejudice the heir or legatee in any manner whatsoever, even should the testator otherwise provide.

1. See Arts. 785, 793 and 1116, Civil Code.
2. The provision in a will that claims of creditors be presented in a manner other than as provided in the Code of Civil Procedure is void, and a claim not presented to the Committee on Claims within the prescribed period is forever barred. Santos v. Manarang, 27 Phil. 209.
3. As to the effect of an illegal condition upon a legacy, see Miciano v. Brimo, 50 Phil. 867.

ART. 793. An absolute condition of not contracting a first or subsequent marriage shall be disregarded unless such condition has been imposed on the widower or widow by the deceased spouse, or by the ascendants or descendants of the latter.

Nevertheless, the right of usufruct, use or habitation, or an allowance or some personal service may be bequeathed to a person for the time during which he or she remains unmarried or in widowhood.

1. The will contained a prohibition against second marriage by the widower. Considering the other provisions of the will, it was held that this prohibition was not a condition and that its violation by the widower did not involve the loss of his rights under the will. Morente v. De la Santa, 9 Phil. 387.

ART. 794. Any disposition made upon the condition that the heir or legatee shall make some provision in his will in favor of the testator or of any other person shall be void.

ART. 795. Any purely potestative condition imposed upon an heir or legatee must be fulfilled by him after the death of the testator when he is informed thereof.

From this rule shall be excepted cases in which the condition is already fulfilled and cannot be repeated.

1. See Arts. 660, 790 and 796, Civil Code.

ART. 796. If the condition is casual or mixed, it shall be sufficient if it be fulfilled or complied with at any time be-

fore or after the death of the testator, unless he has ordered otherwise.

Should it have existed or should it have been fulfilled at the time of the execution of the will and the testator did not know it, it shall be considered as complied with.

If he had knowledge thereof the condition shall be deemed fulfilled only when of such nature that it can no longer exist or be performed anew.

ART. 797. The statement of the object of the institution or of the legacy, or the application to be given to the property left by the testator, or the charge imposed by him, shall not be considered as a condition unless it appears that such was his intention.

That which has been left in this manner may be claimed immediately and is transmissible to the heirs if they give security for compliance with the directions of the testator and the repayment of anything they may receive together with its fruits and interest, should they fail to fulfill this obligation.

1. Arts. 797 to 798 are in force. See Sec. 595 of the Code of Civil Procedure (Willard).
2. A legacy of money "for the expenses of the interment" of the husband of the testatrix, and the perpetuation of his memory, is not conditional. Chiong Joc-Soy v. Vaño, 8 Phil. 119.
3. A mere direction in a will in connection with the enjoyment of a legacy will not be considered a condition, unless the intention of the testator to that effect is clearly shown. Morente v. De la Santa, 9 Phil. 387; Fuentes v. Canon, 6 Phil. 117; Pestigo v. Borjal, 13 Phil. 240.

ART. 798. Whenever without any fault or misconduct attributable to the heir or legatee, an institution or legacy such as those referred to in the next preceding article cannot be given effect in the exact terms prescribed by the testator, it shall be complied with in terms as nearly analogous and in conformity with his will as possible.

If the person interested in the performance or non-performance of the condition shall prevent its fulfillment, with-

out fault or personal act of the heir or legatee, the condition shall be deemed performed.

1. See Arts. 675, 869, 888, 1119, and notes under Art. 797, Civil Code.

ART. 799. A suspensive condition does not prevent the heir or legatee from acquiring his rights and transmitting them to his heirs, even before the fulfillment of the condition.

1. See Arts. 759, 766, 805, and notes under Art. 800, Civil Code.

ART. 800. If the potestative condition imposed upon the heir or legatee is a negative one, or consists in not giving or not doing something, he may comply by giving security that he will not do or give that which has been prohibited by the testator, and that in case he should break the condition he will return whatever he may have received, together with its fruits and interest.

1. Arts. 799 to 800, in force. See Sec. 599 of the Code of Civil Procedure. Sec. 595 of the latter Code does not apply to this case (Willard).

ART. 801. If the heir be instituted under a suspensive condition the estate shall be placed in administration until the condition is accomplished or until it becomes certain that it cannot be fulfilled.

The same shall be done if the heir or legatee fails to give the security required in cases falling within the terms of the next preceding article.

1. See Art. 1054, Civil Code.
2. Arts. 801 to 804, repealed. See Secs. 704, 727, 753 and 754, Code of Civil Procedure (Willard).
3. Until the affairs of the deceased are adjusted and liquidated, the executor or administrator has full administration and control of the property of the deceased, real and personal, and his heirs are not entitled to the possession of any part thereof. Their rights *inter se* are to be determined in the administration proceedings. Patricio v. Aragon, 4 Phil. 615; Pimentel v. Palanca, 5 Phil. 436.

ART. 802. The administration mentioned in the next preceding article shall be entrusted to the heir or heirs unconditionally instituted when the right of accretion exists between them and the conditional heir. The same rule shall apply with respect to legatees.

1. See notes under Art. 801, Civil Code.

ART. 803. If the conditional heir has no coheirs, or, if having them the right of accretion does not exist between them, he shall take charge of the administration upon giving security.

Should he not give such security, the administration shall be conferred upon the presumptive heir, also under bond. Should neither of them give security the court shall put the property in charge of some third person, also under bond, which shall be taken with the intervention of the heir.

1. See notes under Art. 801, Civil Code.

ART. 804. Such administrator shall have the same rights and obligations as administrators of the property of an absentee.

1. See Arts. 182, 187, 188 et seq., and notes under Art. 801, Civil Code.

ART. 805. A designation of the day or time when the effects of the institution of an heir or of the legacy shall begin or cease shall be valid.

In either case the legal heir shall be considered as called to the succession until the arrival of the period fixed, or after its expiration; but in the first case he shall not enter into possession of the property until after having given sufficient security, with the intervention of the instituted heir.

1. See Art. 1125, and notes under Art. 801, Civil Code.

SECTION V. *Legitime.*

ART. 806. The legitime is that part of his property of

which the testator cannot dispose because the law has reserved it for certain heirs, called, on that account, forced heirs.

1. See Arts. 813, 814, 816, and notes under Art. 801, Civil Code; and Secs. 614 and 753, Code of Civil Procedure.
2. The forced heirs cannot be deprived of their legal portions by any act of the person whose inheritance is in question. Escuin v. Escuin, 11 Phil. 332; Rodriguez v. Ravilan, 17 Phil. 63.

ART. 807. The following are forced heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;

2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.

3. The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner and to the extent established by Articles 834, 835, 836, 837, 840, 841, 842, and 846.

1. See Arts. 108 et seq., 114, 119, 127, 177, 844, 848, 1057, 1084, and notes under Art. 806, Civil Code.
2. After the status of a forced heir is established, his share of the inheritance as such heir must be given him. Escuin v. Escuin, 11 Phil. 332; Irlanda v. Pitargue, 22 Phil. 383.
3. See also Inocencio v. Gat-Pandan, 14 Phil. 491; Hinlo v. De Leon, 18 Phil. 221; Borres et al. v. Mpality. of Panay, 42 Phil. 646; Ramirez v. Gmur, 42 Phil. 862.

ART. 808. The legitime of legitimate children and descendants consists of two-thirds of the hereditary estate of the father and of the mother.

Nevertheless, the latter may dispose of one of the two thirds forming the legitime in order to apply it as a betterment to their legitimate children or descendants.

They may freely dispose of the remaining third.

1. See Arts. 761, 813, 823, 834, 835, 840, 857, and notes under Art. 806, Civil Code.

ART. 809. The legitime of parents or ascendants consists of one-half of the hereditary estate of their children and descendants. The latter may freely dispose of the other half, subject to the exception established by Article 836.

1. See Art. 841, Civil Code.

ART. 810. The legitime reserved to the parents shall be divided between both equally; if one of the parents should have died, the survivor shall receive the whole.

If the testator leaves neither father nor mother, but is survived by ascendants of equal degree of the paternal and maternal line, the estate shall be divided equally between both lines. If the ascendants should be of different degrees it shall wholly belong to the nearest ones of either line.

ART. 811. Any ascendant who inherits from his descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister, is obliged to reserve such of the property as he may have acquired by operation of law for the benefit of relatives within the third degree belonging to the line from which such property came.

1. See Arts. 915, 935, 938, 968, 977, 978 and 1969, Civil Code.
2. The owner of property subject to reservation may register same in accordance with Act 496, in his own name, provided its reservable character be duly noted in the registry. Edroso v. Sablan, 25 Phil. 295.
3. The right of a person having a reservable right (*derecho reservable*) in a parcel of land is lost upon his failure to oppose the registration of such land or to have the judgment reopened within one year, for the purpose of having said right noted as a lien against the property. De los Reyes v. Paterno, 34 Phil. 420.
4. Character of reservable property explained. When the title of the person holding under reservable title becomes absolute. Florentino v. Florentino, 40 Phil. 480.
5. The obligation to reserve created by this Article does not arise with respect to illegitimate relatives. Nieva v. Alcala, 41 Phil. 916.

6. Property is acquired by gratuitous title when the acquirer gives nothing for it. The execution of a partition or compromise deed by claimants does not affect its reservable character. Cabardo v. Villanueva, 44 Phil. 186.
7. The person upon whom the property last devolved by descent in the line from which the property is derived, must be taken as the *propositus,* or the person from whom the degrees of kinship are to be reckoned. Cabardo v. Villanueva, 44 Phil. 186.
8. The property subject to reversion should not be turned over to the administrator of the deceased, but should be given to the reservee immediately upon the death of the *reservista.* Cabardo v. Villanueva, 44 Phil. 186.
9. The *reservista* is not merely a usufructuary; he is the owner, subject only to a resolutory condition, and may therefore alienate the property provided the right of the *reservatarios* is saved. Lunsod v. Ortega, 46 Phil. 664.
10. See Maghirang v. Balcita, 46 Phil. 551.
11. See Riosa v. Rocha, 48 Phil. 737.
12. As to right of illegitimate relations to reservation, see Centeno v. Centeno, XXVII Off. Gaz. 3136.
13. See Dizon v. Galang, 48 Phil. 601.

ART. 812. Ascendants succeed, to the exclusion of all other persons, to things given by them to such of their children or descendants as have died without issue, when the same things donated form part of the estate. Should they have been alienated, they shall succeed to any right of action which the donee may have had with respect to them, and to the price obtained therefor should they have been sold, or to the property by which they were substituted, if they were bartered or exchanged.

ART. 813. The testator cannot deprive his heirs of their legitime, except in the cases expressly determined by law.

Neither can he impose upon it any burden, condition, or substitution of any kind whatsoever, saving the provisions concerning the usufruct of the surviving spouse.

1. See Arts. 636, 777, 782, 815, 817, 818, 835, 848, 886, 900, 935, 1037, 1038, 1056 and 1057, Civil Code.
2. See notes under Art. 806, Civil Code.

ART. 814. The preterition of one or all of the forced heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall void the institution of heir; but the legacies and betterments shall be valid, in so far as they are not inofficious.

The preterition of the widower or widow shall not annul the institution, but the person omitted shall retain all the rights granted him by Articles 834, 835, 836, and 837 of this code.

If the omitted forced heirs die before the testator, the institution shall stand.

1. See Arts. 108, 763, 766, 834 et seq., 858, and notes under Arts. 806 and 766, Civil Code.

ART. 815. Any forced heir to whom the testator has bequeathed in any manner less than the legitime pertaining to him may demand the completion thereof.

1. See Arts. 813 and 814, Civil Code.
2. When the surviving spouse receives as an heir one half of the estate of the deceased spouse, the usufructuary right granted by law to the widow or widower must be constituted upon the portion thus received by him and becomes extinguished *ipso facto* by the merger of such right of usufruct and ownership in the same person. Chingen v. Arguelles, 7 Phil. 296.

ART. 816. All relinquishments or compromises with respect to a future legitime made between the person owing it and his forced heirs are void, and the latter may claim their legitime upon the death of the former; but they must collate whatever they may have received by reason of the relinquishment or compromise.

1. See Art. 1271, par. 2, and notes under Art. 819, Civil Code.

ART. 817. Testamentary dispositions which impair the legitime of forced heirs shall be reduced on petition of the heirs in so far as they are inofficious or excessive.

1. See Arts. 636 and 814, Civil Code.
2. See also notes under Art. 806, Civil Code.

ART. 818. For the purpose of determining the amount of the legitime, it shall be computed upon the value of the property remaining at the death of the testator, after deducting all debts and charges, except those imposed by the will.

To the net value of the hereditary estate shall be added the value, at the time they were made, of all the collationable gifts bestowed by the testator.

1. See Arts. 840, 1035 and 1045, Civil Code.
2. The first paragraph of this article has been repealed, but the second is still in force. See Sec. 753 of the Code of Civil Procedure (Willard).
3. The legitime must be determined as provided by the Civil Code, the provisions of the will to the contrary notwithstanding. Santos v. Manarang, 27 Phil. 209.

ART. 819. Gifts, other than betterments, made to children shall be reckoned as part of their legitime.

Gifts made to strangers shall be charged to the part of his estate of which the testator might have disposed by his last will.

In so far as they may be inofficious or exceed the disposable portion, they shall be reduced in accordance with the rules established by the following articles.

1. See Arts. 825, 847, 1035 to 1050, Civil Code.
2. In force. But see Sec. 761 of the Code of Civil Procedure (Willard).
3. The provisions of Art. 1035 of the Civil Code regarding collation do not apply to the proceeds of a life insurance policy of which one of the heirs is the beneficiary, nor can such a policy be considered a donation. Del Val v. Del Val, 29 Phil. 534.

ART. 820. After the legitime has been determined in accordance with the two next preceding articles, the reduction shall be made as follows:

1. Gifts shall be respected if the legitime can be covered by reducing or annulling, if necessary, the legacies made in the will.

2. The reductions of the legacies shall be made *pro rata*, without any distinction whatsoever.

If the testator has ordered that a certain legacy be paid in preference to others, such legacy shall not suffer any reduction until after the others have been applied in full to the payment of the legitime.

3. If the legacy consists of a usufruct or life annuity, the value of which may be greater than that of the disposable portion, the forced heirs may choose between complying with the testamentary disposition, or delivering to the legatee the part of the inheritance of which the testator could freely dispose.

1. See Art. 656 and notes under Arts. 819 and 766, Civil Code.

ART. 821. If the legacy subject to reduction should consist of real property which cannot well be divided, it shall go to the legatee if the reduction does not absorb one-half of its value; otherwise, to the forced heirs; but either party shall pay the other in cash the difference in value.

If the legatee is entitled to a legitime he may retain the entire property, provided its value does not exceed the disposable portion and the share pertaining to him by way of legitime.

1. See notes under Art. 822, Civil Code.

ART. 822. If the heirs or legatees do not wish to make use of the right granted by the next preceding article, it shall be available to the one who did not possess it; if he does not wish to make use of it the property shall be sold at public auction at the instance of any one of the parties in interest.

1. See Arts. 187 and 721, Code of Civil Procedure.

SECTION VI. *Betterments* (*Mejoras*).

ART. 823. The father or the mother may dispose of one of the two thirds of the estate reserved for the legitime in favor of one or more of their children or descendants.

This portion is called a betterment (*mejora*).

1. See Art. 972 and notes under Art. 814, Civil Code.

ART. 824. No charge can be imposed upon the betterment unless it be in favor of the forced heirs or their descendants.

1. See Arts. 160, 782, 813, 834 and 835, Civil Code.

ART. 825. No donation by contract *inter vivos*, either gratuitous or for a valuable consideration, in favor of children or descendants who are forced heirs shall be deemed a betterment unless the donor has expressly declared his intention to that effect.

1. See Arts. 820, 828, Civil Code.

ART. 826. A promise to give or not to give a betterment, made in a public instrument containing a marriage settlement, shall be valid.

Any disposition made by the testator in contravention of the promise shall be inoperative.

1. See Art. 1321, Civil Code.

ART. 827. Any betterment shall be revocable, even if accompanied by delivery of the property, unless it has been made in a marriage settlement, or by a contract supported by a valuable consideration, made with a third person.

1. See Arts. 826, 1321, and notes under Art. 806, Civil Code.
2. This article cited as an instance in which the Civil Code permits agreements with reference to future inheritance. Osorio v. Osorio, 41 Phil. 538.

ART. 828. No bequest or legacy made by the testator to one of his children or descendants shall be considered as a betterment, unless the testator shall have expressly declared such to be his intention or it cannot be included in the disposable portion.

1. See Arts. 820, 825, and notes under Art. 806, Civil Code.

ART. 829. A betterment may consist of some specific thing. If its value exceeds the third available for the betterment and that of the legitime corresponding to the person benefited, the latter must pay the difference in cash to the other persons interested.

1. See notes under Arts. 806 and 822, Civil Code.

ART. 830. The authority to give betterments cannot be delegated to a third person.

1. See Arts. 670, 829, Civil Code.

ART. 831. Notwithstanding the provisions of the next preceding article it shall be valid to stipulate in a marriage settlement that if one of the spouses dies intestate, the widower or widow who has not contracted a new marriage may distribute the property of the deceased according to his or her prudent judgment and give betterments from such property to the children of the marriage, without prejudice to the legitime and to any betterments made by the deceased in his lifetime.

1. See Arts. 670, 912, 1057, 1271, and notes under Art. 806, Civil Code; Secs. 614 and 684, Code of Civil Procedure.
2. This article cited as an instance in which the Civil Code permits agreements regarding future inheritance. Osario v. Osario, 41 Phil. 538.

ART. 832. If the betterment should not consist of a specific thing it shall be paid out of the property of the inheritance. As far as applicable, the rules established by Articles 1061 and 1062 shall be observed in order to secure equality between the heirs in the distribution of the estate.

ART. 833. Any legitimate child or descendant who has received a betterment may renounce the inheritance and accept the betterment.

SECTION VII. *Rights of the Surviving Spouse.*

ART. 834. A widower or widow who, on the death of his

or her spouse, is not divorced, or should be so by the fault of the deceased, shall be entitled to a portion in usufruct equal to that corresponding by way of legitime to each of the legitimate children or descendants who have not received any betterment.

If only one legitimate child or descendant survives, the widower or widow shall have the usufruct of the third available for betterment, such child or descendant to have the naked ownership until, on the death of the surviving spouse, the whole title is merged in him.

If the spouses should be separated by a suit for divorce, the result of the suit shall be awaited.

If there should have been a pardon or a reconciliation between the divorced spouses, the survivor shall preserve his or her rights.

1. See Arts. 50, 73 et seq., 122, 108 et seq., 467 et seq., 492, 806 to 808, 813, 818, 823, 835, 839, 968, 987, 1057, and notes under Art. 806, Civil Code.
2. Until it is ascertained by means of a liquidation that a portion of the conjugal property remains, after all partnership obligations and debts have been paid, the surviving spouse or her heirs can assert no claim of right or title in or to the community property. Manuel & Lazamana v. Losano, 41 Phil. 855.
3. See also Borres v. Municipality of Panay, 42 Phil. 647.
4. The usufructuary portion of the surviving spouse in a second marriage when there are two children of the deceased by different marriages and no betterment, is a third of the estate, taken from the third of free disposal. Dominado v. Derayunan, 49 Phil. 452.
5. As to the exclusive right of the widow to succeed to her husband's interest in an inchoate title to friar lands, see Jocson v. Soriano, 45 Phil. 375 and Arayata v. Joya, 51 Phil. 655.
6. Rules applied concerning usufructuary interest of the widow in concurrence with legitimate children who have received no betterment. Alunan v. Veloso, XXVII Off. Gaz. 3581.

ART. 835. The hereditary portion allotted in usufruct to

the widowed spouse must be taken from the third of the estate available for the betterment of the children.

1. See Borres v. Municipality of Panay, 42 Phil. 647.

ART. 836. If the testator leaves no descendants, but does leave ascendants, the surviving spouse shall be entitled to a third of the estate in usufruct.

This third shall be taken from the free half, the testator being allowed to dispose of the naked ownership of the same.

1. See Art. 809, Civil Code.
2. Article applied. Mijares v. Nery, 3 Phil. 195; Borres v. Municipality of Panay, 42 Phil. 647.

ART. 837. If the testator should leave no legitimate ascendants or descendants, the surviving spouse shall be entitled to one-half of the estate, also in usufruct.

1. See Art. 953, Civil Code.
2. A partition was effected by the widow and one of three heirs (the other two not having participated therein), whereby the widow was to get one-half of certain rents. The heir collected the rents, but did not account to the widow for her half. Held, that the heir could not defend on the ground that the partition was not signed by all the heirs; and, further, that under this article the widow was entitled to one-half of the rents, independently of the agreement. Alcala v. Salgado, 7 Phil. 151.
3. A woman died without legitimate ascendants or descendants. Under her will the surviving husband was to get one-half of her property in full ownership. Held, that the remaining half cannot be burdened with his right of usufruct. Chingen v. Arguelles, 7 Phil. 296.
4. See also Sarita v. Candia, 23 Phil. 443; De los Santos v. Reyes, 37 Phil. 104; Borres v. Municipality of Panay, 42 Phil. 647.
5. Article cited and applied. Uy Coque v. Navas, 45 Phil. 430.

ART. 838. The usufructory rights of the surviving spouse may be satisfied by the settlement upon him or her by the heirs of a life annuity or the income from some specific property, or by the payment of money, as may be de-

termined by agreement between the parties, or, in default of such agreement, by judicial decision.

Until this has been done the usufructuary interest of the surviving spouse shall constitute a lien upon all the property of the estate.

1. See Art. 492, and notes under Art. 837, Civil Code.
2. Article applied. Viloria v. Aquino, 28 Phil. 258.
3. Article cited and applied. Uy Coque v. Navas, 45 Phil. 430.

ART. 839. In case of the survival of children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage shall be taken from the third at the free disposal of the parents.

1. See Art. 808, Civil Code.

SECTION VIII. *Rights of Illegitimate Children.*

ART. 840. When the testator leaves legitimate children or descendants, and also natural children, legally acknowledged, each of the latter shall be entitled to one-half of the portion pertaining to each of the legitimate children who have not received any betterment, provided that it may be included within the freely disposable portion, from which it must be taken, after the burial and funeral expenses have been paid.

The legitimate children may pay the portion pertaining to the natural ones in cash, or in other property of the estate, at a fair valuation.

1. See Arts. 207, 807, 843, 847, 942, 902, 119, 129 et seq., 809, 836, 843 and 1894, Civil Code; Secs. 735, 728, 729 and 735, Code of Civil Procedure.
2. Rights of acknowledged natural children will be governed by the present Civil Code even though they were born prior to its promulgation, if their natural father died after the promulgation. Rights of such children discussed. Mijares v. Nery, 3 Phil. 195; Llorente v. Rodriguez, 3 Phil. 697.
3. A natural child is not entitled to represent its natural father or mother in the succession of the latter's legitimate ascendants. Llorente v. Rodriguez, 10 Phil. 585.

4. An acknowledged natural child is entitled to inherit from his natural parent although the latter has children born to him in lawful wedlock. Rocha v. Tuason, 39 Phil. 976.
5. So much of this article as provides for the payment of burial and funeral expenses from the free portion has been repealed by Section 753 of the Code of Civil Procedure. Concepción v. Jose, 46 Phil. 813.
6. A natural child, born before the Civil Code went into effect, but recognized after that date, is entitled to the hereditary portion of his father's estate given to him by said Code as against a half brother, the legitimate son of the same father, who was also born before the Civil Code went into effect. Gala v. Gala et al. XXVI Off. Gaz. 1693.
7. As to right of acknowledged natural child to intervene in probate proceedings, see Asinas v. Court of First Instance, cited under Article 134.
8. The hereditary portion of the natural child must be one half in quality and quantity. Estate of Tady, 46 Phil. 557.

ART. 841. If the testator does not leave any legitimate children or descendants, but does leave legitimate ascendants the acknowledged natural children shall be entitled to one-half of the freely disposable portion of the estate.

This is understood to be without prejudice to the legitime of the surviving spouse, in accordance with Article 836; so that when the spouse survives together with acknowledged natural children, whatever may be lacking to make up their legitime shall be allotted to them as a naked property right during the life of the widowed spouse.

1. See Art. 942, and notes under Art. 840, Civil Code.
2. See Borres v. Municipality of Panay, 42 Phil. 647.

ART. 842. If the testator leaves no legitimate ascendants or descendants, the acknowledged natural children shall be entitled to a third of the estate.

1. See notes under Arts. 814, 840 and 841, Civil Code.
2. Article applied. Escuin v. Escuin, 11 Phil. 332; Borres v. Municipality of Panay, 42 Phil. 647.

ART. 843. The rights granted natural children by the

preceding articles are transmitted on their death to their legitimate descendants.

1. See Arts. 940 and 941, and notes under Art. 840, Civil Code.

ART. 844. The hereditary portion of children legitimated by royal concession shall be the same as that established by law in favor of acknowledged natural children.

1. See Arts. 127, 808, and notes under Art. 120, Civil Code.

ART. 845. Illegitimate children who have not the status of natural children shall be entitled to support only.

The obligation of the person who is bound to support them shall be transmitted to his or her heirs, and shall continue until such children attain their majority, or, in case they should be incapacitated, while the incapacity lasts.

1. See Arts. 138 to 143, and 661, Civil Code; and Chapter 33 of the Code of Civil Procedure.
2. The limitation upon the rights of illegitimate children established by this article does not disqualify them for taking under the will of a parent. Barrios v. Enriquez, XXVII Off. Gaz. 3443.

ART. 846. The right of succession which the law grants natural children pertains reciprocally in the same cases to the natural father or mother.

1. See Art. 807, Civil Code.
2. The right of a natural child to compel acknowledgment by its father or mother is not transmitted to its ascendants or descendants. Conde v. Abaya, 13 Phil. 249.
3. See Borres v. Municipality of Panay, 42 Phil. 647.

ART. 847. Any donations which a natural child may have received during the lifetime of its father or mother shall be deducted from its legitime.

Should they exceed the third which can be freely disposed of, they shall be reduced in the manner prescribed by Articles 817 et seq.

1. See Art. 1035, and notes under Art. 819, Civil Code.

SECTION IX. *Disinheritance.*

ART. 848. Disinheritance shall be allowed only on the grounds expressly authorized by law.

1. The statement by the testator of the facts constituting cause for disinheritance is not conclusive upon the heir. If controverted, the issue must be decided by the court upon the evidence produced. Pecson v. Mediavillo, 28 Phil. 81.

ART. 849. Disinheritance can be effected only by a will in which the legal cause upon which it is based is expressly stated.

1. See notes under Art. 848, Civil Code.

ART. 850. The burden of proving the truth of the cause for disinheritance shall rest upon the heirs of the testator should the disinherited person deny it.

1. See notes under Art. 848, Civil Code; and Sec. 297, Code of Civil Procedure.

ART. 851. Disinheritance made without a statement of the cause, or for a cause the truth of which, if contradicted, is not proven, or which is not one of those mentioned in the four following articles, shall annul the institution of the heir in so far as it prejudices the person disinherited; but the legacies, betterments, and other testamentary dispositions, in so far as they do not encroach upon the legitime, shall be valid.

1. See notes under Art. 848, Civil Code.

ART. 852. Sufficient causes for disinheritance are, in the respective cases, those of disqualification to succeed by reason of unworthiness mentioned in Nos. 1, 2, 3, 5, and 6 of Article 756.

1. In force (Willard).

ART. 853. In addition to those specified in paragraphs 2, 3, 5, and 6 of Article 756, the following shall be sufficient

causes for the disinheritance of children and descendants, legitimate as well as natural:

1. A refusal without lawful cause to support the parent or ascendant who disinherits such child or descendant.

2. The subjection of the testator to personal violence or to grossly insulting language.

3. The fact that a daughter or granddaughter has become a prostitute.

4. Conviction of a crime to which the law attaches the penalty of civil interdiction.

1. See Art. 152, and notes under Arts. 848 and 852, Civil Code.

ART. 854. In addition to those mentioned in paragraphs 1, 2, 3, 5 and 6 of Article 756, the following shall also be sufficient causes for disinheriting parents or ascendants, either legitimate or natural:

1. The loss of parental authority for the causes mentioned in Article 169;

2. The refusal of support to children or descendants without lawful cause;

3. An attempt by one of the parents against the life of the other, unless there has been a reconciliation between them.

1. See Arts. 756, 105 and 182, Civil Code; Act No. 2710.

ART. 855. In addition to those mentioned in paragraphs 2, 3, and 6 of Article 756, the following shall also be sufficient causes for disinheriting a spouse:

1. Those which are cause for divorce according to Article 105;

2. Those which are cause for the loss of the parental authority in accordance with Article 169;

3. Refusal to support the children or the other spouse;

4. An attempt against the life of the spouse making the will, should there not have been a reconciliation.

In order that the causes which are grounds for divorce

may also be causes for disinheritance, it shall be necessary that the spouses do not live under the same roof.

1. See Arts. 848, 105, 1057, and notes under Art. 854, Civil Code.

ART. 856. A subsequent reconciliation of the offender with the one offended deprives the latter of the right to disinherit and renders inoperative a disinheritance already made.

ART. 857. The children of the person, disinherited shall take his or her place and shall preserve the rights of forced heirs with respect to the legitime, but the disinherited parent shall not have the usufruct or the administration of the property of which it consists.

1. See Arts. 761, 973, and notes under Art. 766, Civil Code.
2. In force, except that a father no longer has the right of administration and usufruct as to the property of his children (Willard).

SECTION X. *Legacies and Bequests.*

ART. 858. A testator may charge with legacies and bequests not only his heir but also the legatees.

The latter shall be liable for the charge only to the extent of the value of the legacy.

1. See Arts. 630, 813, 891, 1003 and 1027, Civil Code.
2. There is now no difference between "heredero" and "legatario." At present, an heir or legatee is not responsible for the debts of the estate beyond his share of the inheritance (Willard).
3. All the estate of the deceased was distributed under the will in specific legacies, without any special charge as to any one of them regarding the payment of debts. Held, that each legacy must answer proportionately for the debts. Benedicto v. Javellana, 10 Phil. 197.
4. See also Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 859. When the testator charges one of the heirs with a legacy the burden of its fulfillment shall rest upon such heir alone.

Should he not charge any one in particular, all shall be liable in the same proportion in which they may inherit.

1. See Arts. 508, 510, and notes under Art. 858, Civil Code.

ART. 860. The heir upon whom is imposed the obligation to deliver the legacy shall be liable in case of eviction, if the thing is indeterminate and is designated only by class or species.

1. See Arts. 875, 882, 884, Civil Code; Secs. 729, 731, 643 (No. 2), 717, 721, 753, 754 and 730, Code of Civil Procedure.
2. Repealed (Willard).

ART. 861. The legacy of a thing belonging to another, when the testator knew at the time of bequeathing it that it was not his, is valid. The heir shall be obliged to acquire it for delivery to the legatee; and should it not be possible for him to do so, to pay the latter its just value.

The burden of proving that the testator knew that the thing did not belong to him rests upon the legatee.

ART. 862. If the testator did not know that the thing he bequeathed belonged to another the legacy shall be void.

But it shall be valid should he acquire it after the execution of the will.

ART. 863. A legacy made to a third person of a thing belonging to the heir, or to a legatee, shall be valid, and such heir or legatee, on accepting the succession must deliver the thing bequeathed or its just value, subject to the limitations established by the following article.

The provisions of the foregoing paragraph are understood to be without prejudice to the legitime of the forced heirs.

ART. 864. If the testator, heir, or legatee, owns a part only of the thing bequeathed or an interest in it, the legacy shall be deemed limited to such part or interest unless the

testator expressly declares that he bequeaths the thing in its entirety.

ART. 865. A legacy of things which are not subject to commerce is void.

ART. 866. The legacy of a thing which at the time of the execution of the will already belonged to the legatee shall be inoperative, even though another person has some interest therein.

If the testator expressly orders that the thing be freed from such interest or encumbrance, the legacy shall be valid in that respect.

1. See Art. 878, Civil Code.
2. The claim here was held to be a debt, and not a legacy. Not having been presented before the committee on claims, it is barred. Santos v. Manarang, 27 Phil. 209.

ART. 867. Should the testator bequeath something which is pledged or mortgaged to secure a recoverable debt, the payment of the latter shall devolve upon the heir.

If the legatee should pay such debt because the heir has not done so, the former shall be subrogated in the place and right of the creditor to recover it from the heir.

Any other charge, perpetual or temporary, to which the thing bequeathed is subject, passes with it to the legatee; but in either case any payment or interest due at the time of the death of the testator shall be a charge upon his estate.

1. See Art. 871, Civil Code.

ART. 868. If the thing bequeathed should be subject to usufruct, use, or habitation, the legatee must respect such rights until they are legally extinguished.

ART. 869. The legacy shall become inoperative:

1. If the testator makes such alterations in the thing be-

queathed that it does not retain either the form or the denomination it had before;

2. If the testator alienates the thing bequeathed or any part thereof under any title or for any cause; provided that in this case the bequest shall become inoperative only with respect to the part so alienated. If after the alienation the thing should revert to the ownership of the testator, even if it be by reason of the nullity of the contract, the bequest shall not thereafter be valid, unless the reacquisition shall have taken place by reason of the exercise of an option of repurchase retained by the testator;

3. If the thing bequeathed is wholly lost, or perishes during the lifetime of the testator, or, without the fault of the heir, after his death. Nevertheless, the person obliged to pay the legacy shall be liable for eviction, as provided by Article 860, if the thing bequeathed should not have been determined in kind.

1. In force, except the latter part of par. 3. See Art. 860, Civil Code (Willard).

ART. 870. The legacy of a credit against a third person or of the release or discharge of a debt of the legatee shall be valid only with respect to that part of the credit or debt existing at the time of the death of the testator.

In the first case the obligation of the heir shall be discharged by assigning to the legatee any right of action he may have against the debtor.

In the second by giving the legatee an acquittance should he request one.

In both cases the legacy shall include any interest which may be due the testator at the time of his death on the credit or debt.

1. See notes under Art. 867, Civil Code.
2. In force (Willard).

ART. 871. The legacy referred to in the foregoing article shall lapse if the testator, after having made it, should

sue the debtor for the payment of his debt, even if such payment should not have been made at the time of his death.

The effect of bequeathing to the debtor a thing pledged by him is only to discharge the lien of the pledge.

ART. 872. A generic legacy of discharge or release of debts includes those existing at the time of the execution of the will, but not subsequent ones.

ART. 873. A legacy made to a creditor shall not be charged against his credit, unless the testator shall have so expressly provided.

In the latter case, the creditor shall be entitled to collect the excess of the credit or of the legacy.

ART. 874. In alternative legacies the provisions of law governing obligations of the same kind shall be observed, subject to such modifications as arise from the express will of the testator.

1. See Art. 1131, Civil Code.

ART. 875. A legacy of generic personal property shall be valid even though there be no things of the same kind in the estate.

A legacy of indeterminate real estate shall be valid only if there be such property in the estate.

The right of election shall pertain to the heir, whose obligation shall be discharged by the delivery of a thing which is neither of the highest nor the lowest quality of its kind.

ART. 876. Whenever the testator expressly leaves the right of election to the heir or to the legatee, the former may give or the latter may select whatever he may prefer.

1. See notes under Art. 867, Civil Code.

ART. 877. If the heir or legatee cannot make the choice, in case it has been granted him, his right shall pass to the heirs; but a choice once made shall be irrevocable.

1. This Article is in force only as far as legatees are concerned. The administrator or executor has now taken the place of "heredero constituido" (Willard).

ART. 878. If the thing bequeathed belonged to the legatee at the time of the execution of the will, the legacy shall be inoperative, even though it may have been alienated by him subsequently.

If the legatee should have acquired it gratuitously after such time, he can claim nothing under the legacy; but if it shall have been acquired for a valuable consideration, he may recover of the heir anything he may have given to acquire it.

1. See notes under Arts. 866 and 867, Civil Code.

ART. 879. A legacy of education lasts until the legatee is of age.

A legacy of support lasts during the life of the legatee, if the testator has not otherwise provided.

If the testator has not fixed the amount of such legacies, it shall be fixed in accordance with the standing and circumstances of the legatee and the value of the estate.

If the testator during his lifetime was in the habit of giving the legatee a certain sum of money or other things by way of support, the same amount shall be deemed bequeathed, unless it is greatly disproportionate to the value of the estate.

1. See Arts. 142 and 508, Civil Code.

ART. 880. If a periodical pension, or a fixed annual, monthly, or weekly payment is bequeathed, the legatee may demand the first payment upon the death of the testator, and the following ones at the beginning of each period; such payment shall not be subject to reimbursement, even though the legatee should die before the expiration of the period begun.

1. See Arts. 508, 510, 788, 820, Civil Code; Arts. 81 to 91, Mortgage Law.
2. See Willard's notes to this article.

ART. 881. The right to unconditional legacies is vested in the legatee upon the death of the testator, and is transmitted to his heirs.

1. See Arts. 759, 912, and notes under Art. 880, Civil Code.
2. The legacy being pure and simple, the legatee acquires his right thereto, and to its increment of whatever nature, from the date of the testator's death. Chingen v. Arguelles, 7 Phil. 296.
3. A legatee who dies before the testator acquires no rights under the will and transmits none to his heirs with reference to such legacy. Marin v. Nacianceno, 19 Phil. 238.

ART. 882. If the legacy is of a specific determinate thing belonging to the testator, the ownership thereof vests in the legatee upon the death of the testator as well as any pending fruits or revenue; but not revenue which was due and unpaid at the time of his death.

From the moment of the testator's death the thing bequeathed shall be at the risk of the legatee; if it shall be destroyed or impaired the loss shall fall upon him, and if it should increase or improve he shall be entitled to the benefit.

1. See Arts. 354, 355, 884, and 885, and notes under Arts. 880 and 881, Civil Code.
2. If a legacy does not consist of specific property, but is generic, interest will be granted not from the date of the death of the testator (unless the testator should so expressly provide), but from the date of demand. Fuentes v. Canon, 6 Phil. 117; Chiong Joc-Soy v. Vaño, 8 Phil. 119.

ART. 883. The thing bequeathed shall be delivered with all its accessories and in the condition in which it may be at the time of the death of the testator.

1. See Art. 882, and notes under Art. 880, Civil Code.

ART. 884. If the bequest should not be of a specific and determinate thing, but is generic or of quantity, its fruits and interest from the time of the death of the testator shall belong to the legatee if the testator shall have expressly so provided.

1. See Arts. 881, 882, 902, 1100 and notes under Arts. 880 and 882, Civil Code.

ART. 885. The legatee cannot take possession of the thing bequeathed upon his own authority, but must request its delivery and possession of the heir, or of the executor, should the latter be authorized to give it.

1. See Arts. 906, 911, 1025, 1027, 1267, and notes under Art. 880, Civil Code; Arts. 42, 45, 46, 66, Mortgage Law.
2. The will prohibited judicial intervention in the settlement of the estate. Held, that the executors named in the will were authorized to pay the legacies. Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 886. The heir must deliver the very thing bequeathed if he is able to do so and cannot discharge his obligation by paying its value.

Legacies of money must be paid in cash, even though there be none in the estate.

The necessary expenses for the delivery of the thing bequeathed shall be for the account of the estate, but without prejudice to the legitime.

1. See Arts. 807 et seq., 858 et seq., 861, 863 and 867, and notes under Art. 880, Civil Code.

ART. 887. If the assets of the estate should not be sufficient to cover all the legacies, their payment shall be made in the following order:

1. Remunerative legacies;
2. Legacies of specific, determinate things which form part of the estate;
3. Legacies declared by the testator to be preferential;
4. Legacies for support;

5. Legacies for education;
6. All others *pro rata.*

1. See Arts. 619 and 882; Civil Code; Secs. 729 and 735, 757, Code of Civil Procedure.

ART. 888. If the legatee cannot or is unwilling to accept the bequest, or the bequest for any reason should be inoperative, it shall be merged into the estate, except in cases of substitution and those in which the right of accretion exists.

1. See Arts. 774, 789, 912, 913, 982, 983 and 987, Civil Code.

ART. 889. The legatee cannot accept part of a legacy and repudiate the other part if the latter imposes a charge upon him.

Should he die before accepting the legacy, leaving several heirs, one of them may accept and another repudiate the part pertaining to each in the legacy.

ART. 890. The legatee of two legacies, one of which is onerous, cannot repudiate the onerous legacy and accept the other. If both are either onerous or gratuitous, he shall be free to accept both or to repudiate whichever he may wish to reject.

Any heir who is at the same time a legatee may repudiate the inheritance and accept the legacy, or repudiate the latter and accept the former.

1. See notes under Art. 660, Civil Code.
2. Distinction between "heir" and "legatee" no longer obtains (Willard).

ART. 891. If the entire estate is distributed in legacies, the debts and liabilities of the same shall be charged to the legatees *pro rata,* in proportion to their shares, unless the testator should have provided otherwise.

[1083]

1. Repealed (Willard).

2. Distinction between "heir" and "legatee" before Act 190 went into effect. Del Rosario v. Del Rosario, 2 Phil. 321.

SECTION XI. *Executors.*

ART. 892. A testator may appoint one or more executors.

1. See Arts. 909 and 911, Civil Code.
2. In force. See Secs. 641 and 642, Code of Civil Procedure (Willard).

ART. 893. No person not having contractual capacity can be an executor.

A married woman may be an executrix with the consent of her husband, but such consent shall not be necessary should she be legally separated from him.

No minor can be an executor, even with the authorization of his father or guardian.

C. C. P. 641, 647, 654.

1. See Arts. 1263, 60 et seq., 199 et seq., 213, 262, 314, 320, 1262, 1301, Civil Code; Arts. 4, 6 et seq., 11, 13, Code of Commerce.
2. Repealed. See, however, Secs. 641, 647 and 654, Code of Civil Procedure (Willard).

ART. 894. Executors may be universal or particular.

In any case executors may be appointed either jointly, successively, or *in solidum.*

1. The first part of the Article has been repealed, but the second part is in force (Willard).

ART. 895. Should the executors be appointed jointly, only such acts as have been done by all of them together, or by one of them legally authorized by the others, or, in case of disagreement, such acts as may have been agreed to by the majority, shall be valid.

1. Arts. 895 to 897 are in force (Willard).
2. One of several executors may sue alone without joining the others, so long as he is duly empowered to act for them. Paterno v. Solis, 15 Phil. 153.

ART. 896. In cases of extreme urgency, any one of the joint executors may, upon his personal responsibility, do anything which may be necessary, giving notice thereof immediately to the others.

1. See notes under Art. 895, Civil Code; Sec. 660, Code of Civil Procedure.

ART. 897. If the testator should not clearly express an intention to appoint the executors *in solidum,* and does not determine the order in which they are to perform the duties of the office, it shall be understood that they have been appointed jointly, and they shall hold the office under the provisions of the two next preceding articles.

1. See notes under Art. 895, Civil Code.

ART. 898. Executorship is a voluntary office; it shall be deemed accepted by the person appointed thereto should he not excuse himself within the six days following that on which he shall have received notice of his appointment, or if he was already aware thereof, during the six days following that on which the death of the testator came to his knowledge.

1. Repealed by Sec. 627, Code of Civil Procedure.

ART. 899. An executor who accepts the office is bound to act; but he may resign for any reason deemed by the court to be sufficient.

1. See Secs. 643 and 653, Code of Civil Procedure.
2. Repealed (Willard).

ART. 900. An executor who does not accept the office, or resigns it without sufficient cause, shall lose anything which the testator may have left him, excepting always any right he may have to a legitime.

1. See Arts. 807 et seq., 898 et seq., Civil Code.
2. The provision regarding waiver by the executor must be considered repealed. Waiver must now be with the consent of the court (Willard).

ART. 901. Testamentary executors shall have all the powers not contrary to law expressly conferred upon them by the testator.

1. See Arts. 902, 903, 907 and 1718, and notes under Art. 902, Civil Code.
2. The provision in the will regarding powers of the executor held sufficient to authorize him to bring foreclosure proceedings. Paterno v. Solis, 15 Phil. 153.
3. Powers of executors and administrators; see Act 190, Chap. XXXIII, and Act 3031.
4. Liability of executor or administrator upon contracts made without judicial authority; see Pacific Commercial Co. v. Hernaez, 51 Phil. 494, cited under Art. 1725.

ART. 902. Should the testator not have specially determined the powers of the executors they shall have the following:

1. To provide for the funeral services and the burial of the testator and pay for the same, in accordance with the provisions of the will, or in default of such provisions, in accordance with the customs of the town;

2. To pay, with the knowledge and consent of the heir, the cash legacies;

3. To see that all the other provisions of the will are carried out, and when just, to maintain the validity of the will in court and elsewhere;

4. To take the necessary precautions for the preservation and custody of the property, with the intervention of such of the heirs as may be present.

1. See Arts. 907, 910, 911, 1026, 1064, 1424, and notes under Art. 901, Civil Code.
2. Repealed by the Code of Civil Procedure (Willard).
3. Under the will, it was held that the executor was authorized to pay the legacy. Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 903. Should there not be cash enough in the estate to pay the funeral expenses and legacies, and the heirs should not pay them from their own funds, the executors, with the intervention of the heirs, shall sell the personal

property, and, should the proceeds therefrom not be sufficient, the real property.

If any minor, absentee, corporation, or public institution should have any interest in the estate, the property shall be sold with the formalities prescribed by law for such cases.

1. See Arts. 1894 (par. 2), 35, 181, 267, 320, 334 et seq. and 902, and notes under Art. 901, Civil Code; Art. 20 Mortgage Law.
2. Repealed. See Chapter 36, Secs. 714 et seq., Code of Civil Procedure (Willard).

ART. 904. If the testator has not fixed a time therefor, the executor must complete his duties within one year from the date of his acceptance of the office or from the conclusion of any litigation which may have been commenced with respect to the validity or nullity of the will or any of its provisions.

1. See notes under Art. 901, Civil Code.
2. Arts. 904 to 906 have been repealed. See Secs. 743 to 745 of the Code of Civil Procedure (Willard).
3. See Paterno v. Solis, 15 Phil. 153.

ART. 905. Should the testator desire to extend the legal term, he must expressly fix the time of the extension. Should he not have fixed it, it shall be understood that the term is extended for one year.

If at the expiration of this extension the execution of the will has not been accomplished, the judge may grant a further extension for such time as may be necessary in view of the circumstances of the case.

1. See Arts. 988 et seq., and notes under Arts. 901 to 904, Civil Code.

ART. 906. The heirs and legatees may, by common consent, extend the term of the executorship for such time as

they may deem necessary, but if the agreement is only that of a majority the extension cannot exceed one year.

1. See notes under Arts. 901 and 904, Civil Code.

ART. 907. The executors shall submit an account of their administration to the heirs.

Should they have been appointed, not in order to deliver the property to certain heirs, but to invest or distribute the same as directed by the testator in the cases allowed by law, they shall submit their accounts to the judge.

Any disposition of the testator in contravention of this article shall be void.

1. See Arts. 887, 910, 1718 and notes under Art. 901, Civil Code.
2. Repealed. See Sec. 672, Code of Civil Procedure (Willard).
3. See Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 908. Executorship is a gratuitous office. The testator may, nevertheless, assign the executors such remuneration as he may deem proper; provided that executors shall in all cases be entitled to make a proper charge for any work done by them in the partition of the estate, or for any other professional services.

If the testator bequeaths or designates any remuneration for the executors jointly, the shares of those who do not accept the office shall accrue to those who do.

1. See Arts. 1718, 1730, Civil Code.
2. Repealed. See Sec. 680, Code of Civil Procedure.
3. Compensation of administrators under the Code of Civil Procedure discussed. The 3% commission will be computed on money actually passing through the administrator's hands; but not on money collected and not disbursed. *In re* Estate of Flora Martinez, 11 Phil. 389; De Viademonte v. Gavierez, 12 Phil. 159.

ART. 909. An executor cannot delegate the office unless he has express authority therefor from the testator.

[1459]

1. Repealed (Willard).
2. See notes under Art. 924, Civil Code.

ART. 910. Executorship terminates by the death, incapacity, resignation, or removal of the executor, and by the lapse of the term fixed by the testator, by law, or by the persons interested, when proper.

1. See Arts. 904, 905, 899, 911 and 606, Civil Code.
2. Arts. 910 and 911 have been repealed by Sec. 653, Code of Civil Procedure (Willard).

ART. 911. In cases falling within the next preceding article, or in case the executor has not accepted the office, the execution of the will of the testator shall devolve upon the heirs.

[522] C. C. P. 653.

1. See notes under Art. 910, Civil Code.

CHAPTER III.

INTESTATE SUCCESSION.

SECTION I. *General Provisions.*

ART. 912. Legal succession takes place:

1. If a person dies without a will, or under a void will, or one which has subsequently lost its validity;

2. When the will does not institute an heir to all or part of the property or does not dispose of all that belongs to the testator. In such case legal succession shall take place only with respect to the property of which the testator has not disposed;

3. If the heir has been instituted conditionally and the condition does not happen, or if the heir dies before the testator, or repudiates the inheritance, no substitute having been appointed for him and there being no right of accretion;

4. When the heir instituted is incapable of succeeding.

1. See Arts. 687, 743, 745, 752, to 756, 797, 888, 981 and 1008, Civil Code.

2. The will having been declared void, the estate of the deceased was distributed in accordance with the rules of intestate succession. Ramos v. Marquez, 10 Phil. 722.

ART. 913. In default of testamentary heirs the law gives the estate, in accordance with the rules hereafter set forth, to the legitimate and natural relatives of the deceased, to the widower or widow, and to the State.

1. See Art. 888 and notes under Art. 956, Civil Code.
2. In force. As to the rights of the State, see Sec. 750, Code of Civil Procedure.
3. A contract of partnership was entered into by four brothers. Upon the death of one of them, the heirs of the deceased are not bound by the terms of the contract in so far as their successional rights are concerned. Rodriguez v. Ravilan, 17 Phil. 63.

ART. 914. The provisions relating to disqualification to succeed by will are also applicable to intestate successions.

1. See Arts. 744 to 762, Civil Code.
2. This article is still in force. See in this connection Sec. 684, Code of Civil Procedure (Willard).

SECTION II. *Relationship.*

ART. 915. Proximity of relationship is determined by the number of generations. Each generation forms one degree.

1. See Arts. 918 and 919, Civil Code.

ART. 916. The series of degrees forms the line, which may be direct or collateral.

The direct line is that constituted by the series of degrees between persons descending one from the other.

The collateral line is that constituted by the series of degrees between persons not descending one from the other, but who spring from a common ancestor.

ART. 917. The direct line is either descendant or ascendant.

The former connects the head of the family with those who descend from him.

The latter connects a person with those from whom he descends.

1. See Arts. 916 and 918, Civil Code.

ART. 918. As many degrees are counted in the line as there are generations or persons, excluding the progenitor.

In the direct line the ascent is made only to the common ancestor. Thus the son is one degree removed from the father, two from the grandfather, and three from the great-grandfather.

In the collateral line the degrees are counted up to the common ancestor and then down to the person as to whom the computation is to be made. Therefore the brother is two degrees removed from the brother, three from the uncle, brother of his father or mother, four from the first cousins, and so forth.

ART. 919. The computation referred to in the next preceding article governs in all matters except those which concern the impediments to canonical marriage.

1. See Art. 918, Civil Code.

ART. 920. Whole blood relationship is that which is traced through both parents jointly.

ART. 921. In every inheritance the relative nearest in degree excludes the one more remote, except in cases in which the right of representation exists.

Relatives in the same degree shall inherit in equal portions, subject to the provisions of Article 949 with respect to relationship by the whole blood.

1. See Arts. 925 to 929, 949, 954, Civil Code.
2. The grandchild of a brother cannot inherit from his grand-uncle by right of representation. Pavia v. Iturralde, 5 Phil. 176.

3. Article applied. Sarita v. Candia, 23 Phil. 443; De Torres v. De Torres, 28 Phil. 49.

ART. 922. Should there be several relatives of the same degree and one or more of them should not be willing to succeed or cannot do so, his portion shall accrue to the others of the same degree, with the exception of cases in which the right of representation exists.

1. See Art. 981, Civil Code.

ART. 923. If the inheritance should be repudiated by the nearest relative, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and not in representation of those repudiating the inheritance.

SECTION III. *Representation.*

ART. 924. The right which the relatives of a person have to succeed him in all the rights which he would have had, if alive, or if he had been capable of inheriting, is called the right of representation.

1. See Arts. 659, 811 and 857, Civil Code.
2. See Marin v. Nacianceno, 19 Phil. 242.

ART. 925. The right of representation shall always take place in the direct descending line, but never in the ascending.

In the collateral line it shall take place only in favor of the children of brothers or sisters, whether they be of the whole or half blood.

1. See Arts. 811, 834, 843, 930 to 934, 937, 940, 941, 948, and 951 to 954, par. 2, and notes under Arts. 921 and 924, Civil Code.
2. As long as there is a descendant in the direct line, the ascendants cannot inherit in intestate succession. Pecson v. Mediavillo, 28 Phil. 81.
3. Article cited and applied. Irlanda v. Pitargue, 22 Phil. 383; Sarita v. Candia, 23 Phil. 443.

ART. 926. Whenever the inheritance is taken by representation, the division of the estate shall be made *per stirpes;* thus, the representative or representatives shall not inherit more than that which the person they represent would inherit if alive.

ART. 927. When children of one or more brothers or sisters of the deceased survive they shall inherit from him by representation, if uncles or aunts also survive. But if they alone survive they shall inherit in equal portions.

1. See Arts. 948 and 949, Civil Code.
2. The word "tios" in the Spanish original (literally "uncles"), includes uncles and aunts.

ART. 928. The right of representing a person is not lost by the renunciation of his inheritance.

1. See Art. 890, Civil Code.

ART. 929. A living person cannot be represented except in cases of disinheritance or incapacity.

1. See Arts. 761, 857 and 923, Civil Code.

CHAPTER IV.

ORDER OF SUCCESSION ACCORDING TO DIVERSITY OF LINES.

SECTION I. *Descending Direct Line.*

ART. 930. Succession pertains, in the first place, to the descending direct line.

1. A great-grandchild survived his maternal great-grandmother. While still a minor, the great-grandchild died and was survived by his father. Held, that the father may share the estate of his son's great-grandmother together with the other grandchildren of the latter. Ramos v. Marquez, 10 Phil. 722.

ART. 931. Legitimate children and their descendants succeed the parents and other ascendants, without distinc-

tion of sex or age, even though they spring from different marriages.

1. See Arts. 108 et seq., 122, 930 et seq., and notes under Art. 930, Civil Code.
2. A natural child cannot inherit by representation from the legitimate ascendant of his natural father. Llorente v. Rodriguez, 10 Phil. 585.
3. Articles cited and applied. Ramirez v. Beautista, 14 Phil. 528; Hinlo v. De Leon, 18 Phil. 221.

ART. 932. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

1. See notes under Arts. 926 and 931, Civil Code.
2. Grandchildren inherit from their grandparents by right of representation. Irlanda v. Pitargue, 22 Phil. 383.

ART. 933. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

1. See Arts. 834, 840, 912 et seq., 924 et seq., 930, 934, 942 and 1038, and notes under Arts. 926, 931 and 932, Civil Code.
2. See Irlanda v. Pitargue, 22 Phil. 390.

ART. 934. Should children and descendants of other deceased children survive, the former shall inherit in their own right, and the latter by right of representation.

1. See notes under Art. 926, Civil Code.

SECTION II. *Ascending Direct Line.*

ART. 935. In default of legitimate children and descendants of the deceased, his ascendants shall inherit from him, to the exclusion of collaterals.

1. See Arts. 836, 844, 912 et seq., 930, 936 et seq., and note under Art. 930, Civil Code.
2. Article cited and applied. Edroso v. Sablan, 25 Phil. 295; Pecson v. Mediavillo, 28 Phil. 81.

ART. 936. The father and mother, if living, shall inherit share and share alike.

Should one only of them survive, he or she shall succeed to the entire estate of the child.

1. See notes under Arts. 935 and 939, Civil Code.

ART. 937. In default of father or mother the ascendants nearest in degree shall inherit.

Should there be more than one of equal degree belonging to the same line they shall divide the inheritance *per capita;* should they be of different lines but of equal degree, one half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made *per capita.*

ART. 938. The provisions of the two articles next preceding are understood to be without prejudice to the provisions of Articles 811 and 812, which are applicable to intestate as well as testamentary successions.

SECTION III. *Acknowledged Natural Children.*

ART. 939. In the absence of legitimate descendants or ascendants, the natural children legally acknowledged and those legitimated by royal concession shall succeed to the entire estate of the deceased.

1. See Arts. 119, 127, 131, 134, 912 et seq., 930, 935, 940 et seq., and notes under Art. 840, Civil Code.
2. In force, except the provision regarding royal concession (Willard).
3. Natural children have no right to inherit by representation from the legitimate ascendants of their natural parents. Llorente v. Rodriguez, 10 Phil. 585.
4. Article cited and applied. Mijares v. Nery, 3 Phil. 195; Escuin v. Escuin, 11 Phil. 332; De Torres v. De Torres, 28 Phil. 49; *In re* Estate of Enriquez and Reyes, 29 Phil. 167; Ramirez v. Gmur, 42 Phil. 862.

ART. 940. If, together with natural or legitimated children, there should survive descendants of another deceased

natural or legitimated child, the former shall succeed in their own right and the latter by right of representation.

1. See notes under Art. 939, Civil Code.

ART. 941. The hereditary rights granted by the two next preceding articles to natural and legitimated children shall be transmitted upon their death to their descendants who shall inherit by right of representation from their deceased grandparent.

1. See Art. 843 and notes under Art. 939, Civil Code.
2. The word "descendants" as used in this article does not include children begotten of adulterous relations. Ramirez v. Gmur, 42 Phil. 865.

ART. 942. In case legitimate descendants or ascendants survive, the natural and legitimated children shall receive from the inheritance only the portion granted them by Articles 840 and 841.

1. See notes under Art. 939, Civil Code.
2. Article cited and applied. Mijares v. Nery, 3 Phil. 195.

ART. 943. A natural or a legitimated child has no right to succeed *ab intestate* the legitimate children and relatives of the father or mother who has acknowledged it; nor shall such children or relatives so inherit from the natural or legitimated child.

1. See notes under Art. 939, Civil Code.
2. A and B are brothers. C is A's wife. B has an acknowledged natural child, D. A dies, leaving as claimant heirs, C and D. Held, that C takes all the estate of A. Anuran v. Aquino, 38 Phil. 32.
3. A natural relative, within the third degree is not entitled to the *reserva* as provided in Art. 811. This conclusion also follows from the provisions of Art. 943. Nieva v. Alcala, 41 Phil. 922.

ART. 944. If an acknowledged natural or legitimated child should die without issue, either legitimate or acknowl-

edged, the father or mother who acknowledged such child shall succeed to its entire estate; and if both acknowledged it and are alive, they shall inherit from it share and share alike.

1. See Arts. 119, 131, 846, 931 et seq., and notes under Art. 939, Civil Code.
2. The mother of a natural child which has died during minority cannot maintain an action against the heirs of the putative father to compel the recognition of such natural child. Conde v. Abaya, 13 Phil. 249.
3. No relatives of a natural child, other than those mentioned in Articles 944 and 945, are entitled to inherit from such child by intestate succession. Estate of Peña v. Guzman et al. 47 Phil. 991.

ART. 945. In default of natural ascendants, natural and legitimated children shall be succeeded by their natural brothers and sisters in accordance with the rules established for legitimate brothers and sisters.

1. See Arts. 917 to 951, and notes under Arts. 939 and 944, Civil Code.
2. Acknowledged natural children do not inherit *ab intestato* from their father's father. Centano v. Centano, XXVII Off. Gaz. 3136.

SECTION IV. *Succession of Collaterals and of Spouses.*

ART. 946. In default of the persons included in the three sections next preceding, the collateral relatives and the surviving spouse shall inherit in the order established by the following articles.

1. Article cited and applied. Rodriguez v. Ravilan, 17 Phil. 63.

ART. 947. Should the only survivors be brothers or sisters of the whole blood, they shall inherit in equal shares.

1. See notes under Art. 946, Civil Code.

ART. 948. Should brothers or sisters survive together with nephews and nieces, the children of brothers or sisters

of the whole blood, the former shall inherit *per capita*, and the latter *per stirpes*.

1. See Arts. 927 and 945, and notes under Arts. 946 and 947, Civil Code.

ART. 949. Should brothers or sisters of the whole blood survive together with brothers or sisters of the half blood, the former shall receive a share in the inheritance double that of the latter.

1. See Art. 925, Civil Code.

ART. 950. In case the only survivors are brothers or sisters of the half blood, some on the father's and some on the mother's side, all shall inherit by equal shares without distinction of property.

ART. 951. Children of brothers or sisters of the half blood shall succeed *per capita* or *per stirpes*, in accordance with the rules established for brothers and sisters of the whole blood.

ART. 952. In the absence of brothers or sisters and of nephews, children of the former, whether of the whole blood or not, the surviving spouse, if not separated by a final decree of divorce, shall succeed to the entire estate of the deceased.

1. See Arts. 73 et seq., 834 et seq., 912 et seq., 920, 923, 946 and 953, and notes under Art. 943, Civil Code.

ART. 953. Should brothers or sisters or children of brothers or sisters survive, the surviving spouse shall be entitled to receive the part of the inheritance in usufruct assigned him or her in Article 837.

1. Article cited and applied. Sarita v. Candia, 23 Phil. 443.

ART. 954. Should there be neither brothers nor sisters, nor children of brothers or sisters, nor a surviving spouse,

the other collateral relatives shall succeed to the estate of the deceased.

The latter shall succeed without distinction of lines or preference among them by reason of the whole blood.

ART. 955. The right to inherit *ab intestate* shall not extend beyond the sixth degree of relationship in the collateral line.

1. In force. See Secs. 684, 750 and 752, Code of Civil Procedure.

SECTION V. *Succession by the State.*

ART. 956. In default of persons entitled to succeed in accordance with the provisions of the preceding sections, the State shall inherit, and the property shall be devoted to institutions of beneficence and gratuitous instruction, in the following order:

1. Municipal charitable institutions and free schools of the domicile of the deceased;
2. Institutions of either kind in the province of the deceased;
3. Charitable and educational institutions of a general character.

1. See Arts. 40, 746, 912 et seq., 930 et seq., 994, 944 et seq., and notes under Art. 913, Civil Code.
2. Arts. 956 to 958 repealed by Secs. 750 to 752, Code of Civil Procedure.
3. There being a valid will, no escheat took place. City of Manila v. Archbishop of Manila, 36 Phil. 815.

ART. 957. The rights and obligations of charitable and educational institutions, in cases falling under the next preceding article, shall be the same as those of the other heirs.

1. See notes under Art. 956, Civil Code.

ART. 958. In order that the State may take possession of the property of the estate, a judicial declaration of heir-

ship must first be made, awarding the property to it in default of lawful heirs.

1. See notes under Art. 956, Civil Code.

CHAPTER V.

PROVISIONS COMMON TO INHERITANCE BY OR WITHOUT WILL.

SECTION I. *Precautions to be Adopted when the Widow is Left Pregnant.*

ART. 959. When the widow believes that she has been left pregnant, she must give notice of the fact to all persons who have rights in the inheritance of such a character that they will disappear or be reduced by the birth of a posthumous child.

1. See Arts. 29, 963, and notes under Art. 960, Civil Code.

ART. 960. The persons in interest to whom the next preceding article refers may request the municipal judge or the judge of first instance, when there is one, to order that the proper precautions be taken to prevent a simulation of parturition or the pretense that the child has been born viable, when the fact is otherwise.

The judge shall be careful that the measures he orders to be taken shall not be offensive either to the modesty or to the liberty of the widow.

1. See Arts. 468 and 469, Penal Code.
2. Arts. 959 to 961 in force, but the Municipal Judge no longer has jurisdiction over this matter (Willard).

ART. 961. Whether the notice referred to in Article 959 has been given or not, when the time of the parturition approaches, the widow must give notice of this fact to the parties interested. The latter shall be entitled to appoint some person in whom they have confidence to ascertain whether there has been in fact a delivery.

If the person selected should be rejected by the widow, the judge shall appoint a physician or a woman.

1. See notes under Art. 960, Civil Code.

ART. 962. The omission of these formalities shall not affect the legitimacy of the child, which, if contested, may be proven by the mother, or by the child through its lawful representative.

The right of action on the part of those entitled to contest the legitimacy of the issue shall prescribe at the expiration of the terms mentioned in Article 113.

1. See notes under Art. 113, Civil Code.
2. The first paragraph in force. The second, repealed by Chapter III, Code of Civil Procedure (Willard).

ART. 963. If the husband has acknowledged in a public or private document the fact of the pregnancy of his wife she shall be excused from giving the notice required by Article 959, but she must comply with the provisions of Article 961.

ART. 964. If the widow is left pregnant she must be supported at the expense of the estate, even though she be rich, taking into account the portion thereof which may pertain to the posthumous child should it be born viable.

1. See Arts. 30 and 142 et seq., Civil Code.
2. See Sec. 684, Code of Civil Procedure.

ART. 965. Until parturition takes place or it becomes certain that it will not take place, either because a miscarriage has occurred or because the maximum time for gestation has passed, the property shall be secured and administered in the same manner as in compulsory testamentary proceedings.

1. See Arts. 108, 966 et seq., Civil Code.
2. Arts. 965 to 967, repealed. See Sec. 596, Code of Civil Procedure (Willard).

ART. 966. The division of the inheritance shall be suspended until parturition or miscarriage takes place, or lapse of time shows the widow was not pregnant.

However, the administrator may pay the creditors upon a judicial order.

1. See notes under Art. 965, Civil Code.

ART. 967. After delivery or miscarriage has taken place, or the period of gestation has elapsed, the administrator of the estate shall be discharged and shall give an account of his management to the heirs or to their legal representatives.

1. See Arts. 108, 965 et seq., and 1026, and notes under Art. 965, Civil Code.

SECTION II. *Property Subject to Reservation.*

ART. 968. Beside the reservation imposed by Article 811, any widower or widow who contracts a second marriage shall be obliged to reserve for the children and descendants of the former marriage the ownership of all the property he or she may have acquired from the deceased spouse by will, intestate succession, gift, or by any other gratuitous title, but not his or her half of the profits of the conjugal partnership.

1. See Art. 164, and notes under Art. 811, Civil Code.
2. One who inherits property subject to reversion may register it in his own name, provided its reservable conditions be duly noted on the registry. Edrosa v. Sablan, 25 Phil. 295.
3. See Macase et al. v. Heirs of Garcia, 49 Phil. 698.
4. See Riosa v. Rocha, 48 Phil. 737.
5. Obligation of widowed spouse to reserve; see Dizon v. Galang, 48 Phil. 601.

ART. 969. The provisions of the next preceding article shall be applicable to any property which may have been acquired in any of the manners mentioned therein by the widower or widow from any of the children of the first marriage or which any relative of the deceased spouse may have

given such widow or widower out of consideration for the former.

ART. 970. The obligation to reserve shall cease when the children of the former marriage who may have a right to such property shall expressly renounce it on coming of age, or when such property has been given or left by the children to their father or mother, with the knowledge that he or she had married a second time.

ART. 971. The reservation shall also cease if, at the time of the death of the father or mother who has contracted such second marriage, no legitimate children or descendants of the first marriage survive.

ART. 972. Notwithstanding the obligation to reserve, the father or mother who has married a second time may devote the reservable property to the betterment of any of the children or descendants of the first marriage, in accordance with the provisions of Article 823.

ART. 973. If the father or mother should not have made use of the right granted him or her by the next preceding article, in whole or in part, the legitimate children and descendants of the first marriage shall succeed to the property reserved, in accordance with the rules prescribed for succession in the descending line, even if, by virtue of a will, such children or descendants should have inherited unequally from the first deceased spouse, or should have renounced or repudiated his or her inheritance.

Any child justly disinherited by the father or by the mother shall lose all right to the reserved property; but should it have legitimate children or descendants, the provisions of Article 857 shall be observed.

1. See Arts. 630 to 634, 852 to 855, Civil Code.

ART. 974. Alienations of reservable real property made by the surviving spouse before contracting a second mar-

riage shall be valid; but in the event of such marriage it shall be the duty of the surviving spouse to give security in favor of the children and descendants of the former marriage for the value of such property.

1. See notes under Art. 968, Civil Code.

ART. 975. Subject to the provisions of the Mortgage Law, alienations of reservable real property made by the widow or widower after contracting a second marriage shall be valid only in case there are no surviving legitimate children or descendants of the former marriage at the time of his or her death.

1. See notes under Art. 968, Civil Code.

ART. 976. Alienations of personal property made before or after contracting a second marriage shall be valid, but the obligation to make good their value shall continue.

1. See notes under Art. 968, Civil Code.

ART. 977. Any widower or widow who contracts a new marriage shall have an inventory made of all the property subject to reservation, cause an entry to be made in the Registry of Deeds, in accordance with the provisions of the Mortgage Law, to the effect that such real estate is subject to reservation, and shall have the personal property appraised.

1. See Arts. 16, 157 to 168, 190 to 199, Mortgage Law; and notes under Art. 968, Civil Code.

ART. 978. Any widower or widow who remarries is also bound to secure by a mortgage:

1. The restitution of any existing personalty pertaining to the paraphernal property or to the unappraised dowry in the condition in which it may be at the time of his or her death, or the value of such personalty if pertaining to the appraised dowry;

2. The payment of any damages caused, or which may be caused by his or her fault or neglect;

3. The return of the price which may have been or may be received for any personal property alienated or the payment of its value at the time of the alienation, if such alienation has been gratuitous;

4. The value of any real property validly alienated.

1. See Arts. 334 et seq., 811, 868 et seq., 974 et seq., 1104, 1346 and 1381, Civil Code; Arts. 168, 190 et seq., Mortgage Law.
2. See notes under Art. 968, Civil Code.

ART. 979. The provisions of the preceding articles concerning a second marriage shall also apply to a third or any subsequent marriage.

ART. 980. The obligation to reserve imposed by the preceding articles shall be applicable to any widower or widow, who, even though he or she does not contract a new marriage may subsequently have an acknowledged natural child or one judicially declared as such.

Said obligation shall be effective from the date of the birth of such child.

SECTION III. *The Right of Accretion.*

ART. 981. In legal successions the portion of any person who repudiates the inheritance shall always accrue to his co-heirs.

1. See Arts. 196 et seq., 637, 909, and 922, Civil Code.

ART. 982. In order that the right of accretion may take place in a testamentary succession it shall be necessary:

1. That two or more persons be called to the same inheritance or to the same portion thereof without a special designation of parts;

2. That one of the persons so called die before the testator or renounce the inheritance or be incapable of receiving it.

1. See Arts. 745, 754, 757 and 758, and notes under Art. 766, Civil Code; and Act No. 2141.
2. See Del Rosario v. Del Rosario, 2 Phil. 321.
3. When one of two joint heirs called by will to an inheritance without special designation of shares dies before the testator, the part pertaining to such heir will, upon the subsequent death of the testator, go by accretion to the coheir; and the additional circumstance that the predeceasing heir was, at the time of the making of the will, disqualified to take, by reason of his being then the legal guardian of the testator with accounts unsettled, does not make a case for intestate succession as to his part of the estate. Torres et al. v. Lopez, 49 Phil. 504.

ART. 983. It shall be understood that a designation has been made by parts only in case the testator may have expressly assigned a share to each heir.

The phrase "one-half to each or in equal parts," or any other which, though designating an aliquot part, does not fix it numerically or in such manner as to make each one the owner of a separate body of property, shall not exclude the right of accretion.

1. See notes under Art. 982, Civil Code.

ART. 984. The heirs to whom the inheritance so accrues shall succeed to all the rights and obligations which the one who was unwilling to receive it or could not do so would have had.

ART. 985. The right of accretion shall take place between forced heirs only when the disposable portion is left to two or more of them, or to any one of them and to a stranger.

Should the part repudiated be the legitime, the other coheirs shall succeed to it in their own right and not by the right of accretion.

1. See notes under Art. 982, Civil Code.

ART. 986. In testamentary successions, when accretion

cannot take place, the vacant portion of the instituted heir, if no substitute has been appointed, shall pass to the legal heirs of the testator, who shall receive it with the same charges and obligations.

1. See Art. 912, Civil Code.

ART. 987. Accretion shall also take place between legatees and usufructuaries in the same manner as that established for heirs.

1. See Art. 888, Civil Code.

SECTION IV. *Acceptance and Repudiation of the Inheritance.*

Concerning the subjects to which the article included in this section (Arts. 988 to 1009) relate, see Chapters 31 to 40, inclusive, C. C. P.

ART. 988. The acceptance or repudiation of the inheritance are acts which are entirely voluntary and free.

1. See Arts. 997, 999, 1002, and notes under Art. 1003, Civil Code.
2. Under the Civil Code, by accepting the inheritance without benefit of inventory, the heirs became jointly and severally liable for the debts. Aramburu v. Ortiz, 14 Phil. 691.
3. An heir cannot waive his rights as such heir in favor of another heir, and if he accepts without the benefit of inventory he cannot reject his share so as to exempt himself from the payment of debts. Ignacio v. Martinez, 33 Phil. 576.

ART. 989. The effects of the acceptance or repudiation shall always retroact to the moment of the death of the person from whom the inheritance comes.

1. See Arts. 440, 1003, 1010 to 1016, 1023, 1024, and notes under Art. 1003, Civil Code.
2. Article cited and applied. Osorio v. Osorio, 41 Phil. 538.

ART. 990. The inheritance cannot be accepted or repudiated in part, for a certain term, or conditionally.

1. See Arts. 888, 889, 890, and notes under Art. 1003, Civil Code.

ART. 991. No one can accept or repudiate an inheritance without being certain of the death of the person from whom he is to inherit, and of his right to the inheritance.

1. See notes under Art. 1003, Civil Code.

ART. 992. Any person having the free disposal of his property may accept or repudiate an inheritance.

An inheritance left to minors or incapacitated persons may be accepted in the manner prescribed by paragraph 10 of Article 269. Should the guardian accept it, the acceptance shall be considered as made under benefit of inventory.

The acceptance of an inheritance left to the poor shall pertain to the persons designated by the testator to determine the beneficiaries and distribute the property, or, in default of such, to those mentioned in Article 749, and shall also be deemed accepted under benefit of inventory.

1. See Arts. 155, 200, 269, 317, 320, 671, 749, 998, 1010 et seq., 1060, and notes under Art. 1003, Civil Code.
2. Under the Civil Code, as the heirs were minors when the inheritance was accepted for them by the gaurdian, their liability for debts is limited to the property inherited. There being a mortgage on the property, the personal liability, if any, must be enforced in accordance with Section 708, Code of Civil Procedure. Hinlo v. De Leon, 18 Phil. 221.
3. Article cited and applied. Aramburu v. Ortiz, 14 Phil. 691; Agoncillo v. Javier, 38 Phil. 437.

ART. 993. The lawful representatives of associations, corporations, and foundations qualified to acquire property may accept any inheritance left to the same; but in order to repudiate it they require the approval of the court, to be granted after hearing the prosecuting officer.

1. See Arts. 35 to 39, 745 et seq., 956, 994, 1002, and notes under Art. 1003, Civil Code.

ART. 994. Public official establishments can neither accept nor repudiate inheritance without the approval of the Government.

1. See notes under Art. 1003, Civil Code.

ART. 995. A married woman cannot accept or repudiate an inheritance except with the permission of her husband, or, this failing, the approval of the judge.

In the latter case, the property of the conjugal partnership already existing shall not be liable for the debts of the hereditary estate.

1. See Art. 61, and notes under Art. 1003, Civil Code.

ART. 996. Deaf-mutes who know how to read and write shall accept or repudiate the inheritance personally or through an agent. Should they not be able to read or write, their guardian shall accept it under benefit of inventory, subject to the provisions of Article 218 with respect to such disability.

1. See notes under Art. 1003, Civil Code.

ART. 997. The acceptance or repudiation of an inheritance once made is irrevocable, and cannot be contested, unless subject to some of the vices which annul consent or an unknown will appears.

1. See Arts. 1265 to 1270, and notes under Art. 1003, Civil Code.

ART. 998. Inheritances may be accepted purely and simply or under benefit of inventory.

1. See notes under Arts. 988, 992 and 1003, Civil Code.
2. See Buenaventura v. Ramos, 43 Phil. 704.

ART. 999. Pure and simple acceptance may be express or implied.

An express acceptance is one made in a public or private document.

An implied acceptance is one resulting from acts from which the intention to accept is necessarily inferred or which could not be rightfully done by anyone except in the capacity of heir.

Acts of mere preservation or provisional administration do not imply an acceptance of the inheritance if, at the same time, the title or character of heir has not been assumed.

1. See Arts. 661, 746, 1000, 1280, 1216 et seq., 1525 et seq., and notes under Arts. 992 and 1003, Civil Code.
2. Effect under the Civil Code of accepting an inheritance without the benefit of inventory. Ortiz v. Aramburu, 8 Phil. 98; Aramburu v. Ortiz, 14 Phil. 691.

ART. 1000. An inheritance is deemed accepted:

1. If the heir sells, gives, or assigns his right to a stranger, to all his co-heirs, or to some one of them;

2. If the heir renounces it, even gratuitously, for the benefit of one or more of his co-heirs.

3. If he renounces it for a consideration in favor of all his co-heirs indiscriminately; but if this renunciation should be gratuitous, and the co-heirs in whose favor it is made are those to whom the portion renounced would accrue by the right of accretion, the inheritance shall not be deemed accepted.

1. See notes under Arts. 999 and 1003, Civil Code.

ART. 1001. Should the heir repudiate the inheritance to the prejudice of his own creditors, the latter may ask the judge to authorize them to accept it in the name of the heir.

The acceptance shall benefit the creditors only to an extent sufficient to cover the amount of their credits. The excess, should there be any, shall not belong in any case to the renouncer, but shall be allotted to the persons to whom, in accordance with the rules of this code, it may pertain.

1. See Arts. 403, 648, 1937, and notes under Art. 1003, Civil Code; Arts. 6 and 20, Mortgage Law.

ART. 1002. Heirs who have removed or concealed any property belonging to the estate lose the right to renounce the inheritance and are subject to the obligations of pure

and simple heirs, without prejudice to the penalties to which they may be liable.

1. See Arts. 988 et seq., 1003, 1024, and notes under Art. 1003, Civil Code; Arts. 502 to 520, 534, 535 (5), Penal Code.

ART. 1003. By pure and simple acceptance, or without benefit of inventory, the heir becomes liable for all the debts and obligations of the estate, not only with the property of the same, but also with his own.

1. See Arts. 992, 1021, and notes under Arts. 988, 992 and 999, Civil Code.
2. Arts. 988 to 1024 repealed by the Code of Civil Procedure. The heirs no longer answer personally for the debts of the estate, whether they accept the inheritance or not. Pavia v. De la Rosa, 8 Phil. 70.
3. See Buenaventura v. Ramos, 43 Phil. 704.

ART. 1004. No action shall be brought against the heir to compel him to accept or repudiate the inheritance until nine days have elapsed from the death of the person whose inheritance is in question.

1. See Art. 1016, and notes under Art. 1003, Civil Code.

ART. 1005. Should a third person in interest bring suit to compel the heir to accept or repudiate the inheritance, the judge shall fix a period, not exceeding thirty days, within which the heir shall declare his intention, warning him that should he not do so, the inheritance shall be deemed accepted.

1. See Art. 1015, and notes under Art. 1003, Civil Code.

ART. 1006. Should the heir die without having accepted or repudiated the inheritance, the same right he had is transmitted to his heirs.

1. See Arts. 759, 992, 1016, and notes under Arts. 989 and 1003, Civil Code.

2. The great-grandchild died while a minor. His right to claim or repudiate the inheritance of his maternal great-grandmother, who predeceased him, was transmitted to his father. Ramos v. Marquez, 10 Phil. 538.

ART. 1007. Should there be several heirs called to an inheritance, some of them may accept and some repudiate it. Each one of the heirs shall enjoy the same liberty to accept it purely and simply, or under benefit of inventory.

1. See notes under Art. 1003, Civil Code.

ART. 1008. The repudiation of an inheritance shall be made in a public or authentic instrument, or in a writing presented to the judge who would have jurisdiction over testamentary or intestate proceedings on the estate.

1. See Arts. 993 et seq., 1216, 1280, and notes under Arts. 1003, and 988, Civil Code.

ART. 1009. If a person who is at the same time the testamentary and legal heir repudiates the inheritance in his capacity of testamentary heir, he is deemed to have repudiated it also as legal heir.

Should he repudiate it as intestate heir, without knowing that he has been instituted as heir by the will, he may still accept it in the latter capacity.

1. See notes under Art. 1003, Civil Code.

SECTION V. *Benefit of Inventory and Right to Deliberate.*

Concerning the subjects to which the articles in this section (Arts. 1010 to 1034) relate, see Chapters 31 to 40, inclusive C. C. P.

ART. 1010. Any heir may accept an inheritance under benefit of inventory, even though the testator should have forbidden it.

He may also request that the inventory be made before accepting or repudiating the inheritance, in order to deliberate upon the matter.

1. See notes under Arts. 988 and 1003, Civil Code.

ART. 1011. The acceptance of an inheritance under the benefit of inventory may be made before a notary or by a writing presented to any of the judges who would have jurisdiction over testamentary or intestate proceedings upon the estate.

1. See Arts. 1012 et seq., 1033, and notes under Art. 1003, Civil Code.

ART. 1012. Should the heir referred to in the next preceding article be abroad, he may make such declaration before any diplomatic or consular agent of Spain authorized to discharge the duties of a notary in the place where the declaration is to be made.

1. See notes under Art. 1003, Civil Code.

ART. 1013. The declaration referred to in the preceding articles shall not produce any effect whatsoever unless it be preceded or followed by a true and exact inventory of all the property of the estate, made with the formalities and within the periods specified in the following articles.

1. See notes under Arts. 992, 1003, Civil Code.

ART. 1014. Any heir who may have in his possession the property of the estate or any part thereof, and who may wish to avail himself of the benefit of inventory or of the right to deliberate, shall so state to the judge who would have jurisdiction over testamentary or intestate proceedings upon the estate, within ten days following that on which he has become aware that he is such heir, if he resides in the place where the deceased died, or if he resides elsewhere, within thirty days.

In either case the heir must at the same time request the making of the inventory and the citation of the creditors and legatees in order that they may be present thereat if they so desire.

1. See Arts. 992, 1006, 660, 1015 et seq., and notes under Art. 1003, Civil Code.
2. See Alfonso v. Natividad, 6 Phil. 240.

ART. 1015. If the heir is not in possession of the inheritance or part of it, and has not assumed to act as such heir, the periods specified in the next preceding article shall be counted from the day following that of the expiration of the term fixed by the judge, in accordance with Article 1005, for the acceptance or repudiation of the inheritance or from the day on which he may have accepted it or has assumed to act as heir.

1. See notes under Art. 1003, Civil Code.

ART. 1016. With the exception of the cases referred to in the two articles next preceding, if no action should have been brought against the heir, he may accept under the benefit of inventory, or with the right to deliberate at any time before the action to claim the inheritance prescribes.

1. See Arts. 661 and notes under Art. 1003, Civil Code.

ART. 1017. The inventory shall be commenced within the thirty days following the citation of the creditors and legatees and shall be finished within the sixty days following.

If on account of the fact that the property is a long distance away, or that the estate is large, or for any other sufficient cause the term of sixty days should appear to be insufficient, the judge may extend this period for such time, not to exceed one year, as he may deem necessary.

1. See notes under Art. 1003, Civil Code; Secs. 643 and 668, Code of Civil Procedure.

ART. 1018. If by the fault or negligence of the heir the inventory is not begun or finished within the periods and with the formalities prescribed in the preceding articles, he shall be deemed to have accepted the inheritance purely and simply.

1. See Art. 992, and notes under Arts. 1017 and 1003, Civil Code.

ART. 1019. Any heir who shall have reserved the right

to deliberate must state to the court within thirty days from the day following that on which the inventory has been concluded whether he accepts or repudiates the inheritance.

If such term of thirty days shall have elapsed without such statement being made it shall be understood that he accepts the inheritance purely and simply.

1. See Arts. 1017, 1026, and notes under Art. 1003, Civil Code.

ART. 1020. In any case, while the inventory is being made, or the acceptance of the inheritance is pending, the judge, at the instance of any party in interest, may provide for the management and custody of the property of the estate, in accordance with the Law of Civil Procedure concerning testamentary proceedings.

1. See notes under Arts. 1003 and 1017, Civil Code.

ART. 1021. One who brings suit to recover an inheritance of which another has had possession for more than one year shall not be obliged to make an inventory, should he succeed in the suit, in order to enjoy such benefit; and he shall be responsible for the liabilities of the estate only with the property which may be delivered to him.

1. See notes under Arts. 1003 and 1017, Civil Code.

ART. 1022. The inventory made by an heir who afterwards repudiates the inheritance shall be available to substitutes and to heirs *ab intestato,* with regard to whom the thirty days for deliberation and in which to make the statement prescribed by Article 1019 shall be counted from the day following that on which they had knowledge of the repudiation.

1. See notes under Arts. 1003 and 1017, Civil Code.

ART. 1023. The benefit of inventory produces the following effects in favor of the heir:

1. The heir is not bound to pay the debts and other char-

ges on the inheritance except to the extent of the property inherited;

2. He retains against the estate all the rights and actions which he may have had against the deceased;

3. His private property is not merged with the property of the estate for any purpose whatever prejudicial to him.

1. See notes under Arts. 988, 992, 999 and 1003, Civil Code.
2. See Agoncillo v. Javier, 38 Phil. 424.

ART. 1024. The heir shall lose the benefit of inventory:

1. If he shall knowingly fail to include in the inventory any of the property, rights, or causes of action of the estate;

2. If before completing the payment of the debts and legacies he should alienate any property of the estate without judicial authority or the consent of all the persons interested, or if he should not apply the proceeds of property so sold in the manner specified at the time the authorization was granted him.

1. See Art. 1002, and notes under Arts. 1003 and 1017, Civil Code.

ART. 1025. Until the inventory has been prepared and the period granted for deliberating has expired, the legatees cannot sue for the payment of their legacies.

1. See notes under Arts. 1003 and 1017, Civil Code; and Secs. 704, 753, 754 et seq., Code of Civil Procedure.
2. Repealed (Willard).
3. See Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 1026. Until all the known creditors and the legatees have been paid, it shall be understood that the estate is under administration.

The administrator, whether it be the heir himself or any other person, shall be the representative of the estate for the purpose of bringing any actions pertaining thereto, and answering any complaints filed against it.

1. See Arts. 1020, 1027, 1031 et seq., and notes under Art. 1025, Civil Code.

2. Arts. 1026 and 1027, repealed (Willard).
3. Both the Civil Code and the Code of Civil Procedure follow the rule that no distribution of an estate can be had until after all the debts and expenses have been paid. Escuin v. Escuin, 11 Phil. 332; Ortiga Hnos. v. Enage et al. 18 Phil. 345; Riosa v. Valenciano, 20 Phil. 170; Fabie v. Yulo, 24 Phil. 240.

ART. 1027. The administrator cannot pay the legacies until he has paid all the creditors.

1. See notes under Arts. 1025 and 1026, Civil Code.

ART. 1028. In case of litigation among the creditors with respect to the preference of their credits, they shall be paid in the order and according to the grade fixed by the final judgment by which the preference is determined.

If there should be no pending litigation between the creditors, those first appearing shall be paid first; but should it appear that one of the known credits is preferred, the payment shall not be made until security has been given in favor of the preferred creditor.

1. See Arts. 1030 et seq., Civil Code.
2. Repealed. See Secs. 735 and 736, Code of Civil Procedure (Willard).
3. This Article has only been partly repealed by Secs. 524 and 735, Code of Civil Procedure. The first paragraph is still in force. Peterson v. Newberry, 6 Phil. 260.
4. The committee on claims as provided in the Code of Civil Procedure has no power to determine the preference between one claim and another. Estate of Gamboa v. Floranza, 12 Phil. 191.
5. Notwithstanding the provisions of Sec. 735, Code of Civil Procedure, debts secured by pledge or mortgage are preferred over all others; but otherwise the order of preference as established in that Article must be respected. Smith, Bell & Co. v. Maronilla, 41 Phil. 557.
6. See also Santos v. Manarang, 27 Phil. 209; Sochayseng v. Trujillo, 31 Phil. 153.

ART. 1029. If, after the legacies have been paid, other

creditors should appear, the latter shall be entitled to proceed against the legatees only in case there is not sufficient property left in the estate to pay them.

1. Repealed (Willard).

ART. 1030. If it should be necessary to sell the property of the estate for the purpose of paying debts and legacies, the sale shall be made in the manner prescribed by the Law of Civil Procedure with respect to testamentary and intestate estates, unless all the heirs, creditors, and legatees agree otherwise.

1. See Art. 660, Civil Code.
2. Repealed. See Sec. 714, Code of Civil Procedure (Willard).
3. See Manuel et al. v. Losano, 41 Phil. 859.

ART. 1031. If the property of the estate should not be sufficient for the payment of the debts and legacies, the administrator shall render an account of his administration to the creditors and legatees who have not been paid in full; he shall be liable for any damage caused the estate by his fault or negligence.

1. Repealed. See Sec. 678, Code of Civil Procedure (Willard).

ART. 1032. After the creditors and legatees have been paid, the heir shall have the full enjoyment of the residue of the estate.

Should the estate have been administered by another person, he shall give an account of his administration to the heir, under the liability imposed by the next preceding article.

1. See Art. 956, Civil Code.
2. See Sec. 753, Code of Civil Procedure (Willard).

ART. 1033. The cost of the inventory and the other expenses arising from the administration of an inheritance accepted under the benefit of inventory, and the defense of its rights, shall be a charge against the estate. Any costs

which the heir may have been personally adjudged to pay by reason of any misconduct or bad faith on his part are excepted.

The same rule shall apply with respect to any costs arising from the exercise of the right to deliberate, if the heir repudiates the inheritance.

1. Arts. 958, 1033 and 1034, repealed. See Sec. 679, Code of Civil Procedure (Willard).

ART. 1034. The private creditors of the heir cannot interfere with the operations of the estate accepted by the latter under benefit of inventory until the creditors of the same and the legatees have been paid; but they may demand the retention or the attachment of the residue pertaining to the heir.

1. See notes under Art. 1033, Civil Code.
2. While the debts of the estate are unpaid, no part thereof is subject to levy for the payment of the heir's obligations. Ortiga Hnos. v. Enage et al. 18 Phil. 345.

CHAPTER VI.

COLLATION AND PARTITION.

SECTION I. *Collation.*

ART. 1035. Any forced heir, called to a succession with others of the same character, must bring into the mass of the estate any property or securities such heir may have received from the deceased during the lifetime of the latter by way of dowry, donation, or by any other gratuitous title, in order that it may be computed in determining the legitime, and in the account of the partition.

1. See Arts. 161 and 1419, Civil Code; Sec. 760, Code of Civil Procedure.
2. See notes under Art. 766, Civil Code.
3. An heir is not under obligation to bring to collation any of his property, unless it is proved that he acquired it gratuitously from the deceased. Hernaez v. Hernaez, 1 Phil. 719.

4. The proceeds of an insurance policy payable to one of the heirs do not belong to the estate of the deceased, and are not subject to collation. Del Val v. Del Val, 29 Phil. 534.
5. Disputes between heirs with reference to the obligation to collate may be determined in the administration proceedings upon the estate of the ancestor without the institution of a separate action. *In re* Will of Ignacio Abuton, 48 Phil. 144.

ART. 1036. Collation shall not take place among forced heirs if the donor should have expressly forbidden it, or if the donee should repudiate the inheritance, excepting cases in which the donation is subject to reduction because inofficious.

ART. 1037. Property left by will is not subject to collation, unless the testator has otherwise directed, provided that the legitimes remain intact.

1. See Arts. 620, 807 et seq., and 1035, Civil Code.
2. Arts. 1037 to 1049 in force. See Secs. 731 and 753, Code of Civil Procedure (Willard).

ART. 1038. When grandchildren, surviving with their uncles, aunts or cousins, inherit from their grandparents in representation of a parent, they shall collate all that their parent, if alive, would have been obliged to collate, even though such grandchildren have not inherited the property subject to collation.

They shall also collate anything they may have received from the testator during his lifetime, unless the testator has provided otherwise, in which case his will must be respected, should it not prejudice the legitime of the co-heirs.

1. See notes under Art. 1037, Civil Code.

ART. 1039. Parents are not obliged to bring into collation in the inheritance of their ascendants anything which may have been donated by such ascendants to their children.

1. See notes under Art. 1037, Civil Code.

ART. 1040. Neither shall gifts bestowed upon the spouse of the child be collated; but should they have been bestowed by the parent on the spouses jointly, the child shall be obliged to bring into collation one half of the thing donated.

1. See notes under Art. 1037, Civil Code.

ART. 1041. Allowances for support, education, attendance in illness, even though unusually expensive, apprenticeship, ordinary equipment, or customary presents are not subject to collation.

1. See Arts. 142 et seq., 1035, and notes under Art. 1037, Civil Code.

ART. 1042. Expenses incurred by a parent in giving his children a professional or artistic career shall not be collated unless the parent so orders, or they encroach upon the legitime. In cases in which their collation is required, the money which the child would have spent if it had lived in the house and company of its parents shall be deducted therefrom.

1. See Art. 143, and notes under Art. 1037, Civil Code.

ART. 1043. Any sums paid by a parent to obtain the release of his children from the military service, discharge their debts, obtain for them a title of honor, or other similar expenses, shall be collated.

1. See notes under Art. 1037, Civil Code.

ART. 1044. Wedding presents, consisting of jewels, clothing, and outfit, shall not be reduced as inofficious except in so far as they exceed by one tenth or more the sum which is disposable by will.

1. See notes under Art. 1037, Civil Code.

ART. 1045. The same things bestowed as a gift or given in dowry need not be brought into collation and partition,

but only their value at the time of the gift or dowry, even though they should not then have been appraised.

Their subsequent increase or decrease in value and even their total loss or destruction, whether casual or intentional, shall be for the account and risk or for the benefit of the donee.

1. See notes under Art. 1037, Civil Code.

ART. 1046. A dowry or gift made by both spouses shall be collated in equal parts in the inheritance of each one of them. That made by one alone shall be brought into collation in his or her inheritance.

1. See notes under Arts. 1037, 1345, Civil Code.

ART. 1047. The donee's share of the estate shall be decreased by an amount equal to that already received by him; the co-heirs shall receive an equivalent as nearly as may be possible in property of the same nature, kind and quality.

1. See notes under Art. 1037, Civil Code.

ART. 1048. Should it be impossible to carry out the provisions of the next preceding article, if the property donated consisted of real estate the co-heirs shall be entitled to receive its equivalent in cash or in securities, at the rate of quotation; and should there be neither cash nor marketable securities in the estate, so much of the other property as may be necessary shall be sold at public auction.

If the property donated was personalty, the co-heirs shall only be entitled to take an equal amount of other personal property of the inheritance at its just valuation.

1. See notes under Art. 1037, Civil Code.

ART. 1049. The fruits of and interest produced by property subject to collation shall not belong to the estate except from the day on which the succession is opened.

For the purpose of determining the amount thereof, the fruits and interest produced by property of the estate of the same kind as that subject to collation shall be made the basis of the calculation.

1. See notes under Art. 1037, Civil Code.

ART. 1050. If any question should arise among the co-heirs with respect to the obligation to collate or with respect to the things which are subject to collation, the distribution of the estate shall not be suspended on this account if proper security is given.

1. Repealed. See Sec. 753, Code of Civil Procedure (Willard).

SECTION II. *Partition.*

ART. 1051. No co-heir shall be obliged to allow the estate to remain undivided unless the testator should have expressly forbidden its partition.

Even though forbidden by the testator, a partition may always be had upon any of the grounds upon which partnerships may be dissolved.

1. See Arts. 400, 818 et seq., 832, 835 et seq., 887 et seq., 1033, 1035 et seq., 1366 et seq., 1418 et seq., 1618 et seq., 1700, 1708, and 1965, Civil Code.
2. Arts. 1051 and 1052, repealed. See Secs. 753, 754, 762, Code of Civil Procedure (Willard).
3. A legatee of an undivided portion of an estate may compel partition, but he must include as parties defendant all persons who may be interested in the estate. Del Rosario v. Del Rosario, 2 Phil. 321.
4. The provisions of the last paragraph of Section 114 of the Code of Civil Procedure are not applicable to partition suits. Toribio v. Toribio, 5 Phil. 520.
5. The transfer of an undivided portion to a third person does not preclude the bringing of a partition suit, the transferee being considered subrogated to the rights of the original co-participant. Dancel v. Dancel, 29 Phil. 25.
6. Partition of future inheritance; see Tinsay v. Yusay, 47 Phil. 639, cited under Art. 1271.

7. Under Section 596 of the Code of Civil Procedure, whenever all the heirs of an intestate are of lawful age and free from disability, and there are no debts due from the estate, or such debts have been paid, the heirs may, by agreement in writing, partition the estate among themselves without judicial proceedings. *In re* Estate of Orozco, 50 Phil. 149.
8. Partition of small estates by summary procedure; see Acts 190, 2331 and 3370.

ART. 1052. A co-heir qualified to manage and dispose of his property may, at any time, request the partition of the estate.

The lawful representatives of incapacitated persons and absentees may request the partition in their name.

1. See Arts. 155, 182 et seq., 200, 262, 317, 320, 660, 965, 1051, 1082 et seq., and notes under Art. 1051, Civil Code.
2. See Albano v. Agtarap, 22 Phil. 345.
3. See Briz v. Briz, 43 Phil. 763.

ART. 1053. The wife cannot ask for the partition of property without the authority of the husband, or, when the husband cannot give it, of the judge. Should the husband request it in the name of his wife, he must do so with her consent.

The co-heirs of the wife cannot require a partition without the institution of proceedings against her and her husband jointly.

1. See Arts. 61 and 995, Civil Code.
2. In force. See Sec. 115, Code of Civil Procedure (Willard).

ART. 1054. Conditional heirs cannot require a partition until the condition has been fulfilled; but the other co-heirs may require it by properly securing the rights which the conditional heir may have in case the condition is fulfilled; and until it is known that it has failed or can never be fulfilled, the partition shall be deemed provisional.

1. See Arts. 796 and 801, Civil Code.
2. A legatee who has not complied with the condition attached to the legacy is not a party in interest within the meaning of Sec. 754, Code of Civil Procedure (Willard).

ART. 1055. If, before the partition is made, one of the co-heirs should die, leaving two or more heirs, a petition for partition by one of them shall be sufficient; but all those who intervene as heirs of an heir shall appear under a single representation.

1. Repealed by Sec. 754, Code of Civil Procedure (Willard).

ART. 1056. If the testator should make a partition of his property by an act *inter vivos,* or by will, such partition shall stand in so far as it does not prejudice the legitime of the forced heirs.

A father who, in the interest of his family, desires to keep any agricultural, industrial, or manufacturing enterprise undivided may make use of the privilege granted him by this article by providing that the legitimes of the other children shall be paid in cash.

1. See Arts. 831, 1057, 1271, par. 2, Civil Code.
2. *Quære,* whether this article can be applied to a partition before death by a parent who subsequently dies intestate. The transfer in this case held to show an invalid oral donation of real estate, and not a partition *inter vivos.* Perizuelo v. Benedicto, 9 Phil. 621.
3. A partition made during the lifetime of the deceased was held valid. Montañano v. Sousa, 14 Phil. 676.

ART. 1057. The testator may, by an act *inter vivos* or *causa mortis,* intrust the mere power of making the partition after his death to any person who is not one of the co-heirs.

The provisions of this and of the next preceding article shall be observed even should there be a minor or a person subject to guardianship among the co-heirs; but the person appointed to make the partition must, in such case, make an inventory of the property of the estate, after citing the co-heirs, the creditors, and the legatees.

1. See Arts. 207, 269, 901, 908, 1052, 1064, and notes under Art. 1056, Civil Code.
2. See Del Rosario v. Del Rosario, 2 Phil. 321.

ART. 1058. Should the testator not have partitioned the estate, or intrusted this power to another, if the heirs should be of age and should be qualified to manage their affairs, they may distribute the estate in any manner they may see fit.

1. See Arts. 12, 1051, and notes under Art. 1052, Civil Code.
2. See also Acts Nos. 290, 448, 599, 871 and 1041, and Secs. 1667–1672, Administrative Code of 1917.
3. When there are no debts and the heirs are of age, they may validly enter into a contract of partition. Mendiola v. Mendiola, 7 Phil. 71.
4. See also Del Rosario v. Del Rosario, 2 Phil. 330; Mandamba v. Magno, 10 Phil. 86.

ART. 1059. If the heirs of age should not agree as to the manner of making the partition, they shall be free to enforce their rights in the manner prescribed by the Law of Civil Procedure.

[155, 838, 840, par. 2]

1. See notes under Arts. 1052 and 1058, Civil Code.

ART. 1060. If the minors should be subject to parental authority, and are represented in the partition by the father, or, in his default, by the mother, neither the intervention nor approval of the judge shall be required.

1. See Arts. 165 and 269, and notes under Art. 1058, Civil Code.
2. There was a verbal contract of partition between the heirs, who entered into possession of their respective shares. Held, that the partition could not be set aside. Madamba v. Magno, 10 Phil. 86.
3. Article cited and applied. Salunga v. Evangelista, 20 Phil. 273.

ART. 1061. The partition of the estate shall be made as equally as possible by dividing the property into lots, or by allotting to each of the co-heirs things of the same nature, quality and kind.

1. See Art. 812, Civil Code, and Sec. 753, Code of Civil Procedure.

ART. 1062. If a thing should be indivisible, or would be greatly impaired by being divided, it may be allotted to one of the heirs upon condition that he pay the others the difference in cash.

Nevertheless, if any one of the heirs should demand that the thing be sold at auction and that outsiders be permitted to bid, this must be done.

[820, 1045, 1051] C. C. P. 753, 762.

ART. 1063. Upon making the partition the co-heirs shall reciprocally compensate each other for the income and fruits which any of them may have received from the property of the estate, for any useful and necessary expenditures made for the benefit of such property, or for any damage caused thereto by malice or negligence.

1. See Arts. 453 et seq., 1049, 1061 et seq., Civil Code.
2. This article may find application now only in cases in which the heirs are allowed by the executor to take possession of the property during the pendency of the administration (Willard).
3. In a proceeding for partition, a co-heir may demand that he be given his proportionate share of the revenue of the property, received theretofore exclusively by the heirs in possession. Irlanda v. Pitargue, 22 Phil. 383.

ART. 1064. All costs of the partition incurred for the common benefit of all the co-heirs shall be deducted from the estate; those incurred for the particular benefit of one of them shall be defrayed by the one so benefited.

[1171, par. 3, 1718] C. C. P. 753, 762, 763.

ART. 1065. The title deeds of acquisition or ownership shall be delivered to the co-heir or bidder to whom the property or properties to which they relate may have been allotted or sold.

ART. 1066. When the same title deed includes several properties allotted to different co-heirs, or one property only which may have been divided among two or more, the title shall remain in the possession of the person having the largest interest in the property or properties, and authen-

ticated copies thereof shall be furnished the others at the expense of the estate. Should the interest be equal, the title shall be delivered to the male heir, and should there be more than one, to the eldest.

Should the title be an original one, the person in whose possession it remains shall, furthermore be obliged to exhibit it to the other persons interested whenever they may request it.

ART. 1067. If either of the heirs should sell his hereditary rights to a stranger before the partition, any or all of his co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the purchase price, provided it be done within the period of one month, to be counted from the time they were informed thereof.

1. See Art. 1522, Civil Code.
2. See Broce v. De la Viña, 20 Phil. 423.
3. A third person purchasing the interest of an heir in an undistributed estate may be required to reconvey to another heir exercising the right conferred by this article, upon tender and payment of the price at which the sale was made to such third person. He cannot demand more, even though he may have contracted the sale of the interest at an advance to another person. Hernaez v. Hernaez, 32 Phil. 214.
4. A sale of his share made by a co-heir before adjudication, held valid, citing Sec. 762, Code of Civil Procedure. Beltran v. Doriano, 32 Phil. 66.
5. Whether rules as to limitation of actions established by the Code of Civil Procedure have affected the period fixed by this article, *quære*. See Willard's Notes.
6. Article cited and applied. Wenceslao v. Calimon, 46 Phil. 906.

SECTION III. *Effects of Partition.*

ART. 1068. A partition legally made confers upon each heir the exclusive ownership of the property which may have been allotted to him.

1. See Art. 1051, Civil Code; Art. 18, Mortgage Law.
2. After payment of debts and distribution of the estate, the heirs become the absolute owners of their respective shares. Chingen v. Arguelles, 7 Phil. 296; Aliasas v. Alcantara, 16 Phil. 489.

3. And even though the estate is adjudicated *pro indiviso,* if it is subsequently partitioned, each heir is considered to have been in the exclusive possession of his portion from the time of the original adjudication. Beltran v. Doriano, 32 Phil. 66.
4. See Rodriguez v. Ravilan, 17 Phil. 63.

ART. 1069. After the partition has been made the co-heirs shall be reciprocally bound as warrantors against eviction from the property so allotted.

1. See Art. 1475, Civil Code.
2. Arts. 1069 to 1072 are still in force, except the second paragraph of Art. 1072 (Willard). See 20 R. C. L. 782.

ART. 1070. The obligation referred to in the next preceding article shall cease in the following cases only:

1. When the testator himself has made the partition, unless it appears, or may be reasonably inferred, that his intention was otherwise, provided that the legitime be left intact;

2. When it has been so expressly stipulated on making the partition;

3. When the eviction originates from a cause subsequent to the partition or has been caused by the fault of the person to whom the property was allotted.

1. See Arts. 675, 1056, 1058, 1069, 1084, and notes under Art. 1069, Civil Code.

ART. 1071. The reciprocal obligation of the co-heirs to warrant against eviction is proportionate to their respective hereditary shares; but if any one of them should be insolvent, the other co-heirs shall be liable for his part in the same proportion, after deducting the part corresponding to the one to be indemnified.

Those who pay for the insolvent heir shall be entitled to recover from him should his circumstances improve.

1. See notes under Art. 1069, Civil Code.

ART. 1072. If a credit should be allotted as recoverable,

the co-heirs shall not be liable for the subsequent insolvency of the debtor of the estate, but only for his insolvency at the time the partition is made.

No one shall be liable for credits classed as unrecoverable; but should they be recovered, in whole or in part, the amount collected shall be distributed proportionately among the heirs.

1. See notes under Art. 1069, Civil Code.

SECTION IV. *Rescission of the Partition.*

ART. 1073. Partitions may be rescinded for the same causes as obligations.

1. See Arts. 1290 to 1299, Civil Code; Arts. 36 to 39, Mortgage Law.
2. See Tinsay v. Yusay, 47 Phil. 639.

ART. 1074. They may also be rescinded on account of lesion exceeding the fourth part, taking into consideration the value of the things at the time they were awarded.

1. See Arts. 1291 and 1293, and notes under Art. 1073, Civil Code; Art. 344, Code of Commerce.
2. Distinction between an action to rescind and an action to annul a contract of partition. An action to annul can only be brought in accordance with Art. 1081, Civil Code. Salunga v. Evangelista, 20 Phil. 273.

ART. 1075. The partition made by the testator cannot be contested on the ground of lesion except in cases in which the legitime of the forced heirs is affected thereby, or when it may appear or may reasonably be inferred that the will of the testator was otherwise.

Lesion.—Defined by Bouvier to be a term used in the Civil Law to signify the injury suffered, in consequence of inequality of situation, by one who does not receive a full equivalent for what he gives in a commutative contract.

1. See Art. 1056, and notes under Art. 1073, Civil Code.

ART. 1076. The action for rescission on account of lesion

shall prescribe after four years, counted from the time the partition was made.

1. See notes under Arts. 1073 and 1074, Civil Code.
2. Article cited. Garcia v. Tolentino, 25 Phil. 102.

ART. 1077. The defendant heir shall have the option of making good the damage or consenting to a new partition.

The indemnity may be made by paying cash or by delivering the thing in which the lesion occurred.

If a new partition is made it shall not affect those who have not received more or less than their proper share.

1. See notes under Arts. 1073 and 1074, Civil Code.
2. Article cited. Salunga v. Evangelista, 20 Phil. 273.

ART. 1078. An heir who has alienated the whole or a considerable part of the real property allotted to him cannot maintain an action for rescission on the ground of lesion.

1. See notes under Art. 1073, Civil Code.
2. The plaintiff having sold his hereditary portion, he cannot bring an action to rescind the contract of partition. Chingen v. Arguelles, 7 Phil. 296.
3. See note No. 2 under Art. 1074, Civil Code.

ART. 1079. The fact that some of the property of the estate was not included in the partition shall not be ground for the rescission thereof; but the partition shall be completed by the distribution of the property omitted.

1. See Arts. 1074, 1024, 1027, and notes under Art. 1073, Civil Code.
2. Article cited. Salunga v. Evangelista, 20 Phil. 273.

ART. 1080. A partition made with preterition of any of the heirs shall not be rescinded unless it be proven that there was bad faith or deceit on the part of the other persons interested; but the latter shall be obliged to pay to the person or persons pretermitted the proportionate share belonging to him or them.

1. See Dariano v. Fernandez Fidalgo, 14 Phil. 62; In re Estate of Reyes, 17 Phil. 188.
2. An adjudication, by judicial proceedings, of the property of a deceased person to those asserting rights of heirship may be set aside upon proof that the decree was obtained by fraud to the prejudice of other persons entitled to participate in the estate. Gemora et al. v. Yap Tico & Co., XXVII Off. Gaz. 3665.

ART. 1081. A partition made with the inclusion of a person believed to be an heir, but who is not, shall be void.

1. See notes under Arts. 1078 and 1080, Civil Code.
2. In force as to partitions made in accordance with Sec. 596, Code of Civil Procedure, but not in force as to partitions made by the courts (Willard).
3. A partition consented to by a forced heir entitled to the whole of the estate left by the deceased can later be set aside, upon proof of facts showing that the other parties to the partition agreement were not entitled to inherit. De Torres v. De Torres, 28 Phil. 49.
4. A voluntary partition made by including as heirs natural children, and awarding them more than their lawful portion, is not void. Centeno v. Centeno, XXVII Off. Gaz. 3136.

SECTION V. *Payment of Hereditary Debts.*

ART. 1082. Recognized creditors may oppose the partition of the inheritance until they are paid or the amount of their claims is secured.

1. See notes under Arts. 1023, 1026 and 1137, Civil Code.
2. Arts. 1082 to 1087, repealed. See Secs. 686 et seq., 727 to 749, Code of Civil Procedure (Willard).
3. Heirs and devisees take subject to the prior right of creditors whose claims have been allowed in the manner prescribed by the Code of Civil Procedure; and the obligation is not affected by the registration in their names, under cadastral proceedings, while the estate is in the process of administration, of land inherited or devised. Mantinola v. Villanueva, 49 Phil. 528.

ART. 1083. Creditors of one or more of the co-heirs may take part, at their own expense, in the partition, in order to

prevent its being made in fraud of or to the prejudice of their rights.

1. See notes under Art. 1083, Civil Code; Art. 6, Mortgage Law.

ART. 1084. After the partition has been made the creditors may demand the payment in full of their claims of any one of the heirs who has not accepted the inheritance under the benefit of inventory, or up to the amount of his hereditary share in case he has accepted it under such benefit.

In either case the defendant shall be entitled to have his co-heirs notified and summoned, unless, by disposition of the testator, or under the terms of the partition, he alone should be bound to pay the debt.

C. C. P. 686 et seq.

1. See Arts. 807, 1003, 1023, 1029 et seq., 1069 et seq., 1085, 1087, 1137, 1144, and notes under Arts. 1082 and 1137, Civil Code.
2. See Agoncillo v. Javier, 38 Phil. 424.

ART. 1085. Any co-heir who shall have paid more than his share of the debts of the estate may recover from the others their proportionate share.

The same rule shall apply if, by reason of the debt being secured by mortgage, or consisting in the obligation of delivering some particular thing, he should have paid it in full. The person to whom it has been allotted may, in such case, demand of his co-heirs their proportional part only, even though the creditor should have transferred to him his right of action and subrogated him in his place.

C. C. P. 686 et seq.

1. See Art. 1141, and notes under Arts. 1082 and 1137, Civil Code.
2. Heirs who have paid the debts of the estate may recover from their co-heirs in the proportions corresponding to the latter. Fabie v. Yulo, 24 Phil. 240.

ART. 1086. Should any of the real property of the inheritance be burdened with a perpetual charge it shall not be

extinguished, even when redeemable, unless a majority of the co-heirs agree thereto.

Should there be no agreement or should the charge not be redeemable, its value or principal shall be deducted from that of the property subject to the charge, and the latter shall pass with the charge to the person to whom it may have been allotted.

1. See notes under Art. 1082, Civil Code.

ART. 1087. Any co-heir who is at the same time a creditor of the deceased may demand of the others the payment of his credit, deducting his proportional part as such heir, and without prejudice to the provisions of Section fifth, Chapter fifth, of this title.

C. C. P. 686 et seq.

1. See Art. 1195 and notes under Arts. 1082 and 1137, Civil Code; Secs. 1667 to 1672, Administrative Code of 1917.

BOOK FOURTH.

OBLIGATIONS AND CONTRACTS.

TITLE I.

OBLIGATIONS.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1088. Every obligation consists in giving, doing, or not doing a certain thing.

1. See Perez v. Pomar, 2 Phil. 686; Pelayo v. Lauron, 12 Phil. 456.

ART. 1089. Obligations are created by law, by contract, by quasi-contract, and by unlawful acts or omissions or by those in which any kind of fault or negligence occurs.

[1114, 1104, 1902]

1. See Navales v. Rias, 8 Phil. 511; Taylor v. Manila E. R. etc. Co., 16 Phil. 8; Lueng Ben v. O'Brien, 38 Phil. 193; Perez v. Pomar, 2 Phil. 686; Pelayo v. Lauron, 12 Phil. 456; Santos v. Manasang, 27 Phil. 222.

ART. 1090. Obligations emanating from law are not to be presumed. Only those expressly determined in this code, or in special laws, shall be enforceable, and they shall be governed by the provisions of the law by which they are created and by those of this book with respect to matters not provided for by such law.

1. See notes under Art. 1089, Civil Code.
2. See Martinez v. Martinez, 1 Phil. 649; Pelayo v. Lauron, 12 Phil. 456; Hanlon v. Haussermann, 41 Phil. 279; Lueng Ben v. O'Brien, 38 Phil. 193.

ART. 1091. Obligations arising from contract shall have the force of law between the contracting parties and must be performed in accordance with their stipulations.

1. See Arts. 1154, 1254, 1255, 1278, 1279, 1281 and 1289, and notes under Arts. 1089, 1090 and 1128, Civil Code.
2. See Co-tiangco v. To Jamco, 3 Phil. 212; Salonga v. Concepcion, 3 Phil. 565.
3. A contract of loan provided that if the amount of the loan was not paid, the same was to be considered the price of a certain piece of land, the title to which was to become vested in the lender *ipso facto*. Held, that the contract was the law between the parties, that the condition was valid, and that it was not a case of *pactum commissorium*. Alcantara v. Alinea, 8 Phil. 111.
4. Contracts in restraint of trade discussed. Ferrazzini v. Gsell, 34 Phil. 697; Ollendorf v. Abrahamson, 38 Phil. 590.
5. A contract of lease provided for a period of one year, "which term shall be extendible." Held, that the stipulation must be given effect, and the extension was presumed to be for another year. Koh v. Ongsiaco, 38 Phil. 190.
6. The general rule laid down in this Article is subject to the exception established by Sec. 29 of Act No. 190 regarding attorney's fees, which may be reduced by the courts if found to be unreasonable or unconscionable. Bachrach v. Golingco, 39 Phil. 143.
7. See also Palma v. Cañizares, 1 Phil. 602; Eleizegui v. Manila L. T. Club, 2 Phil. 309; Gonzales v. Crisanto, 2 Phil. 404; Compañia Agricola v. Reyes, 4 Phil. 2; Borromeo v. Franco, 5 Phil. 49; Compañia General v. Obed, 13 Phil. 391; Ynchausti & Co. v. Yulo, 34 Phil. 978; Ottofy v. Dunn, 38 Phil. 438.
8. The writ of mandamus is not available to compel performance of a private contract. Quiogue v. Romualdez, 46 Phil. 337.
9. See Zialcita v. Arias, 45 Phil. 162.

ART. 1092. Civil obligations arising from crimes or misdemeanors shall be governed by the provisions of the Penal Code.

1. See Arts. 17 et seq., and 119 to 126, Penal Code; and Sec. 107, G. O. No. 58.

2. The civil liability arising from an act constituting criminal negligence may be enforced by civil action by the person damaged thereby. Rakes v. Atlantic G. & P. Co., 7 Phil. 359.
3. After judgment of acquittal in a criminal action, no civil liability upon the same facts can be enforced against the accused. If a civil action has already been brought at the time the criminal action is started, the civil action will be suspended to await the result of the criminal action. Almeida v. Abaroa, 8 Phil. 178.
4. See also U. S. v. Lim, 36 Phil. 698.
5. Article cited and applied. Francisco v. Onrubia, 46 Phil. 327.
6. Acquittal in a criminal prosecution for misappropriation of funds bars a subsequent civil action except where the criminal proceeding is dismissed on the motion of the fiscal before the accused is arraigned. Wise & Co. v. Larion, 45 Phil. 314.

ART. 1093. Those arising from wrongful or negligent acts or omissions not punishable by law shall be subject to the provisions of Chapter second of Title sixteen of this book.

1. See Art. 1104, and notes under Art. 1902, Civil Code.
2. *Culpa aquiliana* and *culpa contractual* distinguished. The obligation of a railroad company to transport its passengers being contractual, the fact that the injury sustained by a passenger was due to the negligence of one of the company's servants, does not constitute a defense. It is not negligence *per se* to alight from a moving train. Cangco v. Manila R. R. Co. 38 Phil. 772.

CHAPTER II.

NATURE AND EFFECTS OF OBLIGATIONS.

ART. 1094. Any person obliged to give something is also bound to preserve it with the diligence of a good father of a family.

1. See Art. 1105, Civil Code.

2. The common law of trusts does not apply in this jurisdiction. P. entrusted to the care of J. a certain amount of money. J. opened a current account with a bank, and mingled the money deposited with him by P. with his personal funds, which were subsequently seized by the United States Army as insurgent funds. Held, that J. was exempt from the obligation to return the money deposited by P. Bishop of Jaro v. De la Peña, 26 Phil. 144.

ART. 1095. The creditor is entitled to the fruits of the thing from the time the obligation to deliver it arises. Nevertheless, no real right therein shall pass to him until the thing has been delivered to him.*

1. See Arts. 609, 657, 661, and 1100, Civil Code.
2. See Fidelity etc. Co. v. Wilson, 8 Phil. 56; Cruzado v. Bustos, 34 Phil. 28.

ART. 1096. Should the thing to be delivered be a determinate one the creditor, independently of the right granted him by Article 1101, may compel the debtor to make the delivery.

Should the thing be indeterminate or generic, he may demand that the obligation be performed at the expense of the debtor.

Should the debtor be in default, or should he have engaged himself to deliver the same thing to two or more different persons, it shall be at his risk, even in case of inevitable accident, until the delivery is made.

C. C. P. 1100.

1. See Arts. 1167 and 1452, Civil Code.
2. See Gonzales v. Blas, 3 Phil. 750; Roman v. Grimalt, 6 Phil. 96; Yu Tek & Co. v. Gonzales, 29 Phil. 384.
3. The vendor of a parcel of land is entitled to a decree for specific performance against the vendee. Gutierrez Repide v. Afzelius, 39 Phil. 190.

ART. 1097. The obligation to give a determinate thing

* Note: The words "creditor" and "debtor" are used in this translation in the Civil Law sense of "obligor" and "obligee."

includes that of delivering all of its accessories, even though they may not have been mentioned.

1. See Arts. 346, 347, 376, and 377, Civil Code.
2. A contract for the sale of an hacienda did not specify whether the improvements, consisting of railway tracks, machinery, etc., were included or not. Held, reversing P. I. Supreme Court decision, that oral evidence was competent to show that such improvements were not included in the contract. Government of P. I. v. Phil. Sugar Estates Co., 30 Phil. 27; reversed on appeal to the Supreme Court of the United States, 247 U. S. 385, 62 L. ed. 1177.

ART. 1098. If the person obliged to do something should fail to do it, it shall be ordered done at his expense.

The same rule shall apply should he do it in a manner contrary to the terms of the obligation. It may also be decreed that that which has been done badly be undone.

1. See Arts. 1150 and 1161, Civil Code.
2. See Gutierez Repide v. Afzelius, 39 Phil. 190.

ART. 1099. The provisions of the second paragraph of the next preceding article shall also be applicable when the obligation consists in not doing something, if the debtor should do that which is forbidden him.

ART. 1100. Persons obliged to deliver or to do something are in default from the time the creditor demands of them judicially or extrajudicially the fulfillment of their obligation.

Nevertheless, the demand of the creditor shall not be necessary in order that default may arise—

1. When the obligation or the law expressly so provides;

2. When by reason of the nature and circumstances of the obligation it shall appear that the designation of the time at which the thing was to be delivered or the service rendered was the determining motive for the creation of the obligation.

In reciprocal obligations neither of the obligors shall be in default if the other does not fulfill or does not submit to

the fulfillment of that which is incumbent upon him. From the time one of the obligees performs his obligation the default begins for the other.

1. See Arts. 1108 and 1501, Civil Code; Arts. 63, 316, 341, Code of Commerce.
2. See Compañia Gral. v. Araza, 7 Phil. 455; Lopez v. Tan Tioco, 8 Phil. 693; Gutierrez Hnos. v. Fuentebella, 13 Phil. 78; Veloso v. Fontanosa, 13 Phil. 86; Doronilla v. Gonzaga, 14 Phil. 42; Jose v. Damian, 14 Phil. 104, Martinez v. Ong Pong Co., 14 Phil. 726; De la Peña v. Hidalgo, 16 Phil. 450; Salvador v. Palencia, 25 Phil. 661; Sun Life v. Rueda Hermanos, 37 Phil. 844.
3. *Mora* (default) in reciprocal obligations discussed. Martinez v. Cavives, 25 Phil. 581; Gutierrez Hermanos v. Oria Hnos. 30 Phil. 491; Causing v. Bencer, 37 Phil. 417; Hanlon v. Haussermann, 40 Phil. 796.
4. In cases of redemption under Sec. 465 of the Code of Civil Procedure, no interest whatever will be allowed from the date when tender was made and refused. Fabros v. Villa, 18 Phil. 336.
5. Time element as principal inducement of contract; see De la Rosa v. Bank of P. I., 51 Phil. 926.

ART. 1101. Any person who is guilty of fraud, negligence, or delay in the fulfillment of his obligations, or who in any manner whatsoever shall fail to comply with the terms thereof, shall be liable for any damage caused thereby.

1. See Arts. 1108, 1214, 1269, 1902, and notes under Art. 1100, Civil Code.
2. See Reyes v. Compañia Maritima, 3 Phil. 519; Heredia v. Salinas, 10 Phil. 157; De la Cruz v. Seminario, 18 Phil. 330; Moncada v. Cajuigan, 21 Phil. 184; Razlag v. Balantacbo, 22 Phil. 205; Algarra v. Sandejas, 27 Phil. 284; Yap Kim Chuan v. Tiaoqui, 31 Phil. 433; Lemoine v. Alkan, 33 Phil. 162; Enriquez v. Diaz, 37 Phil. 982.
3. Art. 1101 does not apply when the obligation consists in the payment of money. Quiros v. Tan-Guinlay, 5 Phil. 675.
4. The liabilities of masters to their servants, and of carriers to passengers, are governed by Arts. 1101 et seq., and not by Arts. 1902 et seq., Civil Code. Rakes v. Atl. G. & P. Co., 7 Phil. 359; Cangco v. Manila R. R. Co., 38 Phil. 772.

5. Defendant contracted to transport and deliver a boiler. It was injured in transit through the negligence of defendant's servant. The obligation to deliver safely being contractual, defendant cannot avoid liability by showing care in selection of the servant. Manila R. R. Co. v. Compañia Transatlantica, 38 Phil. 875.
6. Liability arising from contractual obligations is governed by Articles 1101–1107 and not by Article 1903. Lasam v. Smith, 45 Phil. 657.
7. Where discretionary power is given to the obligor, he cannot be held liable for honest mistakes or errors of judgment. O'Leary v. Macondray & Co., 45 Phil. 812.
8. The lessor is liable to the lessee for damages caused to the latter by the former's breach of contract, but he is not directly liable to the sublessee. Maluenda & Co. v. Enriquez, 46 Phil. 916.
9. The Civil Law does not recognize nominal damages and no recovery can be had except upon satisfactory proof of actual pecuniary loss. Bian Hin & Co. v. Tam Bomping, 48 Phil. 523.
10. An alcohol distiller bought from a sugar mill company a quantity of molasses which the buyer undertook to receive and remove at stated periods during the milling season. The contract provided that if the buyer failed to take delivery of the molasses, after demand, the seller might destroy it and hold buyer liable for the agreed price. *Held,* that to make the buyer liable for molasses destroyed, the seller must prove that notice of the demand for acceptance of delivery was actually received by the buyer. Pampanga Sugar Mills v. Chong Tiaopoc, 49 Phil. 1003.

ART. 1102. Liability arising from fraud is demandable with respect to all obligations. The renunciation of the action to enforce it is void.

1. See notes under Art. 1101, Civil Code.

ART. 1103. Liability arising from negligence in the fulfillment of all kinds of obligations is also demandable; but it may be mitigated by the court according to the circumstances of the case.

1. See Arts. 1101, 1902, and notes under Art. 1102, Civil Code.

2. Contributory negligence of plaintiff in suit for damages explained,—when it exempts the defendant and when it does not. Rakes v. Atlantic, G. & P. Co. 7 Phil. 359.
3. Effect of negligence in the fulfillment of contractual obligations. Cangco v. Manila Railroad Co., 38 Phil. 772; Manila Railroad Co. v. Cia Transatlántica, 38 Phil. 875.
4. Injuries suffered because of negligence of motorman in driving one of the cars of the defendant company, in which plaintiff was a passenger at the time of the accident. Considering that the defendant company had used due diligence in the selection of and in giving instructions to the motorman and was therefore a debtor in good faith, the Supreme Court decreased the amount of the damages allowed plaintiff. Certain remote consequential damages claimed were disallowed. De Guia v. Manila E. R. R. & L. Co., 40 Phil. 706.
5. Courts have discretionary power to moderate the liability according to the circumstances. De Guia v. Manila Electric, 40 Phil. 657; Lasam v. Smith, 45 Phil. 657.
6. A common carrier, for reasons of public policy, is precluded from relieving itself, by contract, of liability for loss or damage caused by its own negligence, or that of its employees, to merchandise delivered to it for transportation. Ysmael & Co. Inc. v. Barretto & Co. Ltd. et al., XXVI Off. Gaz. 745.

ART. 1104. The fault or negligence of the debtor consists in the omission of such diligence as may be required by the character of the obligation, and in view of the circumstances with respect to persons, time, and place.

Should the obligation not determine the degree of diligence to be observed in its fulfillment, that which would be proper on the part of a good father of a family shall be required.

1. See Art. 1902, and notes under Arts. 1102 and 1103. Civil Code.
2. See Baer Senior & Co. v. Cia. Maritima, 6 Phil. 215; Guzman v. Behn, Meyer & Co., 9 Phil. 112.

ART. 1105. No one shall be liable for events which could not be foreseen or which, even if foreseen, were inevitable,

with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes such liability.

1. See Art. 1902, and notes under Arts. 1554 and 1563, Civil Code; and Art. 361, Code of Commerce.
2. As a general rule, force majeure or fortuitous cause is a complete defense, unless there is an express covenant to the contrary or the obligor's negligence is a concurrent cause of the damage complained of, or the law expressly provides the contrary:
   a. General Rule. Crame Sy Panco v. Gonzaga, 10 Phil. 646; Tan Chiong Sian v. Inchausti, 22 Phil. 153; Bishop of Jaro v. De la Peña, 26 Phil. 144; Cerezo v. Atl. G. & P. Co., 33 Phil. 425; Carlos v. Manila E. R. & L. Co., 34 Phil. 55.
   b. Exceptions:
      (1) Express stipulation to the contrary. Government v. Ponzalan, 7 Phil. 546; Government v. Amechazurra, 10 Phil. 637; Government v. Bingham, 13 Phil. 558; Yap Kim Chuan v. Tiaoqui, 31 Phil. 433.
      (2) Concurrent negligence of obligor. Tan Chiong Sian v. Inchausti, 22 Phil. 153 (dissenting opinion of Justice Moreland); Limpangco Sons v. Yangco S. S. Co., 34 Phil. 597.
      (3) But an express stipulation in a contract of lease, that the lessee was under obligation to keep the building in repair, does not oblige the lessee to reconstruct the building after being destroyed by fire of unknown origin. Lizares v. Hernaez, 40 Phil. 981.
3. The expression "events which cannot be foreseen and which having been foreseen are inevitable" is synonymous with the term "fortuitous event." Lasam v. Smith, 45 Phil. 657.
4. See Millan v. Rio, 45 Phil. 718.

ART. 1106. The payment of losses and damages shall include not only the amount of the loss which may have been suffered, but also that of the profit which the creditor may have failed to realize, subject to the provisions contained in the following articles.

1. Rule regarding indemnity for profits or income which a party has failed to earn because of the unlawful act of another. Yunti v. Dy-Yco, 6 Phil. 352; Rodriguez v. Findlay & Co., 14 Phil. 294; Algarra v. Sandejas, 27 Phil. 284; Serrano v. Tan Chuco, 38 Phil. 392.
2. No damages are recoverable for pain caused by personal injury. Marcelo v. Velasco, 11 Phil. 287.
3. In a suit against an employer for breach of a contract of employment, the burden of proof, in mitigation of damages, that plaintiff failed to take advantage of opportunity to obtain other employment, rests upon the employer. Hicks v. Manila Hotel Co., 28 Phil. 325.
4. The article cited and applied. Borromeo v. Manila Electric, 44 Phil. 165; Maluenda & Co. v. Enriquez, 46 Phil. 916.
5. See Rios et al. v. Jacinto et al., 49 Phil. 7, cited under Art. 1124.

ART. 1107. The losses and damages for which a debtor in good faith is liable are those foreseen, or which might have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to perform it.

In case of fraud or intentional wrong (*dolo*) the debtor shall be liable for all damages which clearly originate from the failure to fulfill the obligation.

1. See Arts. 1152, 1153, and notes under Art. 1106, Civil Code.
2. Upon proof that due care was made in the selection of a motorman and in giving him instructions, the defendant company was considered a debtor in good faith and liable only for those damages which could be foreseen or were a necessary consequence of the accident. De Guia v. Manila E. R. & L. Co., 40 Phil. 710.
3. See also Siuliong & Co. v. Nanyo Shoji Kaisha, 42 Phil. 723.
4. The proper measure of damages for failure of the seller to deliver merchandise at the time agreed upon is the difference between the contract price and the price prevailing in the market at the stipulated time and place of delivery. Siuliong & Co. v. Ylagan, 43 Phil. 393; Warner, Barnes & Co. v. Inza, 43 Phil. 505; Lim Siengco v. Lo Seng, 45 Phil. 732.

5. See Manila Engineering Co. v. Cranston, 45 Phil. 128.
6. It is the duty of the party injured by the breach of a contract to minimize the damages as much as possible. De Castelvi v. Cia Gral. de Tabacos, 49 Phil. 998.
7. A person injured by the breach of a contract cannot recover damages for any loss which he might have avoided with ordinary care and at reasonable expense. Puente Bella v. Negros Coal Co. 50 Phil. 70.
8. There can be no recovery of damages from the Land Registration Assurance Fund if the claimant, through negligence, has failed to take due precautions to avoid the loss for which damages are sought. De Ocampo v. Insular Treasurer et al. 50 Phil. 140.

ART. 1108. Should the obligation consist in the payment of a sum of money, if the debtor should become in default, the indemnity for losses and damages, in the absence of a stipulation to the contrary, shall consist in the payment of the interest agreed upon, or, should there be no agreement, in the payment of interest at the legal rate.

Until another rate is fixed by the Government, the legal rate of interest shall be six per cent per annum.

1. See Arts. 526 and 530, Code of Commerce; Act No. 2655; Sec. 650, Adm. Code of 1917.
2. In the absence of an agreement to the contrary, interest does not accrue upon civil obligations (not commercial) until the debtor has been put in default by demand for performance. Gonzales v. Blas, 3 Phil. 749; Parrado v. Je-Juayco, 4 Phil. 710; Quiros v. Tan Guinlay, 5 Phil. 675; Veloso v. Fontanosa, 13 Phil. 79; Chamber of Com. v. Pua Te Ching, 14 Phil. 222; Martinez v. Ong Pong Co., 14 Phil. 726; De la Peña v. Hidalgo, 16 Phil. 450; Luengo v. Moreno, 26 Phil. 111; Ruperto v. Kosca, 26 Phil. 227; Aldecoa & Co. v. Warner, Barnes & Co., 30 Phil. 153; Sun Life v. Rueda Hermanos, 37 Phil. 844.
3. A loan was made, bearing interest at nine per centum. Subsequently the loan was increased, without express agreement as to interest. Held, that as to the latter amount, interest was recoverable at the legal rate of only six per cent per annum. Nolan v. Majinay, 12 Phil. 559.

4. A balance due on current account is not a commercial but a civil obligation, and is as to interest subject to the rule stated in note No. 2. Gutierrez Hnos. v. Fuentebella, 13 Phil. 74.

5. If the amount recoverable is unliquidated, no interest will be due until after liquidation. Pardell v. Bartolome, 23 Phil. 450; Montilla v. Augustinian Corporation, 25 Phil. 447; Lichauco v. De Guzman, 38 Phil. 283.

6. The Government is not liable for interest on taxes unlawfully collected unless such interest is expressly authorized by law; but the tax collector is liable for interest on money wrongfully collected by him by duress of office. H. E. Heacock Co. v. Col. of Customs, 37 Phil. 970.

7. In a promissory note an amount was fixed to cover collection expenses, which evidently included attorneys' fees. Interest on this amount at the legal rate will not be allowed until after judgment in the suit brought for collection. Seton Donna v. Inouye, 40 Phil. 729.

8. Damages for delay in contracts for the payment of money are limited to the interest provided by law. Lopez v. Del Rosario, 44 Phil. 98.

9. Where there is no stipulation as to the rate of interest, the obligation of the debtor for interest as damages for the non-payment of a liquidated claim is to be computed at the legal rate after default from the time of extrajudicial or judicial demand for payment; and interest accruing prior to the date of judgment should be capitalized and consolidated with the principal as of that date, after which the interest is computed upon the judgment at the legal rate until the judgment has been satisfied. Zobel v. City of Manila, 47 Phil. 169.

10. A stipulation in a contract for the payment of money at a certain fixed date to the effect that the contract shall not bear interest must be understood as applicable only to the period which is to elapse prior to maturity. It does not have the effect of depriving the obligee of the right to recover interest as damages in case of default in the payment of the obligation at the due date. Zobel v. City of Manila, 47 Phil. 169.

11. See Po Pauco v. Sigüenza, 49 Phil. 404, cited under Art. 1124.

12. The fact that the rent reserved upon a *pacto de retro* sale of land is greater than the maximum permissible interest

upon a loan of a sum equal to the purchase price does not constitute usury. Tolentino et al. v. González, 50 Phil. 559.

13. A stipulation for monthly payments of interest, in advance, at the highest permitted rate, does not make the contract usurious. Pando v. Kette, XXVII Off. Gaz. 2374.
14. Relation of penal clause to interest; see Bachrach etc. Co. v. Espiritu, XXVII Off. Gaz. 2947, cited under Art. 1152.

ART. 1109. Accrued interest shall draw interest at the legal rate from the time suit is filed for its recovery, even if the obligation should have been silent on this point.

In commercial transactions the provisions of the Code of Commerce shall govern.

Pawn shops and savings banks shall be governed by their special regulations.

1. See Arts. 316 and 317, Code of Commerce.
2. In all civil (not commercial) obligations, no interest will be allowed on accrued interest until after suit is brought. Mendezona v. Moreno, 10 Phil. 144; Nolan v. Majinay, 12 Phil. 559; Jose v. Damian, 14 Phil. 104; Sunico v. Ramirez, 14 Phil. 500; Salvador v. Palencia, 25 Phil. 661; Gutierrez Hnos. v. Oria Hnos. 30 Phil. 491; Ynchausti & Co. v. Yulo, 34 Phil. 978; Bachrach v. Golingco, 39 Phil. 912.
3. This article is applicable only to conventional obligations containing a stipulation for interest. Zobel v. City of Manila, 47 Phil. 169.
4. The contracting parties may stipulate that the interest due upon the loan shall constitute a new principal debt from the time it becomes due, in which case, the interest upon said interest due must not be considered as earned by the original debt. Villaruel v. Alvayada, 46 Phil. 277.
5. Article applied and construed in relation to Section 5 of the Usury Law. Robinson v. Sackermann, 46 Phil. 539.
6. See Government v. Schenkel, 43 Phil. 616; China Bank v. Lichauco, 46 Phil. 460.
7. Where a stipulation governing the rate of interest is inserted in a contract for the payment of money, this rate, if lawful, remains in force until the obligation is satisfied; and the interest that accrues prior to the date of the filing of the complaint should be capitalized and consolidated as of that date with the capital, after which the whole bears interest at the contract rate until the amount due is paid. The con-

tract obligation is not merged in the judgment but remains in full force until the debt is paid. Zobel v. City of Manila, 47 Phil. 169.

8. Accrued interest draws interest at the legal rate from the time suit is brought for its recovery. Philippine Eng. Co. v. Greene, 48 Phil. 466.
9. See Yap Tico & Co. v. Lopez Vito, 49 Phil. 61.
10. Rule not applicable to contracts made prior to promulgation of the Civil Code. Magdagñal v. Lichauco, 51 Phil. 894.

ART. 1110. The receipt of the principal by the creditor without any reservation regarding interest shall extinguish the obligation of the debtor with respect thereto.

The receipt of the last installment of a debt, when the creditor has made no reservation, shall also extinguish the obligation with regard to the previous installments.

1. See Arts. 1108, 1157, 1172 et seq., 1251, 1621, Civil Code; Art. 318, Code of Commerce, Sec. 334, No. 9, Code of Civil Procedure.
2. The existence of a receipt for rent for a given month is proof *prima facie* that rent for the previous months has been paid. Perez v. Garcia, 7 Phil. 162; Rubert v. Smith, 11 Phil. 138.
3. Payment was made of the principal of a debt. No reservation was made as to the interest due at the time of payment. Held, that the interest cannot be collected. Hill v. Veloso, 31 Phil. 160.

ART. 1111. Creditors, after having exhausted the property of which the debtor may be in possession, in order to collect that which is due them, may exercise all the rights and actions of the latter for the same purpose excepting those inherent in his person; they may also contest any acts which the debtor may have performed in fraud of their rights.

M. L. 73, par. 3.

1. See Arts. 1121, 1291, 1911 and 1920, Civil Code.
2. See *In re* Estate of Ceballos, 12 Phil. 273; Uy Tam v. Leonard, 30 Phil. 489.

ART. 1112. All the rights acquired by virtue of an obli-

gation are transmissible in accordance with law, should there be no stipulation to the contrary.

1. A *vale* is a document of credit, and is demandable by any person who has become the bearer thereof in good faith. Gonzales v. Blas, 3 Phil. 750.
2. See also Azarraga v. Rodriguez, 9 Phil. 641.

CHAPTER III.

DIFFERENT KINDS OF OBLIGATIONS.

SECTION I. *Pure and Conditional Obligations.*

ART. 1113. Every obligation, the performance of which should not depend upon a future or uncertain event, or upon a past event unknown to the parties in interest, shall be immediately demandable.

Every obligation subject to a resolutory condition shall also be demandable without prejudice to the effects of the resolution.

> Resolution.—Defined by Bouvier as a term of the Civil Law indicating "the act by which a contract which existed and was good is rendered null. Resolution differs essentially from rescission. The former presupposes the contract to have been valid and it is owing to a cause posterior to the agreement that the resolution takes place; while rescission, on the contrary, supposes that some vice or defect annulled the contract from the beginning."

1. See Arts. 1090, 1091, 1117, 1118, 1123, 1124, 1278, 1569, 1915, par. 1, Civil Code; Arts. 62, 313, Code of Commerce.
2. A promissory note which states no condition or date of payment, may be demanded forthwith. Floriano v. Delgado, 11 Phil. 154.

ART. 1114. In conditional obligations, the acquisition of rights as well as the extinction or loss of those already acquired, shall depend upon the event constituting the condition.

1. See Arts. 647, par. 1, and 1125, par. 3, 1228, Civil Code.

2. The legacy in a will was made to depend upon the death of a certain person. Held, that until the condition was fulfilled, the legacy could not be demanded. Natividad v. Cabino, 36 Phil. 663.
3. In obligations subject to a suspensive condition the acquisition of the right on the part of the creditor depends upon the occurrence of the event constituting the condition. Wise & Co. v. Kelly, 37 Phil. 698.
4. See also Lichauco v. Figueras Hnos., 7 Phil. 339; Ruperto v. Kosca, 26 Phil. 232; Hanlon v. Haussermann, 40 Phil. 812.
5. See Taylor v. Uy Tieng Piao, 43 Phil. 873.
6. The requirement in a deed of gift of land that the donee shall erect a school building on the property is a condition subsequent. Its breach may be cause for revocation of the donation, but does not suspend the vesting of title in the donee. Parks v. Tarlac Province et al. 49 Phil. 142.
7. It was provided in a contract that it might be resolved at any time by either party "if approved by the Ford Company." Held, that such approval was not a condition precedent to the resolution of the contract. Stilianapolous & Co. v. Manila T. & S. Co., XXVII Off. Gaz. 1538.

ART. 1115. If the fulfillment of the condition should depend upon the exclusive will of the debtor, the conditional obligation shall be void. If it should depend upon chance, or upon the will of a third person, the obligation shall produce all its effects in accordance with the provisions of this code.

1. See Art. 1256, Civil Code.
2. The condition in a contract that the debtor will pay her debt as soon as she succeeds in selling her house is void because it depends exclusively upon her will. Osmeña v. Rema, 14 Phil. 99.
3. A stipulation in a contract of employment that the employer shall pay the employee, in addition to his salary, something by way of bonus, is not a condition dependent upon the will of the obligor; but the employee is bound by the decision of the employer as to the amount of the bonus. Liebenow v. Philippine Vegetable Co., 39 Phil. 60.
4. Where the fulfillment of the condition does not depend upon the will of the obligor but on that of a third party, who can-

not be compelled to carry it out, the obligor complies with his contract if he does all that is in his power to perform his undertaking. Smith, Bell & Co. v. Sotelo, 44 Phil. 874.

ART. 1116. Impossible conditions, those contrary to morality, and those forbidden by law, shall annul any obligation dependent upon them.

The condition of not doing a thing which is impossible shall be disregarded.

1. See Arts. 792, 1184, 1255, and notes under Art. 1114, Civil Code.

ART. 1117. If the condition consists in the happening of an event within a fixed period, the obligation shall be extinguished from the time the period lapses or when it becomes certain that the event will not take place.

1. See Art. 1091, and notes under Art. 1114, Civil Code.
2. See Addison v. Felix, 38 Phil. 405; Hanlon v. Haussermann, 40 Phil. 796.

ART. 1118. The condition that a certain event shall not occur within a fixed period shall render the obligation binding from the time the period elapses, or when it becomes evident that such event cannot occur.

Should no period have been determined, the condition shall be deemed fulfilled upon the expiration of the period probably intended in view of the nature of the obligation.

1. See notes under Art. 1117, Civil Code.

ART. 1119. The condition shall be deemed fulfilled if the obligor should intentionally impede its fulfillment.

1. See notes under Art. 1117, Civil Code.
2. Limitations to application of this article. Taylor v. Uy Tieng Piao, 43 Phil. 873.

ART. 1120. The effects of a conditional obligation to give, after the condition has been fulfilled, shall retroact to the day on which it was constituted. Nevertheless, if the

obligation should impose reciprocal engagements on the parties concerned, the fruits and interest corresponding to the time during which the condition has been pending shall be deemed to compensate each other. Should the obligation be unilateral, the debtor shall become the owner of the fruits and interest collected, unless by reason of the nature and circumstances of the obligation, it is to be inferred that the will of the person constituting it was otherwise.

In the obligations of doing or of not doing the courts shall determine in each case the retroactive effect of the fulfillment of the condition.

1. See McCullough v. Aenlle, 3 Phil. 285.
2. See Laureta v. Mata, 44 Phil. 668.

ART. 1121. The creditor, before the fulfillment of the condition, may maintain any actions which may be proper for the preservation of his rights.

The debtor may recover whatever he may have paid during the same period.

[1700, 1704]

1. See Arts. 142 and 143, Mortgage Law.
2. See Jacinto v. De Leon, 51 Phil. 992, cited under Art. 1924.

ART. 1122. Should the condition be established for the purpose of suspending the performance of an obligation to give, the following rules shall be observed in case the thing should improve or be lost or impaired while the condition is pending:

1. If the thing be lost without fault of the debtor the obligation shall be extinguished;

2. If the thing be lost by the fault of the debtor he shall be obliged to make good the damage.

It is understood that the thing is lost when it perishes, ceases to be an object of lawful commerce, or disappears in such a manner that its existence is unknown, or it is not possible to recover it.

3. If the thing deteriorates without fault of the debtor the deterioration shall be borne by the creditor.

4. If the thing should deteriorate by the fault of the debtor, the creditor may choose between the resolution of the obligation or its fulfillment, with indemnity for damages in either case.

5. If the thing should improve by nature or by time, the improvement shall inure to the benefit of the creditor.

6. If it should be improved at the expense of the debtor, the latter shall have no rights other than those granted a usufructuary.

1. See Art. 487, Civil Code.
2. See Laureta v. Mata, 44 Phil. 668; Philippine etc. Co. v. Poizat et al., 48 Phil. 536.

ART. 1123. If the object of the condition should be to resolve the obligation to give, the parties in interest, if the condition is fulfilled, shall make mutual restitution of all they may have received from one another.

In case of the loss, deterioration, or improvement of the thing, the provisions relating to debtors contained in the next preceding article shall be applied to the person obliged to make restitution.

With respect to the obligations to do or not to do, the provisions of the second paragraph of Article 1120 shall be observed in so far as the effects of the resolution are concerned.

ART. 1124. The right to resolve reciprocal obligations, in case one of the obligors should fail to comply with that which is incumbent upon him, is deemed to be implied.

The person prejudiced may choose between exacting the fulfillment of the obligation or its resolution with indemnity for losses and payment of interest in either case. He may also demand the resolution of the obligation even after having elected its fulfillment, should the latter be found impossible.

The court shall decree the resolution demanded, unless there should be grounds which justify the allowance of a term for the performance of the obligation.

This is understood to be without prejudice to any rights acquired by third persons in accordance with Articles 1295 and 1298 and with the provisions of the Mortgage Law.

1. See Arts. 606, 1100, 1106, 1109, 1123, 1149, 1466, 1485, 1486, 1568, Civil Code; and Arts. 36 and 37, Mortgage Law.
2. In a contract to sell, it was stipulated that the purchaser should have six months from the date of the contract within which to perfect the title papers to the land sold. Held, that the failure of the purchaser to perfect the title papers within the time stipulated, will not excuse the vendor from complying with his promise to execute a deed of sale. Borromeo v. Franco, 5 Phil. 49.
3. According to this article, in reciprocal obligations the party aggrieved may ask either for the rescission of the contract or for its specific performance. Mateos v. Lopez, 6 Phil. 206; Alonso v. Lagdameo, 7 Phil. 75; Pabalan v. Holez, 22 Phil. 29; Addison v. Felix, 38 Phil. 404; Gutierrez Hnos. v. Oria Hermanos, 30 Phil. 491; Gutierrez v. Afzelius, 39 Phil. 190.
4. Mere nonperformance by the vendee of obligations imposed by the terms of a contract of sale does not operate as a rescission thereof, although it may be such a breach as to warrant rescission by the vendee. Affirmative action by the vendor is necessary. Guevara v. Pascual, 12 Phil. 311.
5. Relief will not be granted if the party seeking it has failed to comply with his part of the obligation. Bosque v. Yu Chipco, 14 Phil. 95.
6. If the vendee of merchandise wrongfully refuses to take delivery, the vendor may sue for specific performance. Judicial deposit by vendor is not required. Vendee liable for storage charges during suit. Court may order merchandise to be sold. Matute v. Cheong Boo, 37 Phil. 372.
7. But the right to rescind is not absolute, the Court having the power to deny rescission under certain circumstances. Ocejo, Perez & Co. v. International Bank, 37 Phil. 631.
8. The action for damages for nonperformance of a contract must be joined in the action for specific performance of the contract, or it will be deemed waived. Daywalt v. Augustinian Corpn., 39 Phil. 587.

9. The aggrieved party may choose between rescission and performance, but he cannot have both. Yap Unki v. Chua Jamco, 14 Phil. 602; Juan v. Go Tay, 26 Phil. 328; Osorio et al. v. Bennet et al., 4 Phil. 305.
10. Although sale of land has been perfected, if price has not been paid, vendor may inscribe his right to rescind upon nonpayment of the price at the time agreed upon. Cortez v. Bibaño, 41 Phil. 300.
11. See also Cui v. Sun Chan, 41 Phil. 525.
12. The general rule that breach of the contract by one of the parties releases the other is subject, with respect to sales of real estate, to the special rule established by Article 1504. Villareal v. Tan King, 43 Phil. 251.
13. Interest conceded in lieu of damages. Salas Rodriguez v. Leuterio, 47 Phil. 818.
14. See Gonzalez v. Haberer, 47 Phil. 380.
15. Contracts may not be resolved for slight or causal breaches, but only such as are so substantial and fundamental as to defeat the object of the parties in making the agreement; therefore, while time is usually of the essence of the contract, a slight delay in a partial payment will not warrant the resolution of a contract of sale. Song Fo & Co. v. Hawaiian Phil. Co., 47 Phil. 821.
16. Rights of purchaser in case of resolution of sale upon failure of seller to make delivery; see Salas Rodriguez v. Leuterio, 47 Phil. 818, cited under Art. 1506.
17. Upon breach of the terms of a lease by the lessor the lessee is entitled to demand specific performance of the contract or to rescind it. If he elects to rescind and voluntarily resumes possession of the premises he cannot thereafter hold the lessee liable for losses suffered by reason of his inability to lease the premises, during the remainder of the term, for a sum equal to the rent payable under the contract by the defaulting lessee. Resumption of possession terminates the lease. Rios et al. v. Jacinto, Palmo y Hnos. 49 Phil. 7.
18. The resolution of an entire contract has the effect of abrogating it in all its parts. The creditor cannot have resolution as to the principal contract and yet insist on the performance of subordinate stipulations. It results that a clause allowing interest at the rate of 12 per cent in the mortgage cannot be enforced where the mortgage itself is resolved. In such case interest must be computed at the legal rate. In like manner a stipulation for the payment of

an attorney's fee in a mortgage cannot be enforced in connection with the resolution of the mortgage. Po Pauco v. Sigüenza et al., 49 Phil. 404.

19. In a contract by which several persons as obligors bind themselves individually to certain undertakings in consideration of which the obligee agrees to perform an undertaking for the benefit of the obligors as a group, failure of performance on the part of some of the obligors warrants the resolution of the contract by the obligee. Zayco v. Serra, 49 Phil. 985.

SECTION II. *Obligations with a Term.*

ART. 1125. Obligations for the performance of which a day certain has been fixed shall be demandable only when the day arrives.

A day certain is understood to be one which must necessarily arrive, even though its date be unknown.

If the uncertainty should consist in the arrival or non-arrival of the day, the obligation is conditional and shall be governed by the rules of the next preceding section.

1. Article applied. Azarraga v. Rodriguez, 9 Phil. 637.
2. Where payment was to be made when the heir receives his inheritance, it was held, that the obligation became demandable from the date the heir sold his portion and received the purchase price. Ullman v. Hernaez, 30 Phil. 69.
3. The debtor forfeits the right to benefit by the term fixed for the payment, if the property pledged as security is lost through force majeure and it is not substituted. Song Fo & Co. v. Oria, 33 Phil. 3.
4. An obligation contracted by a partner for himself and his co-partners, for the fulfillment of which a period is fixed, becomes a pure obligation upon the dissolution of the partnership by agreement of the members, and the party entitled to enforce it may bring an action for the purpose after the dissolution agreed upon by the parties, without the necessity of waiting for the expiration of the period originally fixed. Estate of Mota v. Serra, 47 Phil. 464.
5. The term for the payment of a bill or note may be extended by oral agreement, but the additional time granted must be definite. Phil. Eng. Co. v. Greene, 48 Phil. 466.
6. Stipulation for acceleration of maturity in the event of breach of terms of contract by debtor is valid. National Bank v. Lopez et al., XXVII Off. Gaz. 975.

ART. 1126. That which has been paid in advance by virtue of an obligation with a term cannot be recovered.

If the person who paid was not aware when he did so of the existence of the term, he shall have a right to claim from the creditor the interest or fruits which the latter may have received from the thing delivered.

1. See Arts. 1095, 1109, 1292, 1841, 1842, 1895 et seq., Civil Code; Art. 879, Code of Commerce.

ART. 1127. Whenever a term for the performance of an obligation is fixed, it is presumed to have been established for the benefit of the creditor as well as that of the debtor, unless from its tenor or from other circumstances it should appear that the term was established for the benefit of one or the other.

1. The presumption established in this article is only *prima facie*, and yields to evidence contradicting it. Pastor v. Gaspar, 2 Phil. 598.
2. See Sarmiento v. Javellana, 43 Phil. 880.

ART. 1128. If the obligation does not specify a term, but it is to be inferred from its nature and circumstances that it was intended to grant the debtor time for its performance, the period of the term shall be fixed by the court.

The court shall also fix the duration of the term when it has been left to the will of the debtor.

1. If a contract of lease does not state the term of duration, the courts have the power to fix the same. Eleizegui v. Manila Lawn T. Club, 2 Phil. 309; Yu Chin Piao v. Lim Tuaco, 33 Phil. 92; Ottofy v. Dunn, 38 Phil. 438.
2. In the following cases, the court held that the circumstances of the case justified it in fixing the period within which the obligation should be performed. Barretto v. Ciudad de Manila, 7 Phil. 416; Levy Hnos. v. Paterno, 18 Phil. 353; Barretto v. Santa Marina, 26 Phil. 440.
3. In the following cases, the court refused to fix any period. Iturralde v. Garduño, 9 Phil. 605; Floriano v. Delgado, 11 Phil. 156; Delgado v. Amenabar, 16 Phil. 403.

4. The lessee in a lease for an indefinite period, contracted before the Civil Code went into effect, died in 1897. Held, that such death terminated the lease, and that the tenancy of the heirs of the lessee was governed by the provisions of the Civil Code giving the lessor the right to eject the lessees at the end of any one month. Soriano v. Roxas, 4 Phil. 641.
5. After the court has fixed a period in a case coming under this article, that period is thereafter considered a part of the contract and cannot be changed or extended by the court. Barretto v. City of Manila, 11 Phil. 624.
6. The contract provided that the debtor might pay "little by little." Held, that the court might fix a period within which the debt must be paid. Seoane v. Franco, 24 Phil. 309.
7. In a case where the defendant procured through fraud an absolute deed to the property, when the agreement was to give the vendor some time to redeem, the court held that it might fix a period within which the property might be redeemed. Yacapin v. Neri, 40 Phil. 61.

ART. 1129. The debtor shall forfeit all right to the benefit of the term—

1. If, after contracting the obligation, it should appear that he is insolvent, unless he gives security for the debt;
2. If he fails to give the creditor any securities he may have undertaken to give;
3. If by his own act he should have diminished such securities after giving them, or if they should disappear in consequence of a fortuitous event, unless they are immediately substituted by new and equally safe securities.

1. See Art. 833, Code of Commerce.
2. See note No. 3, under Art. 1125, Civil Code.
3. See also Palma v. Cañizares, 1 Phil. 602.
4. Breach by the debtor of an agreement to secure a debt by mortgage authorizes the creditor to treat the debt as due. Laplana v. Garchitorena, 48 Phil. 163.

ART. 1130. If the term of the obligation be fixed by days, to be counted from a specified one, such day shall be excluded from the computation, which shall begin with the day following.

1. See Art. 1125, No. 7, and notes under Art. 7, Civil Code; Arts. 60, 303, No. 2, Code of Commerce; and Sec. 4, Code of Civil Procedure.
2. This rule of computation of time applied. U. S. v. Tiqui, 1 Phil. 306; Villegas v. Capistrano, 9 Phil. 416.

SECTION III. *Alternative Obligations.*

ART. 1131. Any person who is bound in the alternative to two or more undertakings, must fully perform one of them.

The creditor cannot be compelled to accept a part performance of one and a part performance of another.

ART. 1132. The right of election pertains to the debtor, unless it has been expressly granted the creditor.

The debtor shall not be entitled to choose undertakings which are impossible, illicit, or which could not have been the object of the obligation.

1. See Art. 1449, Civil Code.
2. It is not reversible error to hold in a judgment that payment may be made in either of two currencies, the provisions of Act No. 1045 to the contrary notwithstanding. Molina v. De la Riva, 6 Phil. 12.
3. The debtor agreed to convey a house and lot at an appraised valuation in the event that payments in money were not made by him when the debt matured. Held, that this is an alternative obligation, specific performance of which could have been enforced had not the creditor permitted the action to recover the debt to prescribe. Agoncillo and Mariño v. Javier, 38 Phil. 424.

ART. 1133. The election shall be effective only from the time it is made known.

1. The object of the notice is to give the creditor opportunity to express his consent to or to impugn the election made by the debtor. Ong Guan Can v. Century Ins. Co., 46 Phil. 592.

ART. 1134. The debtor shall lose the right of election when only one of the undertakings to which he is alternatively bound is feasible.

ART. 1135. The creditor shall be entitled to recover damages if, by the fault of the debtor, all the things which were alternatively the subject-matter of the obligation should have disappeared or it should have become impossible to perform the obligation.

The indemnity shall be fixed by taking as a basis the value of the last thing which may have disappeared or of the last service which may have become impossible.

1. See Arts. 1104 et seq., 1131 et seq., and 1182, Civil Code.

ART. 1136. When the right of election has been expressly granted the creditor, the obligation shall cease to be alternative from the day on which notice of such election may have been given to the debtor.

Up to that time the liabilities of the debtor shall be governed by the following rules:

1. If either of the things should have been lost in consequence of some fortuitous event he shall be discharged by delivering whichever the creditor may select from among those remaining;

2. If the loss of either of the things should be imputable to fault on the part of the debtor the creditor may demand either of those remaining or the price of the thing lost by the fault of the debtor;

3. If all the things should have perished by the fault of the debtor the creditor may choose the price of any one of them.

The same rules shall apply with respect to obligations which consist in performing or refraining from performing one of two or more acts, in case any or all of the undertakings should become impossible.

1. See Arts. 1104, 1105 and 1183, Civil Code.

SECTION IV. *Of Joint (Mancomunada) and Solidary Obligations.*

ART. 1137. The concurrence of two or more creditors or of two or more debtors with respect to the same obligation does not imply that each of the former is entitled to demand

the performance of the obligation in its entirety or that each of the latter is bound to so perform it. This shall be the case only when expressly so provided by the terms of the obligation, and the parties are bound *in solido*.

1. See Arts. 145, 894, 897, 1084, 1723 and 1748, and notes under Arts. 1138 and 1139, Civil Code; Art. 9, Mortgage Law; Secs. 298 and 698, Code of Civil Procedure.
2. The phrase *"juntos o separadamente"* used in a promissory note is equivalent to *"mancomun et in solidum."* Parot v. Gemora, 7 Phil. 94.
3. In a civil partnership, the liability of members is only joint (*mancomun*), and not several (*in solidum*). Co-Pitco v. Yulo, 8 Phil. 544; Dietrich v. Freeman, 18 Phil. 341; Bachrach v. "La Protectora," 37 Phil. 441.
4. The word "joint" or "jointly" is equivalent to *"mancomunada;"* the word "several" or "severally," to *"solidaria"* or *"in solidum;"* the phrase "joint and several" indicates solidarity. Sharruf v. Tayabas Land Co., 37 Phil. 655; Jaucian v. Querol, 38 Phil. 707.
5. If a judgment does not specify how certain debtors are bound, it is presumed that they are bound "jointly," and not "severally." Un Pak Leung v. Nigorra, 9 Phil. 381; Floriano v. Delgado, 11 Phil. 154; White v. Enriquez, 15 Phil. 113; De Leon v. Nepomuceno, 37 Phil. 180.
6. If a contract does not specify how certain debtors are bound, it is presumed that they are bound jointly. Compañia Gra. v. Obed, 13 Phil. 391; Pimentel v. Gutierrez, 14 Phil. 49; Isaac v. Bray, 30 Phil. 533; Lino Luna v. Arcenas, 34 Phil. 80; Agoncillo v. Javier, 38 Phil. 424.
7. An obligation does not cease to be joint and several by the mere fact that the creditor allowed different periods of payment to the debtors. Inchausti & Co. v. Yulo, 34 Phil. 978.
8. Under the Civil Code, prior to the change introduced by the present Code of Civil Procedure, the heirs became jointly and severally liable for the debts of their predecessor, if they accepted the inheritance without the benefit of inventory. Aramburu v. Ortiz, 15 Phil. 691.
9. This rule has no application to obligations arising from tort (*ex delicto*). Persons who co-operate in the tortious infliction of damage are jointly and severally liable. Verzosa v. Lim, 45 Phil. 416.

ART. 1138. Unless otherwise provided by the terms of

the obligations to which the next preceding article relates the credit or the debt shall be deemed to be divided into as many equal parts as there are debtors or creditors, and shall be regarded as separate and distinct credits or debts.

1. See Arts. 393, 765, and notes under Arts. 1137 and 1139, Civil Code.
2. The meaning of joint (*mancomunada*) obligation, explained. Agoncillo v. Javier, 38 Phil. 424.
3. See also Martinez v. Ong Pong Co., 14 Phil. 726.

ART. 1139. If it should be impossible to make such division, the rights of the creditors shall be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If either of these should be found to be insolvent the others shall not be required to make up his share.

1. See notes under Art. 1138, Civil Code; Sec. 298, par. 5, Code of Civil Procedure.

ART. 1140. Solidarity may exist even though the creditors and debtors are not bound in the same manner, or upon the same terms and conditions.

1. Article applied. Inchausti & Co. v. Yulo, 34 Phil. 978.
2. Article cited and applied. Poblete v. Lo Singco, 44 Phil. 369.

ART. 1141. Each one of the solidary creditors may do anything beneficial to the others, but not that which may be prejudicial to them.

An action brought against any one of the solidary debtors shall affect all of them.

1. See notes under Art. 1139, Civil Code.

ART. 1142. The debtor may pay the debt to any one of the solidary creditors; but if he should have been sued by any one of them, he should make payment to the plaintiff.

ART. 1143. The novation, compensation, merger, or re-

mission of the debt, made by any one of the solidary creditors, or with any of the solidary debtors, extinguishes the obligation, without prejudice to the provisions of Art. 1146.

The creditor by whom any of these acts may have been done, as well as he who may collect the debt, shall be liable to the others for their proportional share of the obligation.

1. See Arts. 1137, 1141 et seq., 1190 et seq., 1194, 1202 et seq., Civil Code.
2. Article cited and applied. Inchausti & Co. v. Yulo, 34 Phil. 978.
3. Where the purchase price of property is payable in various instalments, an extension of time granted by the creditor to the debtor with respect to one instalment will discharge the sureties, whether simple or solidary, from all liability as to such instalment, but it does not affect their liability for other instalments unconnected with the extension of time. Villa v. Garcia Bosque et al., 49 Phil. 126.
4. Release of surety by modification of principal's contract; see National Bank v. Veraguth, 50 Phil. 253, cited under Art. 1832.

Art. 1144. The creditor may sue any of the solidary debtors or all of them simultaneously. An action instituted against one shall not be a bar to those which may be subsequently brought against the others, as long as the debt has not been entirely satisfied.

1. See notes under Art. 1137, Civil Code.
2. Article cited and applied. Molina v. De la Riva, 7 Phil. 302; Sunico v. Chuidian, 9 Phil. 625; Chinese Chamber v. Pua Te Ching, 16 Phil. 406; Lino Luna v. Arcenas, 34 Phil. 80; Inchausti & Co. v. Yulo, 34 Phil. 978; Jaucian v. Querol, 38 Phil. 707.

Art. 1145. Payment by one of the solidary debtors extinguishes the obligation.

The one who made the payment can claim from his co-debtors only the share pertaining to each, with interest on the amount advanced.

The nonfulfillment of the obligation by reason of the

insolvency of any solidary debtor shall be made good by his co-debtors in proportion to the indebtedness of each of them.

1. See Arts. 1141 and 1150, Civil Code.
2. See Inchausti & Co. v. Yulo, 34 Phil. 978.

ART. 1146. Any reduction or remission granted by the creditor with respect to the part affecting one of the solidary debtors shall not release the latter from his liability with regard to his co-debtors in case the debt should have been paid in full by any of them.

1. See Art. 1143, Civil Code.

ART. 1147. If the thing should have perished, or the undertaking should have become impossible, without fault on the part of the solidary debtors, the obligation shall be extinguished.

If there should have been fault on the part of either of them, all shall be liable with respect to the creditor for the value of the undertaking, for damages, and for payment of interest, without prejudice to their right of action against the culpable or negligent debtor.

1. See Arts. 1104 et seq., 1136 et seq., and 1150, Civil Code.

ART. 1148. Any solidary debtor may interpose against the claims of the creditor all defenses arising from the nature of the obligation and those which are personal to himself. Defenses personal to the other solidary debtors shall be available to the defendant only with respect to the share of the debt for which the former may be liable.

1. The sureties bound themselves jointly and severally with the principal debtor. The principal debtor died while execution was pending. Held, that the sureties cannot set up the defense that the execution should be suspended because of the death of the principal debtor, that defense being one which could be invoked only by the representative of the deceased principal debtor. Chinese Ch. of Commerce v. Pua Te Ching, 16 Phil. 411.

2. The extension granted to one of the solidary debtors being personal to him, it cannot be set up as a defense by the other debtors. Inchausti & Co. v. Yulo, 34 Phil. 978.

SECTION V. *Divisible and Indivisible Obligations.*

ART. 1149. The divisibility or indivisibility of the things which are the object of an obligation in which there is but one debtor and one creditor shall not change or modify the provisions of Chapter second of this Title.

1. See Arts. 1094 et seq., Civil Code.

ART. 1150. An indivisible joint (*mancomunada*) obligation is converted into an obligation to pay damages whenever either of the debtors fails to comply with his undertaking. Those debtors who may have been ready to perform their obligations shall not contribute to the payment of damages more than the sum equivalent to their proportionate share of the value of the thing or of the undertaking of which the obligation may consist.

ART. 1151. For the purposes of the preceding articles, obligations to give determinate things and all those which are not capable of partial performance shall be deemed indivisible.

Obligations of doing shall be divisible when their purpose is the performance of a number of days of work, the execution of works by metric units, or other similar things which by reason of their nature are capable of partial performance.

The divisibility or indivisibility of obligations which consist in refraining from doing any particular thing shall be determined by the character of the undertaking in each particular case.

SECTION VI. *Obligations with a Penal Clause.*

ART. 1152. In obligations with a penal clause the penalty shall substitute indemnity for damages and the payment of interest in case of nonperformance should there be no agreement to the contrary.

The penalty can be enforced only when it is demandable in accordance with the provisions of this code.

1. See Arts. 1091, 1101, 1106 et seq., 1153 et seq., Civil Code; Art. 55, Code of Commerce.
2. A penal clause inserted in a contract will be enforced by the courts according to its tenor, unless there has been a partial or irregular compliance with the obligation, in which case the courts may reduce the stipulated penalty according to their sound discretion. Palacios v. Cavite, 12 Phil. 140; Lambert v. Fox, 26 Phil. 588; Laureano v. Kilayco, 32 Phil. 194.
3. A contract for the payment of money provided for interest at a certain rate, and in case of default the debtor was to pay ₱400 additional. Held, that the payment of the sum of ₱400 did not preclude the recovery of interest. Lopez v. Hernaez, 32 Phil. 631.
4. Insistence upon receiving satisfaction of the penal clause operates as a renunciation of the right to other damages. Navarro v. Mallari, 45 Phil. 242.
5. The amount of attorney's fee agreed to be paid by the debtor upon failure to perform his obligation, may be reduced by the court if found excessive. Bachrach v. Galingco, 39 Phil. 138; Warrington v. De la Rama, 46 Phil. 881.
6. If attorney's fees are included in the penal clause, the courts have power to modify the amount of the penalty. Manila T. & S. Co. v. Tamaraw Plantation Co., 47 Phil. 513.
7. Penal clause in mortgage; see Cia. Gral. de Tabacos v. Jalandoni, 50 Phil. 501.
8. When an obligation contains a penal clause as well as a stipulation for interest, the penalty may not be considered in order to determine whether the contract is usurious. Bachrach Motor Co. v. Espiritu, XXVII Off. Gaz. 2947.

ART. 1153. The debtor cannot relieve himself from the performance of the obligation by paying the penalty unless such right has been expressly reserved to him. Neither may the creditor exact the performance of the obligation and also the payment of the penalty unless such right has been clearly granted him.

1. See Arts. 1110, 1152, 1154 et seq., Civil Code; Art. 56, Code of Commerce.
2. See also notes under art. 1152, Civil Code.

3. See the cases of Vitug v. Coronel, 40 Phil. 686; Cui v. Sun Chan, 41 Phil. 525.

ART. 1154. The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor.

1. See notes under Art. 1152, Civil Code.
2. Article cited and applied. Icaza v. Florez, 7 Phil. 211; Insular Gov't v. Punzalan, 7 Phil. 546; Insular Gov't v. Amechazura, 10 Phil. 637; Insular Treasurer v. Rodis, 40 Phil. 850.
3. Article cited and applied. Kidwell v. Carter, 43 Phil. 998.
4. While the parties to a contract may stipulate that the debtor shall pay a penalty, in addition to interest, in the event of his breach of the obligation, when such stipulation is for the payment of attorney's fees the court may reduce the penalty if it is found to be excessive. Manila T. & S. Co. v. Tamaraw Plantation Co. 47 Phil. 513.
5. As to modification of penalty when the obligation has been partly performed, see Bachrach Motor Co. v. Espiritu, XXVII Off. Gaz. 2947.

ART. 1155. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause.

1. See notes under Art. 1152, Civil Code.

CHAPTER IV.

EXTINCTION OF OBLIGATIONS.

GENERAL PROVISIONS.

ART. 1156. Obligations are extinguished:

By their payment or fulfillment;

By the loss of the thing due;

By the remission of the debt;

By the merger of the rights of the creditor and debtor;

By compensation;

By novation.

1. See Arts. 1930, 1110, 1157, 1182, 1184, 1190 et seq., 1202 et seq., 1847 and 1851, Civil Code.
2. The onus of proving payment is upon the debtor. Chua Chienco v. Vargas, 11 Phil. 219.
3. Article cited. Bantug v. Del Rosario, 11 Phil. 511; Ramos v. Ledesma, 12 Phil. 656; Lack of Alonso, 14 Phil. 630; Zapanta v. De Rotaeche, 21 Phil. 154; Santos v. Manarang, 27 Phil. 209.

SECTION I. *Payment.*

ART. 1157. A debt shall not be deemed paid unless there has been a complete delivery of the thing or a performance of the undertaking which constitutes the subject-matter of the obligation.

1. See Arts. 275, 1156, 1177 and 1249, Civil Code; Art. 40, Mortgage Law; Sec. 344, Code of Civil Procedure.
2. See Chua Chienco v. Vargas, 11 Phil. 219; Bantug v. Del Rosario, 11 Phil. 511; Ramos v. Ledesma, 12 Phil. 656; Olino v. Medina, 13 Phil. 379.
3. Although the interest stipulated be usurious, the borrower is not relieved from the payment of the loan. Cui Jong & Co. v. Rivera, 45 Phil. 778.

ART. 1158. Payment may be made by any person, whether he has an interest in the performance of the obligation or not, and whether the payment is known and approved by the debtor or whether he is unaware of it.

One who makes a payment for the account of another may recover from the debtor the amount of the payment, unless it was made against the express will of the latter.

In the latter case he can recover from the debtor only in so far as the payment has been beneficial to the latter.

1. See Arts. 1145, 1205, 1274, and notes under Art. 1157, Civil Code.
2. R. attached and acquired F.'s right to repurchase a certain piece of land. Before R. exercised the right to repurchase, F. paid the price to the vendee under *pacto de retro* and reacquired the land. Held, that the payment by F. does not inure to the benefit of R., because R. is not a "debtor" within the meaning of Art. 1158, Civil Code. Gonzaga v. Garcia, 27 Phil. 7.

3. See also U. S. v. Gorme, 18 Phil. 323; Sison v. Balgos, 34 Phil. 885; Mitsui etc. v. Manila E. R. R. L. Co., 39 Phil. 624; Bank of the P. I. v. Trinidad, 42 Phil. 223.

ART. 1159. One who pays in the name of the debtor, without the knowledge of the latter, cannot compel the creditor to subrogate him to his rights.

1. See Arts. 1210 and 1840, Civil Code.

ART. 1160. In obligations to give, payment made by a person not having the free disposal of the thing due, and capacity to convey it, shall not be valid. However, if the payment should have consisted in the delivery of a sum of money or of some fungible thing, it cannot be recovered of a creditor who may have spent or consumed it in good faith.

1. See Arts. 317, 320, 324, 337, 433 et seq., and 1263, Civil Code.

ART. 1161. In obligations to do, the creditor cannot be compelled to accept the performance of the obligation or the rendition of the service by a third person when the personal qualifications and circumstances of the debtor have been taken into consideration in the creation of the obligation.

ART. 1162. Payment must be made to the person in whose favor the obligation is constituted, or to another authorized to receive it in his name.

1. See Arts. 1552, 1895, and notes under Art. 1157, Civil Code, and Art. 490, Code of Commerce.
2. A collective partnership may sue in its own name upon a contract entered into for its benefit by one of the partners personally. Tuason & San Pedro v. Zamora & Sons, 2 Phil. 305.
3. See Ramos v. Ledesma, 12 Phil. 656; Ormachea v. Trillana, 13 Phil. 194.
4. Where a person making payment relied upon the representations of an agent as to his authority to receive and receipt for the money, such payment is made at his own risk. Keeler Electric Co. v. Rodriguez, 44 Phil. 19.

ART. 1163. Payment made to a person who is incapacitated for the management of his property shall be valid in so far as it may have been beneficial to him.

A payment made to a third person shall also be valid in so far as it may have been beneficial to the creditor.

1. See Arts. 257, 1162 and 1304, Civil Code.
2. The second paragraph of Art. 1163 casts upon the one who made the payment the burden of proving that it has inured to the benefit of the creditor. Pañganiban v. Cuevas, 7 Phil. 477.

ART. 1164. A payment made in good faith to the person who is in possession of the credit shall release the debtor.

1. See Art. 362, Civil Code.
2. The mere seizure by the revolutionary government of the property in question did not give that government such interest in the property that payment to it by the debtor will relieve him of his obligation towards the owner of the property. Such seizure did not amount to confiscation and did not deprive the owner of his rights of ownership and possession. Pañganiban v. Cuevas, 7 Phil. 477.

ART. 1165. A payment made by the debtor to the creditor after he has been judicially ordered to retain the debt shall not be valid.

1. See Art. 1164, Civil Code, and Chapter XX C. C. P.

ART. 1166. The debtor of one thing cannot oblige his creditor to receive another, even though it should be of equal or greater value than that due.

In obligations to do, one undertaking cannot be substituted by another against the will of the creditor.

1. See Art. 1096, Civil Code.

ART. 1167. If the obligation should consist in the delivery of a generic or indeterminate thing, the quality and particulars of which should not have been expressed, the

creditor cannot exact one of the highest quality, nor can the debtor deliver one of the lowest quality.

1. See Art. 1096, Civil Code.

ART. 1168. Extrajudicial expenses incurred in making the payment shall be for account of the debtor. With respect to judicial expenses, the court shall decide in accordance with the Law of Civil Procedure.

1. See Art. 1179, Civil Code; Secs. 785, 487 to 495, Code of Civil Procedure.

ART. 1169. Unless the contract expressly authorizes it the creditor cannot be compelled to accept partial performances of the undertaking of which the obligation consists.

Nevertheless, should the debt be in part liquidated and in part unliquidated, the creditor may exact and the debtor may make payment of the former without awaiting the liquidation of the latter.

1. See Art. 494, Code of Commerce.

ART. 1170. Payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such specie, in silver or gold coin legally current in Spain.

The delivery of promissory notes payable to order, or drafts or other commercial paper, shall produce the effects of payment only when realized or when, by the fault of the creditor, the privileges inherent in their negotiable character have been lost.

In the meantime, the action arising from the original obligation shall be suspended.

1. See Arts. 1157, 1166 and 1754, Civil Code; Art. 179, Code of Commerce; Secs. 1610 to 1627, Adm. Code of 1917; Act of Congress of July 1st, 1902 (Arts. 76 to 83 inclusive); Act of Congress of March 2nd, 1903; Acts of the Philippine Legislature, Nos. 696, 731, 770, 771, 792, 796, 801, 822, 937, 978, 1017, 1045, 1050, 1158, 1195 and 1202, Civil Code.

2. This Article includes a note made by the debtor and delivered to the creditor. The provision regarding damage due to the fault of the creditor refers only to promissory notes and bills of exchange, i. e., negotiable instruments. Compañia Gral. v. Molina, 5 Phil. 142; Quiros v. Tan-Guinlay, 5 Phil. 675; U. S. v. Bedoya, 14 Phil. 397.
3. In an action for the enforcement of an obligation to pay money expressed in terms of United States dollars, judgment must be rendered in Philippine currency for a sum sufficient, at the time of judgment, to enable the creditor to purchase the equivalent sum in United States currency due pursuant to the contract. Engel v. Velasco & Co., 47 Phil. 115.

ART. 1171. Payment shall be made at the place designated in the obligation.

Should it not have been designated, and when a determinate thing is to be delivered, the payment shall be made at the place where the thing was at the time the obligation was created.

In any other case the place of payment shall be the domicile of the debtor.

1. See Secs. 81 and 377, Code of Civil Procedure.

THE APPLICATION OF PAYMENTS.

ART. 1172. A person owing several debts of the same kind to a single creditor may declare, at the time of making a payment, to which of them it is to be applied.

If the debtor should accept from the creditor a receipt which recites the application to be given the payment, he cannot contest it, unless there should be ground for treating the contract as void.

1. See Arts. 1201 and 1684, Civil Code.
2. Article cited and applied. Sanz v. Lavin y Hnos., 6 Phil. 299; Pimentel v. Gutierrez, 14 Phil. 49.
3. If at the time of making a payment the debtor designates the debt to which he elects to apply it, he cannot thereafter have it applied to another debt. Bachrach v. Golingco, 39 Phil. 918.

ART. 1173. If the debt bears interest the payment shall not be deemed made on account of the principal until the interest is covered.

1. See Art. 1110, and notes under Art. 1172, Civil Code.
2. Article cited and applied. Javellana v. Lim, 11 Phil. 141; San Jose v. Ortega, 11 Phil. 442; Sunico v. Ramirez, 14 Phil. 500.

ART. 1174. When the payment cannot be applied in accordance with the preceding rules, that which, among the matured debts, is the most burdensome to the debtor shall be deemed paid.

If such debts should be equally burdensome, the payment shall be applied to all of them *pro rata*.

[1110, 1127]

1. See notes under Art. 1172, Civil Code.
2. Article cited and applied. Sanz v. Lavin & Bros., 6 Phil. 299; Li Hang Sheong v. Diaz, 14 Phil. 68.
3. See Hongkong etc. Corp. v. Aldanese, 48 Phil. 990, cited under Art. 1822.
4. In running accounts, payments are to be applied to the extinction of the items of debt according to the priority of each, so that credits are to be deemed payments *pro tanto* of the debts antecedently due. National Bank v. Veraguth, 50 Phil. 253.

PAYMENT BY ASSIGNMENT.

ART. 1175. Any debtor may assign his property to his creditors in payment of his debts. Such assignment releases the former from liability only to the net amount of the property assigned, unless there is an agreement to the contrary. Agreements entered into between the debtor and his creditors with respect to the effect of an assignment shall be governed by the provisions of Title seventeen of this book, and those of the Law of Civil Procedure.

1. See Arts. 1714, 1911, 1917 et seq., Civil Code; Secs. 524 and 785, Code of Civil Procedure; Act No. 1856.

2. In the following cases it was held that subsequent to the passage of Act No. 190 and before the promulgation of the Insolvency Law, no actions could be instituted looking to the settlement of estates in insolvency, or by voluntary assignments for the benefit of creditors. Bonaplate v. Ambler, 2 Phil. 392; Encarnacion v. Ambler, 3 Phil. 623; Peterson v. Newberry, 6 Phil. 260; Peña v. Mitchell, 9 Phil. 587; Strong etc. v. Van Buskirk Crook Co., 10 Phil. 190; International Bank v. Corrales, 14 Phil. 360.
3. A document was executed in which, after acknowledging a certain indebtedness, the debtor assigned his share in an inheritance to his creditor. Held, that the assignment was a valid payment. Ignacio v. Martinez, 33 Phil. 576.
4. Stipulation to convey mortgaged property in payment of debt; see 47 Phil. 951, cited under Arts. 1859 and 1311.

TENDER OF PAYMENT AND CONSIGNATION.

ART. 1176. If a creditor to whom tender of payment has been made should refuse without reason to accept it, the debtor may relieve himself of liability by the consignation of the thing due.

The same effect shall be produced by consignation alone when made in the absence of the creditor, or if the latter should be incapacitated to accept the payment when it is due, or when several persons claim to be entitled to receive it, or when the muniments of the obligation have been lost or mislaid.

1. See Arts. 116, 1162, 1166, 1167, 1169 to 1171, Civil Code.
2. See Pañganiban v. Cuevas, 7 Phil. 477; Fabros v. Villa, Augustin, 18 Phil. 336; De Jesus v. Sociedad Arrendataria, 23 Phil. 76.
3. Where tender of payment is made for the first time one year after an action is brought, it should include interest from the date of filing suit, and accrued costs. Fiege v. Smith, Bell & Co., 43 Phil. 113.
4. See Sing Juco v. Cuaycong, 46 Phil. 81.

ART. 1177. In order that the consignation of the thing due may release the obligor, previous notice thereof must be

given to the persons interested in the performance of the obligation.

Consignation shall have no effect unless made strictly in accordance with the provisions governing payment.

1. See Arts. 1157, 1160, 1162, 1166, 1167, 1169 to 1171, 1176, and notes under Art. 1176, Civil Code.

ART. 1178. Consignation shall be made by the delivery of the things due to the court, accompanied by proof of tender, when required, and of notice of the consignation in other cases.

After the consignation has been made the persons interested shall also be notified thereof.

Act 156, Sec. 56 (5).
1. See Art. 1171, Civil Code.
2. See notes under Art. 1176, Civil Code.

ART. 1179. The expenses of the consignation, in cases in which it can properly be made, shall be chargeable to the creditor.

ART. 1180. After the consignation has been duly made the debtor may petition the judge to order the cancellation of the obligation. At any time before the creditor has accepted the consignation, or the court has declared that it was properly made, the debtor may withdraw the thing or sum of money consigned, leaving the obligation in force.

ART. 1181. If, after the consignation has been made, the creditor should authorize the debtor to withdraw it, the former shall lose any preference he may have had with respect to the thing consigned. The co-debtors and sureties shall be released.

SECTION II. *Loss of the Thing Due.*

ART. 1182. An obligation which consists in the delivery of a determinate thing shall be extinguished if such thing

should be lost or destroyed without fault on the part of the debtor and before he is in default (*mora*).

1. See Arts. 1122, 1136, 1147, 1451, 1460, 1568, 1902, and notes under Arts. 1105, 1554 and 1563, Civil Code.
2. Loss of the thing through fortuitous cause extinguishes the obligation to deliver it unless there is stipulation to the contrary. Roman v. Grimalt, 6 Phil. 96; Crame v. Gonzaga, 10 Phil. 646; Insular Gov't v. Bingham, 13 Phil. 558.
3. The plaintiff advanced ₱3,000.00 to defendant in payment of 600 piculs of sugar. The contract in writing did not specify that the sugar was to come from the crop on defendant's land, which was destroyed. Held, that the sugar to be sold not having been segregated, the sale was not perfected, and the loss of the crop, even though through force majeure, did not extinguish defendant's obligation to deliver the sugar. Yu Tek & Co. v. Gonzalez, 29 Phil. 384.

ART. 1183. Whenever the thing is lost while in the possession of the debtor, it shall be presumed, subject to the provisions of Article 1096, that the loss occurred by his fault and not by a fortuitous event in the absence of proof to the contrary.

1. See Arts. 1105, 1568, and notes under Art. 1563, Civil Code.
2. Article cited and applied. Palacio v. Sudario, 7 Phil. 275; Insular Government v. Bingham, 13 Phil. 558; Hernaez v. Lizares, 40 Phil. 981.

ART. 1184. The debtor shall also be relieved from an obligation which consists in the doing of something if fulfillment of the undertaking becomes legally or physically impossible.

1. See Arts. 1105, 1135 and 1272, Civil Code.
2. See Millan v. Rio y Olabarrieta, 45 Phil. 718.

ART. 1185. When the obligation to deliver a certain and determinate thing arises from the commission of a crime or misdemeanor the obligor shall not be exempted from the payment of its value, whatever the cause of its loss may have been, unless, having offered the thing to the person

entitled to receive it, the latter should have refused without reason to accept it.

ART. 1186. When an obligation is extinguished by the loss of the thing, all rights of action which the debtor may have against third persons by reason thereof, shall pertain to the creditor.

1. See Arts. 1096, 1135 et seq., 1157 and 1902, Civil Code; Arts. 17, 119 et seq., Penal Code.
2. If the steamship causing damage to plaintiff's vessel is sunk and totally lost by reason of the collision, but such steamship is insured and the insurance is collected by the owner, plaintiff may recover to the extent of the insurance collected. G. Urrutia & Co. v. Baco River Plantation Co., 26 Phil. 632.

SECTION III. *Remission of Debts.*

ART. 1187. A remission may be made either expressly or by implication.

Both shall be subject to the provisions governing inofficious donations. Express remissions shall, furthermore, be made with the same formalities as a donation.

1. See Arts. 618 to 656, 1143 and 1146, Civil Code.
2. See notes under Art. 1188, Civil Code.
3. Extinction of obligation by negligence of obligee; see De Ocampo v. Insular Treasurer, 50 Phil. 140, cited under Art. 1107.

ART. 1188. The voluntary surrender by the creditor to his debtor of a private document containing the evidence of a debt implies the renunciation of the creditor's right against the debtor.

If, for the purpose of invalidating such renunciation, it should be contended that it is inofficious, the debtor and his heirs may maintain it by proving that the delivery of the instrument was made by virtue of the payment of the debt.

1. See Sec. 334 (Nos. 8 and 12), Code of Civil Procedure.

2. The creditor's possession of the documents evidencing the debtor's indebtedness is proof that it has not been paid, and the onus is on the debtor to show payment. Merchant v. International Bank, 9 Phil. 554; Miller etc. v. Jones, 9 Phil. 648; Velasco v. Masa, 10 Phil. 279; Bantug v. Del Rosario, 11 Phil. 511; Ramos v. Ledesma, 12 Phil. 656; Piñon v. De Osorio, 30 Phil. 365; Toribio v. Foz, 34 Phil. 913.
3. Proof, however, is admissible to show that the debt has actually been paid, although the documents are still in the possession of the creditors. Lopez Liso v. Tambunting, 33 Phil. 226.

ART. 1189. Whenever any private instrument evidentiary of a debt is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, in the absence of proof to the contrary.

1. See notes under Arts. 1187 and 1188, Civil Code.

ART. 1190. The remission of the principal debt shall extinguish all accessory obligations; but the remission of the latter shall leave the former in force.

1. See Arts. 1155, 1191 and 1193, Civil Code.

ART. 1191. The accessory obligation of pledge shall be presumed to be remitted when the thing pledged, after having been delivered to the creditor, is found in the possession of the debtor.

1. See Art. 1863, Civil Code.

SECTION IV. *Merger of Rights.*

ART. 1192. Whenever the characters of creditor and debtor are merged in the same person, the obligation is extinguished.

From this rule are excepted cases in which the merger takes place by virtue of inheritance, if the inheritance has been accepted under benefit of inventory.

1. See Arts. 1023 and 1087, Civil Code.
2. The second paragraph of this article has been repealed by implication (Willard).

3. See Sochayseng v. Trujillo, 31 Phil. 159.
4. Facts held not to constitute merger. Estate of Mota v. Serra, 47 Phil. 464.

ART. 1193. When the merger takes place with respect to the principal debtor or the principal creditor, it shall inure to the benefit of the sureties. A merger with respect to the latter does not extinguish the obligation.

1. See Art. 1848, Civil Code.

ART. 1194. Merger does not extinguish joint (*mancomunada*) obligations, except with respect to the part pertaining to the creditor or debtor in whom both characters are merged.

1. See Art. 1143, Civil Code.

SECTION V. *Compensation.*

ART. 1195. Compensation shall take place whenever two persons, in their own right, are reciprocally creditors and debtors of each other.

1. See Arts. 807, 1143, Civil Code.
2. Distinction between "compensation" and set-off or counterclaim. Yap Unki v. Chua Jamco, 14 Phil. 602.
3. There can be no "compensation" if either debt is unliquidated. Luengo y Martinez v. Herrerro, 17 Phil. 29.
4. There can be no "compensation" if the debt in favor of one party is not held by him in his own right. Escaño v. Heirs of Escaño, 28 Phil. 73.
5. See also Acuña Co Chongco v. Dievas, 12 Phil. 250; De la Peña v. Hidalgo, 20 Phil. 323.

ART. 1196. In order that compensation may take place, it shall be necessary:

1. That each of the persons bound should be so as principal, and that he be at the same time the creditor, as principal, of the other;

2. That both debts consist of a sum of money or, when the things owing are fungible, that they be of the same kind and

also of the same quality, if the latter should have been designated;

3. That both debts be due;

4. That they be liquidated and demandable;

5. That neither of them be subject to any adverse possession or claim asserted by a third person, and of which due notice has been given the debtor.

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1. See notes under Art. 1195, Civil Code.
2. See Montilla v. Augustinian Corporation, 25 Phil. 447; Cia. Gral. v. French et al., 39 Phil. 34.

ART. 1197. Notwithstanding the provisions of the next preceding article, the surety may oppose the defense of compensation with respect to that which the creditor may owe his principal debtor.

ART. 1198. A debtor who has consented to the assignment of rights made by his creditor in favor of a third person cannot avail himself as against the assignee of any defense of compensation which he might have had against the assignor.

If the creditor gave him notice of the assignment and the debtor did not consent thereto, he may oppose the defense of compensation as to prior debts, but not as to subsequent ones.

If the assignment is made without knowledge of the debtor, he may oppose the defense of compensation as to prior credits, and also as to subsequent ones contracted before he had knowledge of the assignment.

1. See Art. 1526, Civil Code; Sec. 114 (Nos. 2 and 3), Code of Civil Procedure.

ART. 1199. Debts payable in different places may be compensated by an indemnity for the expenses of transportation or for the exchange at the place of payment.

ART. 1200. Compensation shall not take place when ei-

ther of the debts arises from a deposit, or from the undertaking of a depositary or a borrower by contract of *commodatum*. Neither can one receiving support from his creditor invoke such gratuitous undertaking as a compensation of his indebtedness.

1. See Art. 151 and notes under Art. 1195, Civil Code.

ART. 1201. When one person owes another several debts subject to compensation, the provisions relating to the application of payments shall be observed in determining the order of compensation.

1. See Art. 1172, Civil Code.

ART. 1202. The effect of compensation is to extinguish both debts in the concurrent amounts, even though the creditors and debtors have no knowledge of it.

1. See notes under Art. 1195, Civil Code; Art. 144, Mortgage Law.

SECTION VI. *Novation.*

ART. 1203. An obligation may be modified:

1. By altering its object or principal conditions;
2. By substituting another in place of the debtor;
3. By subrogating a third person to the rights of the creditor.

1. See Art. 1143, Civil Code.
2. There were two promissory notes long overdue. Subsequently a third note was made, covering the amounts of the two notes and an additional sum, and extending the date of payment. Held, that a novation was effected by a change of the principal conditions of the contract. Peterson v. Azada, 8 Phil. 432.
3. A case of substitution of debtor and creditor. Azarraga v. Rodiguez, 9 Phil. 637.
4. A contract extending the term for payment of an amount due under a judgment does not extinguish the judgment by novation. Zapanta v. De Rotaeche, 21 Phil. 154.
5. A new agreement subject to a suspensive condition does not produce a novation of the original agreement until the condition is performed. Vaca v. Kosca, 26 Phil. 388.

6. In every novation there are four essential requisites: First, a previous valid obligation; second, the agreement of all the parties to the new contract; third, the extinguishment of the old contract; and fourth, the validity of the new one. Tiu Siuco v. Habana, 45 Phil. 707.
7. There is no novation of the principle obligation where a mortgagor transfers the mortgaged property to a third person without the consent of the creditor. McCullough v. Veloso, 46 Phil. 1.
8. A consideration is necessary for a modification of a contract such as an agreement for the extension of time of performance of a mortgage, and the moving party must plead and prove such consideration. Hawaiian Philippine Co. v. Hernaez, 45 Phil. 746.
9. See Bank of P. I. v. Gooch, 45 Phil. 514.
10. A novation, under the rules of the Civil Law, is a substitution, not of a new paper or note, but of a new obligation in lieu of an old one, the effect of which was to pay, dissolve, or otherwise discharge it. Tiu Siuco v. Habana, 45 Phil. 707.
11. See Fleming etc. Co. v. Cruz et al., 49 Phil. 42, cited under Art. 1820.
12. Extinction of obligation by new agreement; see Asia Banking Corp. v. McCuene, 50 Phil. 694, cited under Art. 1809.
13. One who subscribes for stock of a proposed corporation is relieved of his obligation if, without his consent, the authorized capital stock of the corporation is increased. National Exchange Co., Ltd. v. Ramos, 51 Phil. 310.

ART. 1204. In order that an obligation may be extinguished by another which substitutes it, it shall be necessary that it be so declared expressly, or that the old and new obligations be incompatible in every respect.

1. See notes under Art. 1203, Civil Code.
2. In the following cases the court held that the evidence adduced was not sufficient to establish novation. Cia. Gral. v. Molina, 5 Phil. 142; Santos v. Reyes, 10 Phil. 123; Martinez v. Cavives, 25 Phil. 581; Pacific Com. Co. v. Sotto, 34 Phil. 237.
3. Mere extension of the time of payment of a solidary obligation as to one of the solidary debtors, does not extinguish the obligation by novation as to the others. Inchausti & Co. v. Yulo, 34 Phil. 978.

4. Novation of a contract is never presumed. Aboitiz v. De Silva, 45 Phil. 883; Asia Bank v. Lacson Co., 48 Phil. 482.
5. A chattel mortgage taken by the holder of a previously issued public warehouse receipt upon the mortgaged merchandise, does not create a novation in the absence of evidence that it was intended by the parties that it should have that effect. Bank of P. I. v. Herridge, 47 Phil. 57.
6. When mortgaged real estate is sold by the mortgagor, and the mortgagee assumes the obligation to pay the mortgage debt, acceptance of interest payments from the new owner does not to show that the mortgagee consented to a novation of the contract by the discharge of the original debtor. Straight v. Haskell, 49 Phil. 614.
7. A provision in a lease under which the lessee is authorized to assign it to strangers to the contract does not, in the event of such assignment, release the original lessee from his obligations to the lessor, unless it be specifically agreed that the assignment shall have that effect. Rios et al. v. Jacinto, Palma y Hnos., 49 Phil. 7.

ART. 1205. Novation which consists in the substitution of a new debtor in the place of the original one may be made without the knowledge of the latter, but not without the consent of the creditor.

1. See Art. 1207, Civil Code.
2. See notes under Arts. 1203, 1204, Civil Code.
3. See also Luengo y Martinez v. Herrero, 17 Phil. 29; Garcia v. De Manzano, 39 Phil. 577.
4. In order that there may be a novation of a contract by the substitution of a new debtor the express consent of the creditor is necessary; but such consent, if indubitable, need not be contemporaneous with the execution of the new contract. Estate of Mota v. Serra, 47 Phil. 464.

ART. 1206. The insolvency of the new debtor, if he has been accepted by the creditor, shall not revive the action of the latter against the original debtor, unless such insolvency was prior and public, or known to the debtor when he transferred his debt.

ART. 1207. When the principal obligation is extin-

guished by reason of novation, the accessory obligations shall remain in force only in so far as they benefit third persons who have not given their consent thereto.

1. See notes under Art. 1205, Civil Code.

ART. 1208. Novation is void if the original obligation was also void, unless the cause of nullity be such as to be available to the debtor only, or unless ratification has given validity to acts which were void in their origin.

1. See Art. 1309, Civil Code.

ART. 1209. The subrogation of a third person to the rights of a creditor is not to be presumed, except in the cases expressly mentioned in this code.

In other cases it shall be necessary to prove it clearly in order that it may be effective.

1. See Palma v. Cañizares, 1 Phil. 602; Pañganiban v. Cuevas, 7 Phil. 477; Somes v. Molina, 15 Phil. 133.

ART. 1210. Subrogation shall be presumed:

1. When one creditor pays another preferred creditor;

2. When a third person, not interested in the obligation, pays with the express or implied approval of the debtor;

3. When payment is made by a person who is interested in the performance of the obligation, subject to the effects of the merger, with respect to the share pertaining to him.

1. See Arts. 1158, 1159, and notes under Art. 1209, Civil Code.

ART. 1211. The debtor may make the subrogation without the consent of the creditor when, in order to pay the debt, he has borrowed money under a contract evidenced by a public instrument in which he has stated the purpose for which the money is borrowed and when the receipt shows the source from which the sum paid was obtained.

1. See notes under Arts. 1210 and 131, Civil Code.

ART. 1212. Subrogation transfers the credit to the subrogee with all the rights inherent therein, either against the debtor or against third persons, be they sureties or holders of mortgages.

1. See notes under Arts. 1209, 1205 and 1210, Civil Code.
2. See Javier v. Osmeña, 34 Phil. 336.

ART. 1213. A creditor to whom a partial payment has been made may exercise his rights concerning the rest, with priority over the person subrogated to his place by virtue of the partial payment of the same credit.

1. See notes under Art. 1209, Civil Code.
2. In connection with Sec. 465, Code of Civil Procedure, see Gonzales Diez v. Delgado, 37 Phil. 389.

CHAPTER V.

PROOF OF OBLIGATIONS.

GENERAL PROVISIONS.

Concerning the subjects to which the articles in this Chapter (Arts. 1214 to 1253) relate, see C. C. P. 273 to 376 and 381 to 383.

ART. 1214. The burden of proof of obligations devolves upon the one who seeks to enforce their performance, and that of their extinction upon the one opposing it.

1. See Sec. 297, Code of Civil Procedure.
2. One who seeks to enforce an obligation has the burden of proving its existence. Parrado v. Jo-Juayco, 4 Phil. 710; Tuason v. Uson, 7 Phil. 85; Sanz v. Lavin y Hnos., 6 Phil. 299; Uy Piaoco v. Osmeña, 9 Phil. 299; Ortiz v. Melliza, 22 Phil. 132; Nicolas v. Guerrero, 23 Phil. 178; Manuel Novo & Co. v. Ainsworth, 26 Phil. 380; Belen v. Belen, 13 Phil. 202.
3. One who alleges that a certain obligation, the existence of which is admitted, has been extinguished, must prove such extinction. Behn, Meyer & Co. v. Rosatzin, 5 Phil. 660; Veloso v. Veloso, 8 Phil. 83; Lopez v. Tan Tioco, 8 Phil. 693;

Chua Chienco v. Vargas, 11 Phil. 219; Piñon v. De Osorio, 30 Phil. 365; Hill v. Veloso, 31 Phil. 160.

4. Payment shall be deemed made on account of the principal, on the absence of proof that interest was stipulated. De Guzman v. Balarag, 11 Phil. 503.
5. The burden of proving that the goods represented by a bill of lading were delivered at the port of destination rests upon the carrier. Keller & Co. v. Ellerman & Bucknall S. S. Co., 38 Phil. 514.

ART. 1215. Proof may be made by documents, by confession, by the personal inspection by the judge, by experts, by witnesses, and by presumptions.

1. See Arts. 50 et seq., Code of Commerce.

SECTION I. *Public Instruments.*

ART. 1216. Public instruments are those authenticated by a notary or by a competent public official, with the formalities required by law.

1. See Sec. 299, Code of Civil Procedure, and notes under Art. 131, Civil Code.
2. Church records made prior to December 18, 1899, the date of the promulgation of General Orders No. 68, are public documents, and certified copies thereof are admissible in evidence; but those of subsequent date are not public but private. U. S. v. Orosa, 7 Phil. 247; U. S. v. Arceo, 11 Phil. 530; U. S. v. Ibañez, 13 Phil. 689; U. S. v. Evangelista, 29 Phil. 215.
3. Miscellaneous instances in which certain documents were held to be public, and certified copies thereof admitted in evidence as such. Broce v. Broce, 4 Phil. 611; U. S. v. Mateo, 5 Phil. 462; U. S. v. Carrington, 5 Phil. 725; Cacnio v. Baens, 5 Phil. 742; U. S. v. Weems, 7 Phil. 241.
4. Documents acknowledged before a Notary Public are public documents. Gochuico v. Ocampo, 7 Phil. 15; McMicking v. Kimura, 12 Phil. 98; Gomez v. Avecilla, 15 Phil. 465; Robinson v. Villafuerte, 18 Phil. 171; Amancio v. Pardo, 20 Phil. 313; Antillon v. Barcelon, 37 Phil. 148.
5. Public instruments as evidence. Cacnio v. Baens, 5 Phil. 742.
6. See also Ismael v. Guanzon, 2 Phil. 347; Abello v. Kock, 3 Phil. 558; Salmo v. Icaza, 10 Phil. 485; Elumbaring v. Elumbaring, 12 Phil. 384; Perez v. Cortez, 15 Phil. 211.

ART. 1217. Instruments authenticated by a notary public shall be governed by the Notarial Law.

1. See Art. 1216, Civil Code; Art. 93, Code of Commerce; Secs. 231 to 252, Administrative Code of 1917.
2. See notes under Arts. 131, 1216 and 1279, Civil Code.

ART. 1218. Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.

They shall also be evidence against the contracting parties and their successors in interest with respect to any declarations the former may have made therein.

1. See Arts. 1215 et seq., 1248, 1526, and notes under Art. 1221, Civil Code.
2. A public document is evidence against the contracting parties; but as to third parties, only for the purpose of showing, (1) its date and (2) the fact that led to its execution. Art. 1218 of the Civil Code must now be read in connection with Sec. 285, Code of Civil Procedure. Mendoza v. Fulgencio, 8 Phil. 243; De la Rama v. Robles, 8 Phil. 712; Lopez v. Alvarez, 9 Phil. 33; Robinson v. Villafuerte, 18 Phil. 171; Amancio v. Pardo, 20 Phil. 313; Rosario v. Manila Railroad, 22 Phil. 140; Dupilas v. Cabacuñgan, 36 Phil. 254; Mercado v. Espiritu, 37 Phil. 215; Chinchilla v. Rafel, 39 Phil. 888; Bough v. Cantiveros, 40 Phil. 209.

ART. 1219. An instrument executed for the purpose of abrogating any other former instrument executed by the same parties shall be effective as against third persons only when the contents of the later instrument have been entered in the proper public registry or on the margin of the original instrument and that of the copy or transcript by virtue of which such third person may have acted.

1. See notes under Art. 1221, Civil Code.

ART. 1220. Copies of public instruments of which an original or protocol is in existence, when contested by those who are adversely affected thereby, shall have evidentiary

force only when they have been compared with such original.

If any difference should be found between the original and the copy, the former shall prevail.

1. See notes under Art. 1221, Civil Code.

ART. 1221. In case of the disappearance of an original instrument, protocol, or original record, proof may be made by:

1. First copies issued by the public officer who authenticated the original;

2. Subsequent copies issued by judicial order after notice to the parties in interest;

3. Copies which without judicial order have been made in the presence of the parties in interest and with their conformity.

In default of the copies mentioned, any others which have been in existence for thirty years or more shall be competent evidence, provided they have been taken from the original by the officer who authenticated it or by some other officer entrusted with its custody.

Copies of lesser antiquity, or those authenticated by some public officer other than those mentioned in the next preceding paragraph shall only have the effect of a foundation in writing for further proof.

The evidentiary weight of copies made from copies shall be determined by the courts in accordance with the circumstances.

1. See Secs. 284, 321 and 326, Code of Civil Procedure.
2. There is no vested right in a rule of evidence. Aldeguer v. Hoskyn, 2 Phil. 500.
3. If a document is lost, and secondary evidence thereof is sought to be introduced, it must first be shown that (1) the document was duly executed, and delivered, where delivery is necessary; and (2) that it has been lost or destroyed. Timbol v. Manalo, 6 Phil. 254; Gabriel v. Bartolome, 7 Phil. 699; Araujo v. Celis, 6 Phil. 223; Savella v. Sabellano, 22 Phil. 197; Veguillas v. Jaucian, 25 Phil. 315; Michael & Co. v. Enriquez, 33 Phil. 87.

4. Private documents may be admitted in evidence upon proof of their due execution. Salmo v. Icaza, 10 Phil. 485; Antillon v. Barcelon, 37 Phil. 148; San Carlos v. Municipality of Cebu, 19 Phil. 32.
5. See also Geraldo v. Arpon, 22 Phil. 407; Samson v. Salvilla, 12 Phil. 497.

ART. 1222. The weight as evidence of the record in any registry of a document which has disappeared shall be determined in accordance with the last two paragraphs of the next preceding article.

1. See notes under Art. 1221, Civil Code.

ART. 1223. A public instrument which is defective by reason of lack of authority on the part of the notary or of any other imperfection of form shall be regarded as a private document if signed by the parties thereto.

1. See notes under Art. 1221, Civil Code.
2. The provisions of the Spanish notarial law regarding capacity or incapacity of notaries public have not been repealed by Sec. 791 of Act 190, or by Act 2035. Barretto v. Cabreza, 33 Phil. 112.

ART. 1224. Instruments executed for the purpose of acknowledging an act or contract shall not be proof against the document in which such act or contract has been recorded if, by reason of any excess or omission, there should be conflict between them, unless the novation of the former should be made expressly to appear.

1. See notes under Art. 1221, Civil Code.

PRIVATE DOCUMENTS.

ART. 1225. A private document, legally acknowledged, shall have the same weight as a public document between the parties thereto and their successors in interest.

1. See Arts. 1218, 1223, 1232, 1303, and notes under Art. 1221, Civil Code; and Arts. 33 et seq., Code of Commerce.

2. See the following cases, for "private documents" "legally recognized." Alcantara v. Alinea, 8 Phil. 111; Guillermo v. Matienzo, 8 Phil. 368; Chua Chienco v. Vargas, 11 Phil. 219; De la Cruz v. Niño, 18 Phil. 284; Alpuerto v. Perez, 38 Phil. 785.
3. See notes under Art. 1227, Civil Code.

ART. 1226. Any person against whom an obligation in writing, purporting to be signed by him, is presented in court, must testify whether the signature is his or not.

The heirs or successors in interest of the obligor may limit their testimony to stating whether they know or do not know if the signature is that of their predecessor in interest.

A refusal, without just cause, to give the testimony mentioned in the two paragraphs next preceding may be treated by the court as an admission of the authenticity of the document.

1. See Sec. 103, Code of Civil Procedure.

ART. 1227. The date of a private document shall not be counted with respect to third persons, except from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office.

1. See notes under Art. 1225, Civil Code.
2. "Third persons," as used in this article, means persons who have not intervened in the execution of the document either as principals or as witnesses. The heirs and successors in interest of the signers are not considered "third persons," but privies (causa habientes). This article establishes a rebuttable presumption. The testimony of attesting witnesses or other persons present when a private document is executed is admissible, even as against third parties, to prove the true date of its execution. Alpureto v. Perez Pastor, 38 Phil. 785.
3. Article cited and applied. Lao-Simbieng v. Palencia, 18 Phil. 325; Easton v. Diaz & Co., 32 Phil. 180; Barretto v. Cabreza, 33 Phil. 112; Kalambakal v. Pamatmat, 34 Phil. 465; Chinchilla v. Rafel, 39 Phil. 888.

ART. 1228. Private entries, registries, and papers shall be evidence, against the person who has written them only, as to all matters clearly shown thereby; but any person who wishes to make use thereof shall be bound to accept them also in the part which is adverse to him.

1. See Arts. 48 and 49, Code of Commerce; Secs. 283, 285 and 329, Code of Civil Procedure.
2. An objection based on this article was made for the first time in the Supreme Court against the admission of certain documentary evidence. Held, that the objection cannot be considered. Tan Machan v. De la Trinidad, 3 Phil. 684.

ART. 1229. Any note written or signed by the creditor at the end, in the margin, or on the back of an instrument held by him, shall constitute evidence of any matters which may be favorable to the debtor.

The same rule shall apply with respect to any note written or signed by the creditor on the back, in the margin, or at the foot of the duplicate of any document or receipt found in the possession of the debtor.

In either case the debtor who wishes to avail himself of that which may be favorable to him shall be obliged to abide by that which is adverse to him.

1. See notes under Art. 1228, Civil Code.

ART. 1230. Private instruments executed for the purpose of changing agreements made by public instruments shall produce no effect against third persons.

1. See notes under Art. 1225, Civil Code.
2. Article cited and applied. Martell Ong v. Jariol, 17 Phil. 244.

SECTION II. *Admissions.*

ART. 1231. Admissions may be made either judicially or extrajudicially.

In either case it shall be an indispensable condition to the validity of an admission that it should relate to personal

acts of the one making such admission and that he should have legal capacity to make it.

1. See Arts. 60, par. 1, 1226, 1234 et seq., Civil Code.

ART. 1232. Admissions are evidence against those making them.

Exception is made of cases in which compliance with the laws may be evaded thereby.

1. See Arts. 11, par. 3, 1218, Civil Code; Sec. 298, Code of Civil Procedure.

ART. 1233. An admission cannot be used in part only against the person making the same except when it refers to different facts or when part of the admission has been proved by other evidence or when it is in some particular contrary to nature or to law.

1. See Art. 283, Code of Civil Procedure.

ART. 1234. An admission loses its force only when it is proven that it was made by reason of some mistake of fact.

1. See Arts. 1231, 1266, Civil Code.

ART. 1235. A judicial admission must be made under oath before a judge of competent jurisdiction and after the party who is to be benefited by it has entered an appearance in the action.

1. Arts. 1235 to 1238, repealed. See Secs. 381, 382 and 355, Code of Civil Procedure (Willard).

ART. 1236. When a judicial admission under decisory oath is solicited, the party from whom it is demanded may ask that the oath be referred to the adverse party, and should the latter refuse to take it, his refusal shall be deemed an admission.

1. See notes under Art. 1235, Civil Code.

ART. 1237. A decisory oath cannot be demanded with

respect to incriminating facts or on questions with regard to which the parties cannot compromise.

1. See notes under Art. 1235, Civil Code.

ART. 1238. An admission made under decisory oath, whether deferred or referred, constitutes evidence only in favor of or against the parties who submitted to it and their heirs or successors in interest.

No proof of the falsity of such oath shall be admitted.

1. See notes under Art. 1235, Civil Code.

ART. 1239. Extrajudicial admissions are deemed to be matters of fact which are to be weighed by the courts in accordance with the rules of evidence.

1. See Art. 1231, Civil Code.

SECTION III. *Personal Inspection by the Judge.*

ART. 1240. Evidence by personal inspection by the judge shall be admissible only in so far as it clearly permits the court to judge, by the external appearance of the thing inspected, of the fact which it is desired to ascertain.

1. See Arts. 1215, 1241, Civil Code; Sec. 332, Code of Civil Procedure.

ART. 1241. The inspection made by one judge may be taken into consideration in a judgment rendered by another judge, provided the former has set forth in the record, with perfect clearness, the details and particulars of the thing inspected.

1. See Art. 1240, Civil Code.

SECTION IV. *Expert Evidence.*

ART. 1242. Evidence of this kind may be made use of only when scientific, artistic, or practical knowledge is necessary or desirable for the ascertainment of the facts.

1. See Art. 1215, Civil Code; Secs. 292, 298 and 327, Code of Civil Procedure.

ART. 1243. The weight of this evidence and the manner in which it is to be introduced are the subjects of provisions of the Law of Civil Procedure.

1. See notes under Art. 1242, Civil Code; Sec. 795, Code of Civil Procedure.

SECTION V. *Testimony of Witnesses.*

ART. 1244. The testimony of witnesses shall be admissible in all cases in which it shall not have been expressly excluded.

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1. See notes under Art. 1245, Civil Code.
2. See Parrado v. Jo-Juayco, 4 Phil. 710.

ART. 1245. All persons, of either sex, who are not disqualified by natural incapacity, or by the provisions of law, may be witnesses.

1. See Secs. 381, 382 and 383, Code of Civil Procedure.

ART. 1246. The following are disqualified by natural incapacity:

1. Lunatics or insane persons;
2. The blind and deaf, as to those things a knowledge of which depends upon sight and hearing;
3. Minors under 14 years of age.

1. See notes under Art. 1245, Civil Code.

ART. 1247. The following are disqualified by law:

1. Those directly interested in the suit;
2. Ascendants as to suits of their descendants and the latter as to those of the former;
3. The father-in-law or mother-in-law as to suits of the son-in-law or daughter-in-law, and vice-versa;
4. The husband as to suits of his wife and the wife as to those of her husband;
5. Any person who is required to keep secret matters

made known to him by reason of his station or profession, as to matters so communicated;

6. Those specially disqualified to be witnesses to certain instruments.

The provisions of paragraphs 2, 3, and 4 shall not be applicable to suits in which it is sought to prove the birth or death of children, or any other private family matter which it may not be possible to prove by other means.

1. See notes under Art. 1245, Civil Code; Arts. Penal Code.
2. Article cited. Cuyugan v. Santos, 34 Phil. 100.

ART. 1248. The weight of the testimony of witnesses shall be determined by the courts in accordance with the provisions of the Law of Civil Procedure, care being taken to avoid the final determination of matters which can generally be proved by public instruments, private documents, or some written evidence, upon the mere fact of the conformity of the testimony of witnesses, unless their veracity is unquestionable.

[1218, 1297]

1. See Sec. 273, Code of Civil Procedure; Act of Congress of March 8, 1902, Sec. 9.
2. Articles cited. Robinson v. Villafuerte, 18 Phil. 171; Cuyugan v. Santos, 34 Phil. 119.

SECTION VI. *Presumptions.*

ART. 1249. Presumptions are not admissible, except when the fact from which they are to be deduced is fully proven.

1. See Arts. 33, 69, 108 to 110, 130, 193, 267, 393, 434, 436, 1090, 1137, 1253 and 1407, Civil Code; Secs. 333 and 334, Code of Civil Procedure.
2. Where a will which cannot be found is shown to have been in the possession of the testator when last seen, the presumption is, in the absence of other competent evidence, that it was cancelled or destroyed by him. Gago v. Mayumac, 49 Phil. 902.
3. As to presumption arising from gross inadequacy of price in sale with *pacto de retro*, see Cabigao v. Lim, 50 Phil. 844.

4. As to presumption of identity of foreign law with the law of the forum, see Miciano v. Brimo, 50 Phil. 867.

ART. 1250. Presumptions established by law exempt those favored thereby from producing proof.

1. See Art. 1090, and notes under Art. 1249, Civil Code.
2. The following cases illustrate the operation of presumptions. Veloso v. Veloso, 8 Phil. 83; Velasco v. Masa, 10 Phil. 279; *In re* Estate of Enriquez and Reyes, 29 Phil. 167.
3. The presumption of innocence of crime is superior to the presumption that when a second marriage is contracted a former marriage of one of the parties has been dissolved. Rustia v. Ramos, 48 Phil. 292.

ART. 1251. Presumptions established by law may be rebutted by proof to the contrary, except in those cases in which the law expressly prohibits such rebuttal.

Only a judgment obtained in a suit for revision shall be effective to overcome the presumption of the truth of the *res adjudicata.*

1. See Arts. 108 to 110 and 1110, and notes under Art. 1250, Civil Code; Sec. 306, Code of Civil Procedure.
2. Requisites essential to sustain a plea of *res adjudicata.* Palanca Tanguinlay v. Quiros, 10 Phil. 360; Acasio v. Alba, 10 Phil. 410; Lanuza v. Gonzales, 17 Phil. 413; Tan-Suyco v. Javier, 21 Phil. 82; Peñalosa v. Tuason, 22 Phil. 303; Bowler v. Intestate of Alvarez, 23 Phil. 561; Donato v. Mendoza, 25 Phil. 57; Solano v. Salvilla, 29 Phil. 66; Hongkong & Sh. B'k v. Aldecoa & Co., 30 Phil. 255; Archbishop of Manila v. Director of Lands, 35 Phil. 339.

ART. 1252. In order that the presumption of *res adjudicata* may be admissible in another suit, the most perfect identity must exist, between the case decided by the judgment and that in which it is invoked, with respect to the subject-matter and cause of the action, the parties thereto, and the capacity in which they litigated.

In matters concerning the civil status of persons, and in those which involve the validity or nullity of testamentary provisions, the presumption of *res adjudicata* shall be valid

against third persons, even if they were not parties to the proceedings in which the judgment was rendered.

It shall be deemed that identity of persons exists whenever the litigants in the second suit are the successors in interest of those who litigated in the preceding suit, or when they are bound to them by bonds of solidarity, or by those which are established by the indivisibility of the undertaking as between those entitled to demand its performance, or those obligated to its fulfillment.

1. See Art. 1816 and notes under Art. 1251, Civil Code.
2. The acquittal of the beneficiary of a life insurance policy of estafa connected with the issuance of the policy does not preclude a defense by the insurance company to a civil action by such beneficiary upon averments that the policy was obtained by fraud and deceit practiced by plaintiff. Eguaras v. Great Eastern, etc. Co., 33 Phil. 263.
3. A former judgment against a collective partnership is not *res adjudicata* in an action against the individual partners. De los Reyes v. Lukban, 35 Phil. 757.
4. See also Merchant v. Int. Bank, 9 Phil. 554; Salunga v. Evangelista, 20 Phil. 281; Agregado v. Muñoz, 26 Phil. 456; Lopez v. Gloria, 40 Phil. 37.
5. See Lopez v. Director of Lands, 46 Phil. 589; Guinto v. Bonfing, 46 Phil. 884; Atienza v. Molina, 46 Phil. 986; Cruz v. Cruz, 47 Phil. 10; Manila Electric v. Artiaga, 50 Phil. 144.
6. A valid judgment in *res judicata* not only as to all defenses actually interposed, but as to all other defenses which might have been, but were not pleaded. National Bank v. Barretto, XXVII Off. Gaz. 4144.

ART. 1253. In order that presumptions other than those established by law may be admitted as means of proof, the fact proved and that which it is desired to deduce from it must be necessarily and directly connected by the rules of human reasoning.

1. See Art. 1249 and notes under Art. 1251, Civil Code.
2. See Pañganiban v. Cuevas, 7 Phil. 477.

TITLE II.

CONTRACTS.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1254. A contract exists from the moment one or more persons consent to be bound with respect to another or others to deliver something or to render some service.

1. See Arts. 1088 et seq., and 1255 et seq., Civil Code; Art. 50, Code of Commerce.
2. The defendant accepted the services of plaintiff as interpreter. It was not stipulated that the services were to be gratuitous. Held, under the rule of *facio ut des*, the defendant was obliged to pay for them. Perez v. Pomar, 2 Phil. 682.
3. The stipulations in a contract are binding upon the parties unless they violate the prohibitive provisions of Art. 1255, Civil Code. Jimeneo v. Gacilago, 14 Phil. 16; Walker v. McMiking, 14 Phil. 668.
4. See Coronel v. Ona, 33 Phil. 456.
5. See Zayco v. Serra, 44 Phil. 326.

ART. 1255. The contracting parties may establish any pacts, clauses and conditions they may deem advisable, provided they are not contrary to law, morals, or public order.

1. See Arts. 4 (par. 2), 1116, 1271, 1275, 1666, 1872, and notes under Art. 1254, Civil Code; Art. 117, Code of Commerce; Art. 2, Mortgage Law.
2. The parties cannot by contract deprive a court of its jurisdiction over a given case. Molina v. De la Riva, 6 Phil. 12.
3. It is against public morals to stipulate in a contract of loan that the services to be rendered by the borrower while the loan subsists shall be gratuitous. De los Reyes v. Alojado, 16 Phil. 499.

4. A contract to compromise a criminal case will not be enforced. Arroyo v. Berwin, 36 Phil. 386.
5. A covenant in a contract of loan which provides that upon default ₱5 a day will be paid as a penalty, in addition to the interest stipulated, will not be enforced. Ibarra v. Aveyro, 37 Phil. 273.
6. Contracts in restraint of trade depend for their validity upon the circumstances of each case. Ollendorff v. Abrahamson, 38 Phil. 585.
7. Stipulations regarding attorneys' fees will be controlled by the courts notwithstanding Art. 1255, Civil Code. Bachrach v. Golingco, 39 Phil. 138.
8. Article cited and applied. Borromeo v. Franco, 5 Phil. 49; Icaza v. Ortega, 5 Phil. 166; De los Reyes v. De los Reyes, 8 Phil. 103; Guillermo v. Matienzo, 8 Phil. 368; Chang v. Assurance Corpn., 8 Phil. 400; Peterson v. Azada, 8 Phil. 432; Roxas v. Mijares, 9 Phil. 252; Palacios v. Mun. of Cavite, 12 Phil. 140; Warner, Barnes & Co. v. Jaucian, 13 Phil. 4; Jose v. Damian, 14 Phil. 104; Tañido v. Jumauan, 17 Phil. 335; Yu Tek & Co. v. Gonzalez, 29 Phil. 391; Cuyugan v. Santos, 34 Phil. 116; Ferrazini v. Gsell, 34 Phil. 697; Legarda Koh v. Ongsiaco, 36 Phil. 185; Bough v. Cantiveros, 40 Phil. 209; Aguilar v. Rubiato, 40 Phil. 570.
9. The right to enter into lawful contracts constitutes one of the liberties of the people of the state. People v. Pomar, 46 Phil. 440.
10. Warrants of attorney to confess judgment are not authorized nor contemplated by our law, and are void as against public policy. National Bank v. Manila Oil R. & B. Co., 43 Phil. 444.
11. Provision in mortgage contract for sale of mortgaged property to pay debt, without notice or advertisement, held valid. National Bank v. De Poli, 44 Phil. 763.
12. Contracts between attorney and client are subject to revision by the court. Reyes v. Ocson, 44 Phil. 489.
13. Validity of stipulations in a contract for services limiting the right of the employee to engage in business discussed. Del Castillo v. Richmond, 45 Phil. 679.
14. A clause in a fire insurance policy to the effect that an action thereon by the insured must be brought within a certain time is valid if reasonable. Macias & Co. v. China Fire Ins. Co., 46 Phil. 345.
15. See El Hogar Filipino v. Paredes, 45 Phil. 178; Villaruel v. Alvayda, 46 Phil. 277.

ART. 1256. The validity and fulfillment of contracts cannot be left to the will of one of the contracting parties.

1. See Arts. 1124, 1115, and notes under Art. 1255, Civil Code.
2. Article cited and applied. Legaspi v. Aguilar, 12 Phil. 353; Fernandez v. Manila E. R. R. & L. Co., 14 Phil. 275; Cuyugan v. Santos, 34 Phil. 103.
3. The burden of proving a fact relied upon to establish the nullity of a contract valid on its face, is upon the person alleging it. Joaquin v. Mitsumine, 34 Phil. 858; Ollendorff v. Abrahamson, 38 Phil. 585.
4. See also Legarda v. Zarate, 36 Phil. 68; Liebenow v. Phil. Veg. Oil Co., 39 Phil. 60.
5. Article cited and construed. Taylor v. Uy Tieng Piao, 43 Phil. 873.

ART. 1257. Contracts shall be binding only upon the parties who make them and their heirs, excepting, with respect to the latter, cases in which the rights and obligations arising from the contract are not transmissible, either in consequence of their nature, or by agreement, or by provision of law.

Should the contract contain any stipulation in favor of a third person, he may demand its fulfillment, provided he has given notice of his acceptance to the person bound before the stipulation has been revoked.

1. See notes under Art. 1258, Civil Code.
2. When plaintiff's rights flow from a voidable contract defendant, if not a party to such a contract, cannot rely upon such voidability as a defense. Wolfson v. Estate of Martinez, 20 Phil. 340; Ibañez v. Hongkong & Sh. Bank, 22 Phil. 572.
3. Meaning of stipulation in favor of third persons. Uy Tam v. Leonard, 30 Phil. 471; Daywalt v. Augustinian Corpn., 39 Phil. 587.
4. See also Eleizegui v. Manila Lawn Tennis Club, 2 Phil. 309; Lopez v. Enriquez, 16 Phil. 336; Manila Railroad v. Cia. Transatlantica, 38 Phil. 875.
5. The payee of a telegraphic transfer may bring an action in his own name against the bank which issued the same, although he took no part in its purchase. Kauffman v. National Bank, 42 Phil. 183.

6. A written undertaking to respond as surety for the performance of a contract to be entered into between the principal and a third person, is binding upon the surety upon acceptance by the person for whose benefit it was made. Poblete v. Lo Singco, 44 Phil. 369.
7. An agreement upon consideration by which one of the parties promises to donate property to a third party is governed by the law of contracts. Acceptance by the donee may be implied from his contract. Tabar v. Becada, 44 Phil. 619.
8. A contract made in the name of an entity which has no legal existence, which name is in reality the designation of a subsidiary branch of the business of an existing firm or corporation is binding upon the latter and the other party to the agreement. Blossom & Co. v. Manila Gas Corp., 48 Phil. 848.
9. A trust constituted between two contracting parties for the benefit of a third person is not subject to the rules governing donations of real property. The beneficiary of a trust may demand performance of the obligation without having formally accepted the benefit of the trust in a public document, upon mere acquiescence in the formation of the trust and acceptance under the second paragraph of Article 1257 of the Civil Code. Cristobal v. Gomez, 50 Phil. 810.
10. Effect of contract for professional services upon children of obligor; see Velaya v. Patricio, 50 Phil. 178, cited under Art. 1263.
11. Right of buyer of land to enforce warranty of title against his vendor's grantor; see De la Riva v. Escobar, 51 Phil. 243, cited under Art. 1481.

ART. 1258. Contracts are perfected by mere consent, and from that time the parties are bound, not only to the performance of that which has been expressly stipulated, but also with respect to all the consequences which, according to the character of the contract, are in accordance with good faith, custom, and law.

1. See Arts. 1279, 1450, and notes under Arts. 1255 and 1257, Civil Code; Arts. 54 and 55, Code of Commerce; Sec. 335, Code of Civil Procedure.
2. Article cited and applied. Perez v. Pomar, 2 Phil. 682; Co-Tiangco v. To-Jamco, 3 Phil. 210; McCullough v. Aenlle & Co., 3 Phil. 285; Enriquez v. Diaz, 37 Phil. 992; Cangco

v. Manila Railroad Co., 38 Phil. 781; Manila R. R. Co. v. Cia. Transatlantica, 38 Phil. 875.

3. Prior to the enactment of the Code of Civil Procedure, a contract for the sale of realty to be enforcible did not need to be in writing. Such a contract is not now void but voidable, and it may be proved and established by oral evidence if no timely objection thereto is interposed. This is also true as to the other cases mentioned in sec. 335 of the Code of Civil Procedure. (Statute of Frauds). Roman v. Grimalt, 6 Phil. 96; Couto v. Cortes, 8 Phil. 459; Lim v. Lim, 10 Phil. 633; Reiss v. Memije, 15 Phil. 350; Conlu v. Araneta, 15 Phil. 387; Gallemit v. Tabiliran, 20 Phil. 241; Kuenzle & Streiff v. Jiongco, 22 Phil. 110; Gomez v. Salcedo, 26 Phil. 485; Gutierrez Hnos. v. Orense, 28 Phil. 571; Gorospe v. Ilayat, 29 Phil. 21; Domalagan v. Bolifer, 33 Phil. 471; Abrenica v. Gonda, 34 Phil. 739; Santos v. Rivera, 33 Phil. 1; Behn, Meyer & Co. v. Davis, 37 Phil. 431.
4. See Robinson etc. Co. v. Cruz et al., 49 Phil. 42, cited under Art. 1712.

ART. 1259. No one can contract in the name of another without being authorized by him or without having his legal representation in accordance with law.

A contract entered into in the name of another by one who has neither his authorization nor legal representation shall be void, unless it should be ratified by the person in whose name it was made before being revoked by the other contracting party.

1. See Arts. 269, 1309, 1313, 1697, 1709 and 1888, Civil Code.
2. Ratification must be made by the person for whom the unauthorized act was executed, or by some one duly authorized by him. Mere lapse of time cannot produce ratification. Tipton v. Velasco, 6 Phil. 67; Salunga v. Evangelista, 20 Phil. 290.
3. Ratification may be express or implied. Gutierrez Hnos. v. Orense, 28 Phil. 571.
4. Ratification validates the act not only from the date of ratification but from that of its celebration. Tacalinar v. Corro, 34 Phil. 898.
5. Without authority from the court, no person can make a valid contract for or on behalf of a minor or convey away the minor's interest in land. Ibañez v. Rodriguez, 47 Phil. 554.

6. As to implied ratification by corporation of unauthorized contract, see Zamboanga Transportation Co. v. Bachrach Motor Co., XXVII Off. Gaz. 2747.

ART. 1260. Oaths shall not be admitted in contracts. If taken, they shall be disregarded.

CHAPTER II.

ESSENTIAL REQUISITES FOR THE VALIDITY OF CONTRACTS.

GENERAL PROVISIONS.

ART. 1261. There is no contract unless the following requisites exist:

1. The consent of the contracting parties;
2. A definite object which is the subject-matter of the contract;
3. A consideration for the obligation established.

1. See Arts. 59, 1310, and notes under Art. 1548, Civil Code.
2. Article cited and applied. Palma v. Cañizares, 1 Phil. 602; Tunga-Chui v. Que-Bentec, 2 Phil. 561; Perez v. Pomar, 2 Phil. 682; Garcia v. Montague, 12 Phil. 480; Gallemit v. Tabiliran, 20 Phil. 241; Ibañez v. Hongkong & Sh. B'k, 22 Phil. 572; Manalo v. De Mesa, 29 Phil. 495; Aldecoa & Co. v. Warner Barnes & Co., 30 Phil. 153; Legarda v. Zarate, 36 Phil. 68; Barretto v. Barretto, 37 Phil. 234.
3. Various instances of lack of consent. U. S. v. Milla, 4 Phil. 391; Madrigal & Co. v. Stevenson & Co., 15 Phil. 38; Villagracia v. Ulibare, 24 Phil. 371; Mina v. Pascual, 25 Phil. 540; Ruperto v. Kosca, 26 Phil. 227; Coronel v. Ona, 33 Phil. 456; Lim v. Sun Life Assur. Co., 41 Phil. 263.
4. A sale of land to be valid need not be evidenced by public instrument. A private document is sufficient, notwithstanding the provisions of Art. 1280. Lopez v. Alvarez, 9 Phil. 28; Alano v. Babasa, 10 Phil. 511; Sison v. Ramos, 13 Phil. 54; Tuason v. Goduco, 23 Phil. 342; Porlay v. Hombrada, 34 Phil. 928.
5. See also Tipton v. Velasco, 6 Phil. 67; Behn, Meyer & Co. v. Mitchel, 7 Phil. 420; Antonio v. Aloc, 25 Phil. 147; Eguaras

v. Great Eastern Life Assur. Co., 33 Phil. 263; Tolentino v. Paraiso, 34 Phil. 609; Henry W. Peabody & Co. v. Bromfiel & Ross, 38 Phil. 841.

6. The expression, "I am in a position to entertain the purchase of the vessel upon the following terms . . ." does not constitute a definite offer to purchase. Rosenstock v. Burke, 46 Phil. 217.
7. A simulated contract lacks some of the elements necessary to make any contract whatever, and may be treated as non-existent for all purposes. Belen v. Collector of Customs, 46 Phil. 241.

SECTION I. *Consent.*

ART. 1262. Consent is shown by the concurrence of offer and acceptance with respect to the thing and the consideration which are to constitute the contract.

An acceptance made by letter shall not bind the person making the offer except from the time it came to his knowledge. The contract in such case is presumed to have been entered into at the place where the offer was made.

1. See Arts. 1257 et seq., 1263 et seq., 1271 et seq., 1278, 1760, Civil Code; Arts. 50 to 55, Code of Commerce.
2. An insurance contract is not perfected until acceptance is actually or constructively communicated to the applicant. A letter will not be presumed to have been received by the addressee unless it is shown that it was deposited in the post office properly addressed and stamped. Enriquez v. Sun Life Assur. Co., 41 Phil. 269.
3. See also Gamboa v. Gonzales, 17 Phil. 381; Perez v. Pomar, 2 Phil. 682.
4. For the acceptance of an offer to become a perfect contract, it must be plain, unconditional, and must not involve any new proposal. Zayco v. Serra, 44 Phil. 326.
5. See Laudico v. Arias, 43 Phil. 270, as to acceptance by letter.
6. In order that a bond offered to secure an obligation be binding upon the makers it must be accepted by the creditor and notice of such acceptance communicated to the sureties. National Bank v. Garcia et al. 47 Phil. 662.
7. The owner of property which is offered for sale at public or private auction may prescribe the manner, terms and conditions of such sale and the terms so imposed are binding upon bidders. Leo Quinco v. Postal Savings Bank, 47 Phil. 772.

8. An offer made through a public advertisement may, by acceptance, be converted into a binding contract. De la Rosa v. Bank of the P. I., 51 Phil. 926.

ART. 1263. The following persons cannot give consent:

1. Minors who are not emancipated;

2. Lunatics or insane persons, and deaf-mutes who do not know how to write;

3. Married women, in the cases provided by law.

1. See Arts. 60 et seq., 199 et seq., 213, 262, 314, 320, 996, 1262, 1300, 1301, 1304, 1318, 1932, Civil Code; Arts. 4, 6 et seq., 11 and 13, Code of Commerce.
2. A minor who represents himself to be of age, cannot thereafter disaffirm, on the ground of minority, a contract entered into in reliance upon such representations. Mercado v. Espiritu, 37 Phil. 215.
3. See also Gantingco v. Pabinguit, 35 Phil. 81.
4. The mere fact that one of the contracting parties was judicially declared insane nine days after the execution of the contract is not proof that he was insane when he entered into it. Carillo v. Jaojoco, 46 Phil. 957.
5. Without authority from a court of competent jurisdiction no person can make a valid contract for or on behalf of a minor or convey away the minor's interest in land. Ibañez v. Rodriguez, 47 Phil. 554.
6. Power of wife to sell property; see Samson v. Carratala, 50 Phil. 647, cited under Art. 1444.
7. An attorney made a *cuota litis* contract with a person claiming to be entitled to a share in an estate. During the pendency of the action, the claimant died. The attorney had claimant's minor children substituted as parties plaintiff and prosecuted the case to a successful conclusion. Held, that the contract was not binding on the children. Velaya v. Patricio, 50 Phil. 178.
8. The sale by a guardian, upon express judicial authority; of real estate belonging to his ward, is valid. Roa v. Roa, XXVII Off. Gaz. 4060.

ART. 1264. The incapacity mentioned in the next preceding article is subject to the modifications which are de-

termined by law, and is to be understood as without prejudice to the special disqualifications established by the same.

[60, par. 2, 62, 63, 221, 225, 229, 322, 1103, 1318, 1704, 1765]

ART. 1265. Consent given by reason of error, violence, intimidation, or deceit shall be void.

1. See Art. 1817, and notes under Arts. 1261 and 1269, Civil Code.
2. The vendor's lack of title to the property conveyed constitutes a breach of warranty but the sale cannot be annulled on the ground of error. Levy v. Johnson, 4 Phil. 643.
3. An act preceded by an exercise of judgment, although consent thereto is given reluctantly, is not void, although the consequences may show a lack of foresight, or the result may be a bad bargain or an unwise investment. Martinez v. Hongkong & Sh. B'k, 15 Phil. 252; Vales v. Villa, 35 Phil. 769.
4. Accounts stated have the same force and effect as contracts. A mere error in the accounting will only give rise to its correction. Aldecoa & Cox v. Warner, Barnes & Co., 16 Phil. 423; Gutierrez Hnos. v. Oria Hnos., 30 Phil. 491; Oquiñena v. Muertegui, 32 Phil. 261; Gonzales v. Harty, 32 Phil. 328.
5. To vitiate consent the error must affect the substance of the contract. Dumasug v. Modelo, 34 Phil. 252.
6. Proof necessary to establish fraud. Garcia v. Montague, 12 Phil. 480; Antonio v. Aloc, 25 Phil. 147; Eguaras v. Great Eastern L. Ins. Co., 33 Phil. 263.
7. Article cited and applied. Gomez v. Linton, 45 Phil. 652.
8. See Tuason v. N. China Ins. Co., 47 Phil. 14, cited under Art. 1759.
9. Where the defense in an action upon a policy of life insurance is that it was obtained by fraud and deceit on the part of the assured, such defense is not in conflict with Section 47 of the Insurance Act, under which an action to rescind a contract of insurance must be brought by the insurer before the commencement of an action on the contract; the defense based on the fraud of the insured is not a proceeding for the rescission of the contract but, if sustained, shows that no contract ever existed. Tan Chay Heng v. West Coast Life Insurance Co., 51 Phil. 80; Argente v. West Coast Life Insurance Co., 51 Phil. 725.

ART. 1266. In order for error to invalidate consent, it must have existed with respect to the substance of the thing which was the object of the contract, or to those of its qualities which were the principal inducement to the agreement.

An error with respect to the person shall invalidate a contract only when the consideration of the person was the principal cause of the contract.

A mere error of account shall give ground only for its correction.

1. See notes under Art. 1265, Civil Code.
2. Article cited and applied. Joaquin v. Mitsumine, 34 Phil. 858.
3. See Asiain v. Jalandoni, 45 Phil. 296; Gomez v. Linton, 45 Phil. 652.

ART. 1267. Violence exists when, in order to exact consent, irresistible force is used.

Intimidation exists when one of the contracting parties is inspired with a reasonable and well-grounded fear of suffering an imminent and serious injury to his person or property, or to the person or property of his spouse, descendants or ascendants.

In order to determine the extent of the intimidation, the age, sex, and condition of the person must be considered.

Fear of displeasing persons to whom obedience and respect are due shall not annul a contract.

1. See notes under Art. 1265, Civil Code; Arts. 494 et seq., 502, 521, 589, Penal Code.
2. A contract executed through fear of imprisonment for failure to render an account as guardian, cannot be avoided upon the ground of duress. Doronila v. Lopez, 3 Phil. 360; Martinez v. Hongkong & Sh. Banking Corp., 15 Phil. 252.
3. But see Jalbuena v. Ledesma, 8 Phil. 601.

ART. 1268. Violence or intimidation shall annul the obligation, even if employed by a third person who was not a party to the contract.

1. See notes under Arts. 1261, 1265 and 1267, Civil Code.

2. The threat, made by a judge, to send a person to prison, by reason of which his wife signed a contract of suretyship, constitutes intimidation sufficient to vitiate consent. Jalbuena v. Ledesma, 8 Phil. 601.

ART. 1269. Deceit exists when, by means of insidious words or machinations made use of by one of the contracting parties, the other is induced to enter into a contract which without them he would not have made.

1. See Art. 1102, and notes under Art. 1265, Civil Code; Arts. 534 et seq., Penal Code.
2. The consignee who, by false representations, induces his consignors to sell to him the property consigned at a price less than that at which he sold the same, must answer for the difference. Cadwallader & Co. v. Smith, Bell & Co., 7 Phil. 461.
3. In order that fraud may vitiate consent, it must be the *causal* not only the *incidental* inducement to the making of the contract, and based upon a fact *anterior* and not *subsequent* to the making of the contract. Hill v. Veloso, 31 Phil. 160; Eguaras v. Great Eastern Assur. Co., 33 Phil. 263.
4. The sale of shares of stock in a corporation by a shareholder to a director, without disclosure by the latter of pending negotiations, dependent upon his own action, which tend to enhance the value of the shares, may be set aside as fraudulent at the suit of the vendor. Strong v. Repide, 213 U. S. 419, 53 L. ed. 853.
5. The innocent non-disclosure of a fact does not necessarily affect the formation of a contract or operate to discharge the parties from their agreement. Tuason v. Marquez, 45 Phil. 381.
6. The statement that a corporation's authorized capital is ₱250,000 when it was in fact ₱500,000 avoids a contract of subscription for capital stock. Salmon, Dexter & Co. v. Unson, 47 Phil. 649.
7. The mere fact that the bargain was a hard one and that the price was inadequate is not a sufficient ground for the cancellation of a contract. Askay v. Cosalan, 46 Phil. 179.

ART. 1270. In order that deceit may be ground for the annulment of a contract it must be serious, and must not have been employed by both of the contracting parties.

Incidental deceit only renders the party who employed it liable in damages.

1. See notes under Arts. 1265 and 1269, Civil Code.
2. See Eguaras v. Great Eastern Life Assur. Co., 33 Phil. 263.
3. Article cited and applied. Valdez v. Sibal, 46 Phil. 930.

SECTION II. *Subject-Matter of Contracts.*

ART. 1271. All things, even future ones, which are not excluded from the commerce of man, may be the subject-matter of contracts.[1]

Nevertheless, no contract may be entered into with respect to future inheritances, except those the object of which is to make a division *inter vivos* of the estate, in accordance with Article 1056.

All services not contrary to law or to good morals may also be the subject-matter of contract.

1. See Arts. 4, 816, 827, 831, 1115, 1254, 1261, 1331 and 1460, Civil Code; Arts. 53 and 67, Code of Commerce.
2. The communal property of a municipality, such as the plaza, etc., cannot be the subject of contract. Cavite v. Roxas, 30 Phil. 602.
3. A partition of a future inheritance is invalid, but heirs who participate therein and accept its benefits are estopped from repudiating it. Tinsay v. Yusay, 47 Phil. 639.
4. Public policy; limitation on power to contract; see Puentebella v. Negros, 50 Phil. 69, cited under Art. 1815.

ART. 1272. Impossible things or services cannot be the subject-matter of contracts.

1. See Art. 1184, Civil Code.
2. Performance excused for impossibility anticipated as contingency in contract. Labayen v. Talisay-Silay etc. Co. XXVII Off. Gaz. 627.

ART. 1273. The subject-matter of every contract must be a thing determinate with respect to its kind. The uncer-

[1] "Things excluded from the commerce of man are, among others, sacred, religious and holy things, rights of royalty, and personal liberty." Medina & Marañon, Leyes Civiles de España, p. 213.

tainty of the amount shall not be an obstacle to the existence of the contract, provided it may be possible to determine it without the necessity of a new agreement between the contracting parties.

1. A contract by which an employer obligates himself to pay a bonus to his employee to be determined in the employer's discretion is valid. Liebenow v. Phil. Veg. Oil Co., 39 Phil. 60.
2. Article cited and applied. Gonzalez v. Davis, 43 Phil. 468.

SECTION III. *Consideration (causa) of Contracts.*

ART. 1274. In onerous contracts the consideration as to each of the parties is the undertaking or the promise of a thing or service by the other party; in remuneratory contracts the consideration is the service or benefit for which the remuneration is given; and in contracts of pure beneficence the consideration is the liberality of the benefactor.

1. See Arts. 618, 619 and 622, Civil Code; Art. 890, Code of Commerce.
2. The existence of a cause or consideration for a contract is presumed until the contrary is shown. Azarraga v. Rodriguez, 9 Phil. 637; Eliot v. Montemayor, 9 Phil. 693.
3. A promise made by one party in consideration of the promise made by the other party is good and will be enforced. Enriquez de la Cavada v. Diaz, 37 Phil. 982.
4. A contract of suretyship (*fianza*) is generally supported by and requires no other consideration than the liberality of the surety. Standard Oil Co. v. Codina Arenas, 19 Phil. 363.
5. The consideration in a mortgage contract is that which supports the principal obligation. China Bank v. Lichauco, 46 Phil. 460.
6. See Hawaiian Philippine Co. v. Hernaez, 45 Phil. 746.
7. Where one of the signers of a joint and several promissory note affixed his signature thereto for the accommodation of the co-maker and a third person advanced the face value of the note to the accommodated party at the time of the creation of the note, the consideration for the note, as regards both makers, is the money so advanced to the accommodated party. Acuña v. Veloso et al., 50 Phil. 241.
8. Conveyance without consideration; good as between parties; see Solis v. Chua Pua Hnos., 50 Phil. 636.

ART. 1275. Contracts without consideration or with an illicit consideration produce no effect whatsoever. A consideration is illicit when it is contrary to law or morals.

1. See Arts. 1116, 1214, 1666, 1758, 1814, and notes under Art. 1274.
2. All contracts affecting the course of a criminal prosecution are invalid as being against public policy. Arroyo v. Berwin, 36 Phil. 386; Velez v. Ramos, 40 Phil. 787.
3. A simple failure of title to property conveyed does not make a case of lack of consideration under this Article. Levy v. Johnson et al., 4 Phil. 650.
4. Although a public document recites a consideration, if it is proved that there has been in fact no consideration, the contract is void. Ocejo, Perez & Co. v. Flores, 40 Phil. 921.
5. See Zayco v. Serra, 44 Phil. 326; Askay v. Cosalan, 46 Phil. 179.

ART. 1276. The statement of a false consideration in contracts shall be ground for annulment, unless it be proven that they are supported by another real and licit one.

[619]

1. Plaintiffs executed a mortgage to secure a firm's debts under the impression that they were partners, when as decided by a final judgment of the court, they were not partners but creditors. Held, that the creditor's desire to preserve the firm intact was a sufficient consideration. Ibanez de Aldecoa v. Hongkong & Sh. Bank, 30 Phil. 255; 31 Phil. 339.
2. Defendant executed a written undertaking to pay a sum of money. The consideration recited was shown to be false. The real consideration was in part lawful and in part unlawful. Held, plaintiff cannot recover, having failed to prove what part of defendant's undertaking was supported by the valid consideration. Lichauco v. Martinez, 6 Phil. 594.
3. See also Cia. Gral. de Tabacos v. Obed, 13 Phil. 391.

ART. 1277. Even though the consideration should not be expressed in the contract, it shall be presumed that a consideration exists and that it is licit, unless the debtor proves the contrary.

1. See Arts. 1214, 1262, Civil Code.

2. Article cited and applied. Rodriguez v. Martinez, 5 Phil. 67; Sparrevohn v. Bachrach, 7 Phil. 194; Azarraga v. Rodriguez, 9 Phil. 637; Standard Oil Co. v. Codina Arenas, 19 Phil. 363.
3. Sec. 335 (par. 2), of the Code of Civil Procedure does not require that the cause or consideration for the promise to answer for another's debt be also stated in writing. Behn, Meyer & Co. v. Davis et al., 37 Phil. 431.
4. Article cited and applied. Zayco v. Serra, 44 Phil. 326.
5. The presumption is that a consideration existed and that it was lawful, in the absence of proof to the contrary. Lima v. Lim Chu Kao, 51 Phil. 476.

CHAPTER III.

OPERATION OF CONTRACTS.

ART. 1278. Contracts shall be binding, whatever may be the form in which they may have been entered into, provided that the essential conditions required for their validity exist.

1. See Arts. 1091, 1256, 1261, 1266, 1281, and notes under Arts. 1255 and 1261, Civil Code; Arts. 50 et seq., and 873, Code of Commerce.
2. Arts. 1278, 1279 and 1280, are still in force in so far as they are not in conflict with Sec. 335, Code of Civil Procedure (Willard).
3. Article cited and applied. Irureta Goyena v. Tambunting, 1 Phil. 490; Perez v. Pomar, 2 Phil. 682; Guillermo v. Matienzo, 8 Phil. 368; Peterson v. Azada, 8 Phil. 432; Couto v. Cortez, 8 Phil. 459; Lopez v. Alvarez, 9 Phil. 28; Roxas v. Mijares, 9 Phil. 252; Alano v. Babasa, 10 Phil. 511; De la Rama v. Inventor, 12 Phil. 44; Ormachea Tin Congco v. Trillana, 13 Phil. 194; Jimeno v. Gacilago, 14 Phil. 16; Dievas v. Co Chongco, 16 Phil. 447; Gallemit v. Tabiliran, 20 Phil. 241; Tuason v. Goduco, 23 Phil. 342; Del Castillo v. Escarella, 26 Phil. 409; Manalo v. De Mesa, 29 Phil. 495; Aldecoa & Co. v. Warner, Barnes & Co., 30 Phil. 153; Cuyugan v. Santos, 34 Phil. 100; Legarda v. Zarate, 36 Phil. 68; Rodriguez v. Pamintuan, 37 Phil. 876; Gutierrez Repide v. Afzelius, 39 Phil. 190.

4. A contract of partnership, civil or mercantile, even though oral, is valid and binding as between the parties. Thunga-Chui v. Que-Bentec, 2 Phil. 561.
5. Jurisdiction of courts is a subject pertaining to the procedural law and not to the Civil Code, and a contract depriving a court of the power to hear a certain case lawfully within its jurisdiction will not be enforced. Moline v. De la Riva, 6 Phil. 12.
6. But a party to an action may waive his rights with respect to the venue if the court has jurisdiction of the case. Manila R. R. v. Attorney General, 20 Phil. 523.
7. Arts. 1278 to 1280 do not require that an action to compel the execution of the necessary documents shall precede the action arising out of the contract. Villa v. Santiago, 38 Phil. 157.
8. The *pactum commissiorium* in a contract of pledge is void. Puig v. Sellner, 45 Phil. 286.
9. He who seeks to enforce the performance of a contract must himself be fair and reasonable and do equity. Seva v. Berwin & Co., 48 Phil. 580.
10. Where a document, purporting to be a mortgage of all the real estate of the mortgagor, cannot be recorded because of the insufficiency of the description of the property affected, the mortgagor may be compelled to reform it or execute another document sufficient in law to carry out the intention of the agreement. Bian Hin & Co. v. Tan Bomping, 48 Phil. 523.

ART. 1279. Should the law require the execution of an instrument or any other special formality in order to make the obligations of a contract effective, the contracting parties may compel each other to comply with such formality from the moment in which consent has been given, and the other requirements for the validity of the contract exist.

1. See Arts. 536, 1111, 1280, 1455, and notes under Arts. 1278 and 1280, Civil Code; and Arts. 389, 394, Mortgage Law.
2. Upon the death of the obligor his heirs may be compelled to execute the necessary document. Such heirs are not regarded as third persons. Mojica v. Fernandez, 9 Phil. 403; Araneta v. Montalibano, 14 Phil. 117.

3. Notwithstanding the provisions of Sec. 335, Act 190, a contract for the sale of realty may be established by oral evidence, if introduced without objection. Conlu v. Araneta, 15 Phil. 387.
4. A power to sell land is sufficient although expressed in a private document. Jiminez v. Rabot, 38 Phil. 378.
5. A donation of realty, to be valid, must be in a public document. Velasquez v. Biala, 18 Phil. 231.
6. Article cited and applied. Bian Hin & Co. v. Tan Bomping, 48 Phil. 523.
7. Contracts by two or more parties affecting land registered under the Torrens system must not only be signed by or on behalf of all the parties but must be acknowledged by each of them. Philippine etc. Co. v. Poizat et al., 48 Phil. 536.
8. The Spanish Notarial Law in the Philippines was repealed by Act 136. Philippine etc. Co. v. Poizat et al. 48 Phil. 536.
9. Title to real estate registered under the Torrens system does not pass by the execution and delivery of a deed. The act by which title is passed is the registration of the deed. Bambalan v. Maramba, 51 Phil. 417.
10. An unregistered sale of land registered under the Torrens system is valid as against the purchaser of the vendor's interest in such property upon execution sale. Lanci v. Yangco, XXVII Off. Gaz. 1020.
11. This article does not apply to donations *propter nuptias*. Solis v. Barroso, XXVII Off. Gaz. 2716.
12. Acknowledgment of notarial instruments; see Acts 2103, 3362 and 3428.

ART. 1280. The following must be reduced in writing in a public instrument:

1. Acts or contracts whose object is the creation, transmission, modification, or extinction of rights which affect real property;

2. Leases of real property for six or more years, whenever they are to be effective as against strangers;

3. Marriage settlements, and the creation or increase of doweries, whenever it is intended to enforce them against third persons;

4. The assignment, repudiation, or renunciation of hereditary rights, or those of the conjugal partnership;

5. Powers to contract marriage, general powers of attor-

ney for lawsuits; and any special powers which are to be presented in court; powers to manage property, and all other powers granted for the purpose of performing an act recorded or which is to be recorded in a public instrument, or which is to be good as against third persons;

6. The assignment of actions or rights arising from an act or contract evidenced by a public instrument.

All other contracts in which the amount of the undertaking of either of the contracting parties exceeds 1,500 pesetas must be reduced to writing, even though it be in a private document.

1. See Arts. 1321, 1549, 1555, and notes under Arts. 1278 and 1279, Civil Code; Arts. 2, 3, 389, 394, Mortgage Law, and Arts. 51, 720, and 737, Code of Commerce; Sec. 335, Code of Civil Procedure.
2. Prior to the enactment of the Code of Civil Procedure, an oral contract for the transfer of realty was valid and enforceable as between the parties thereto. Guerrero v. Miguel, 10 Phil. 52; Craig v. Leuterio, 11 Phil. 44; Doliendo v. Depino, 12 Phil. 758; Conlu v. Araneta, 15 Phil. 387; Dievas v. Co Chongco, 16 Phil. 447; Osorio v. Cortes, 24 Phil. 653; Del Castillo v. Escarella, 26 Phil. 409.
3. The administrator of government property who is duly authorized to execute contracts, may validly lease a portion of said property for a period not exceeding six years. Tipton v. Andueza, 5 Phil. 477.
4. See also Fernandez v. De la Rosa, 1 Phil. 671; German & Co. v. Donaldson etc. Co., 1 Phil. 63; De Dios Chua Soco v. Velosox, 2 Phil. 658; Luchsinger & Co. v. Melliza, 9 Phil. 376; Marella v. Reyas, 12 Phil. 1; De Leon v. Naval, 3 Phil. 258; Hasim & Co. v. Estate of Kernan, 11 Phil. 435; Lichauco v. De Guzman, 38 Phil. 283.
5. Paragraph 1 of this article does not require that the act or contract be evidenced by a public instrument in order to validate the same but only to insure its efficacy. Hawaiian Philippine Co. v. Hernaez, 45 Phil. 746.
6. This article has been modified by Section 335 of the Code of Civil Procedure and by the Land Registration Act. Hawaiian Philippine Co. v. Hernaez, 45 Phil. 746.

CHAPTER IV.

INTERPRETATION OF CONTRACTS.

ART. 1281. If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal sense of its wording shall be followed.

If the words appear to be contrary to the evident intention of the contracting parties, the intention shall prevail.

1. See Arts. 675, 1401, 1815; Civil Code; Arts. 37, 57 et seq., Code of Commerce; Secs. 286 to 294, Code of Civil Procedure.
2. Article cited and applied. Gonzales v. Crisanto, 2 Phil. 404; Perez v. Pomar, 2 Phil. 682; Alburo v. Villanueva, 7 Phil. 277; Azarraga v. Rodriguez, 9 Phil. 637; Aniversario v. Ternato, 10 Phil. 53; Palacios v. Cavite, 12 Phil. 140; Nolan v. Majinay, 12 Phil. 559; Jimeno v. Gacilago, 14 Phil. 16; Reyes v. Limjap, 15 Phil. 420; Hernandez v. Antonio, 16 Phil. 507; Umale v. Fernandez, 28 Phil. 89; Lizardi v. Yaptico, 30 Phil. 211; Escario v. Regis, 31 Phil. 618; Vega v. Ballilos, 34 Phil. 683; Chinchilla v. Rafel, 39 Phil. 888; Riera v. Palmaroli, 40 Phil. 105.
3. A person signed a document without clearly indicating the capacity in which he intended to be bound. Held, parol evidence is admissible to show his intention. Ramirez v. Orientalist Co., 38 Phil. 634.
4. Although the evidence tends to show that the contract was one of loan, yet if the parties have interpreted it as one of sale, that interpretation will be given effect. Valdez v. Sibal, 46 Phil. 930.
5. Whenever possible, writings must be so construed as to give effect to their general intent and so as to avoid absurdities. Bank of P. I. v. Herridge, 47 Phil. 57.
6. Contract held executed and not merely executory. Chinese American Bank v. Uy Chaco, XXXIV Off. Gaz. 1453.
7. See Palanca v. Director of Lands, 43 Phil. 149; Jo Chung Cang v. Pacific Commercial Co., 45 Phil. 142; Rubio v. Villanueva, 45 Phil. 842; Rosenstock v. Burke, 46 Phil. 217; Velazquez v. Teodoro, 46 Phil. 757; Song Fo & Co. v. Hawaiian Philippine Co., 47 Phil. 821.

8. A negotiable warehouse receipt is not rendered invalid as against third persons by reason of the fact that it incorrectly states the origin of the merchandise therein described when no doubt exists as to the identity of the goods; and the manifest intention of the parties to the contract of deposit must prevail, regardless of the inaccuracy of its wording. American-Foreign Banking Corp. v. Herridge, 49 Phil. 975.
9. A written contract may be reformed when by reason of mutual mistake the language fails to express the real meaning of the parties; but proof of mutual mistake must be clear and convincing. Tolentino et al. v. Gonzalez, 50 Phil. 558.
10. *Pacto de retro;* when may be construed as mortgage; see Tolentino v. Gonzalez, 50 Phil. 558, cited under Art. 1507.
11. The courts will reform a written agreement where, owing to mutual mistake, the language used therein does not fully or accurately express the agreement of the parties. To justify such reformation it must be shown conclusively (1) that the mistake is one of fact; and (2) that the mistake was common to both parties. Bank of the P. I. v. Fidelity & Surety Co., 51 Phil. 57.
12. In a mortgage of real property executed by the defendant in favor of the plaintiff bank to secure an indebtedness owing to the bank from a third party, the secured debt was described as bearing interest payable quarterly; but the original contract by which the indebtedness was created was incorporated into the mortgage by reference and this contract showed that the interest was to be capitalized monthly. Held, upon comparison of the provisions of the two contracts, that the intention of the parties evidently was to bind the defendant to the mode of payment expressed in the original agreement. Philippine Trust Co. v. Echaus, XXVII Off. Gaz. 1441.

ART. 1282. In order to judge as to the intention of the contracting parties, attention must be paid principally to their conduct at the time of making the contract and subsequently thereto.

[1114]

1. See notes under Art. 1281, Civil Code.
2. In the franchise to the Manila Electric R. R. Co., free transportation was granted to employees of the City of Manila "wearing official badges." For nine years the parties con-

strued this phrase to mean wearing the badges so they could be seen. Held, that the courts are not at liberty to adopt a construction opposed to that which the parties have placed on their contract. Manila Electric v. Commissioners, 30 Phil. 387.

3. Article cited and applied. Asis v. Pardo, 2 Phil. 401; Calvo v. Olives, 6 Phil. 88; Atlantic Gulf v. Insular Gov't, 10 Phil. 166; Figueras v. Rocha & Co., 13 Phil. 504; Tañido v. Jumauan, 17 Phil. 335.
4. The court may take into consideration the relations existing between the parties as an aid to the construction of an ambiguous contract. Kidwell v. Carter, 43 Phil. 953.
5. Peso sign used where dollar sign was intended. Held, dollar sign governs. Manila Engineering Co. v. Cranston, 45 Phil. 128.
6. Article cited and applied. Soler v. Chesley, 43 Phil. 529.
7. See Garcia v. Hongkong F. & M. Ins. Co., 45 Phil. 122; Reyes v. Elser, 45 Phil. 685.

ART. 1283. However general the terms of a contract may be, it shall not be construed as including things and cases different from those with respect to which the persons interested intended to contract.

1. See notes under Arts. 1281 and 1282, Civil Code.
2. Article cited and applied. Guzman v. Balarag, 11 Phil. 503; Hibberd v. McElroy, 25 Phil. 164; De la Vega v. Ballilos, 34 Phil. 683; Hanlon v. Hausserman, 40 Phil. 796.

ART. 1284. If any stipulation of a contract should be susceptible of different meanings, it shall be understood in the sense most adequate to give it effect.

1. See notes under Arts. 1281 to 1283, Civil Code; Arts. 57 to 59, Code of Commerce.

ART. 1285. The stipulations of a contract should be interpreted in relation to one another, and those that are doubtful given the meaning which may appear from a consideration of all of them together.

[1401]

1. See notes under Arts. 1281 and 1283, Civil Code.

ART. 1286. Words which have different meanings shall be understood in that which may be most in accord with the nature and object of the contract.

1. See Arts. 346, 347, 675, and notes under Art. 1281, Civil Code.
2. The institution of a suit against delinquent debtors is not an act of strict ownership but merely an incidental matter in the administration of a business, which an agent acting under a general power of attorney may lawfully undertake. German & Co. v. Donaldson-Sim & Co., 1 Phil. 63.

ART. 1287. The uses or customs of the country shall be taken into consideration in construing ambiguous provisions in contracts, and shall be used to supply the omission of stipulations which are usually included.

1. See notes under Art. 1281, Civil Code.
2. When a contract makes use of the word "pesetas," it must be understood as referring not to the Spanish peseta but to the peseta in use and current in the Philippines. Yañes de Barnuevo v. Fuster, 29 Phil. 622.

ART. 1288. Obscure terms of a contract shall not be so construed as to favor the party who occasioned the obscurity.

1. See notes under Art. 1281, Civil Code; and Sec. 293, Code of Civil Procedure.
2. A clause in a contract of lease provided that improvements (obras) might be made by the lessee on the premises. The lessee demolished an old wall and erected another of reinforced concrete. Held, the word "obras" must be construed liberally in favor of the lessee. Enriquez v. Watson, 22 Phil. 638.
3. Article cited and applied. Gov't of the P. I. v. Derham Bros. 36 Phil. 960.

ART. 1289. If it should be absolutely impossible to solve, by the rules established by the preceding articles any doubts concerning the incidental details of a gratuitous contract, they should be settled in such a way as to effect the least possible transmission of rights or interests. When

such doubt arises in construing onerous contracts, it shall be resolved in favor of the greatest reciprocity of interests.

Should such doubts as those whose solution is referred to in this article exist with respect to the principal object of the contract to such a degree as to make it impossible to determine what was the intention or will of the parties, the contract shall be void.

1. See notes under Art. 1281, Civil Code.
2. In case of doubt as to whether a certain contract was a sale with right of repurchase or a mere loan secured by a mortgage, the contract will be held a loan inasmuch as this finding will give rise to a lesser transmission of rights and interests. Olino v. Medina, 13 Phil. 379.
3. See also Perez v. Cortes, 15 Phil. 211; Padilla v. Linsangah, 19 Phil. 65.

CHAPTER V.

RESCISSION OF CONTRACTS.

ART. 1290. Contracts validly entered into may be rescinded in the cases established by law.

1. A contract for the sale of personal property provided that in case of default in the payment of the price, the vendor might rescind the contract. Held, that the rights of the parties are not governed by this article, but by Arts. 1124 and 1506, Civil Code. Guevara v. Pascual, 12 Phil. 311.
2. Contracts in fraud of creditors. Kuenzle & Streiff v. Watson & Co., 13 Phil. 26; Panlilio v. Victorio, 35 Phil. 706.

ART. 1291. The following may be rescinded:

1. Contracts which have been entered into by guardians without the authorization of the family council, provided the persons they represent have thereby suffered lesion of more than one-fourth part of the value of the things which have been the subject-matter thereof;

2. Those executed in representation of absentees, if the latter should have suffered the lesion referred to in the next preceding paragraph;

3. Those made in fraud of creditors when the latter cannot recover, in any other manner, what is due them;

4. Contracts relating to things in litigation, should they have been made by the defendant without the knowledge and approval of the parties litigant, or of the competent judicial authority;

5. Any other contracts specially determined by law.

1. See Arts. 4, 188, 269 et seq., 1111, 1124, 1255, 1261, 1276, 1277, 1294 to 1299, 1466, 1468, 1469, 1479, 1483, 1503, and notes under Art. 1290, Civil Code; Art. 234, Code of Commerce.
2. Before an action to set aside a contract, as being in fraud of creditors, can be maintained, it must first be shown that plaintiff has no other remedy available. Regalado v. Luchsinger, 5 Phil. 625; Guash v. Espiritu, 11 Phil. 184.
3. Acts complained of held not to be in fraud of creditors. Mortera v. Martinez, 14 Phil. 541; Kuenzle & Streiff v. Tan Sunco, 16 Phil. 670; Ibañez v. Hongkong & Sh. Bank, 22 Phil. 572.
4. Acts complained of held to be in fraud of creditors. Panlilio v. Victorio, 35 Phil. 706; Alpuerto v. Perez, 38 Phil. 785.
5. See Aquino v. Tañedo, 39 Phil. 517.
6. Mutual mistake as to the subject matter of the contract, which is so material as to go to the essence of the contract, is a ground for relief and rescission. Asiain v. Jalandoni, 45 Phil. 296.
7. A slight or casual breach of the contract is not ground for rescission. Song Fo v. Hawaiian Philippine Co., 47 Phil. 821.
8. Failure of the vendor to place the purchaser in possession of the property sold, when so required by the contract, is a ground for rescission. Gonzalez v. Haberer, 47 Phil. 380.
9. Where an estate, in the course of administration, appears to be insolvent, any creditor who believes that a conveyance of property executed by the decedent in his lifetime was made in fraud of creditors may, upon leave of the court, bring an action in the name of the executor or administrator to recover property thus fraudulently conveyed away. Estate of Ankron v. Baker, 51 Phil. 75.
10. A conveyance made by an insolvent debtor for a grossly inadequate consideration and with intent to defraud his creditors is void as to them, and the existence of gross disparity between the consideration and the value of the property

conveyed will create a presumption of fraud. Asia Banking Corp. v. Noble, Jose et al., 51 Phil. 763; Asia Banking Corp. v. Corcuera et al., 51 Phil. 781.

ART. 1292. Payments made by a debtor while in a state of insolvency on account of obligations which were not enforcible at the time the payment was made may also be rescinded.

1. See notes under Art. 1291, Civil Code.
2. See Art. 879, Code of Commerce; Act No. 1956.

ART. 1293. No contract shall be rescinded for lesion excepting those mentioned in paragraphs 1 and 2 of Article 1291.

1. See Arts. 1074 and 1469, Civil Code; Art. 344, Code of Commerce.
2. See McCullough v. Aenlle & Co., 3 Phil. 285.

ART. 1294. The action for rescission is a subsidiary one; it may be enforced only when the person injured has no other legal remedy by which to obtain reparation for the injury.

1. See notes under Arts. 1290 and 1291, Civil Code.

ART. 1295. Rescission makes necessary the return of the things which were the subject-matter of the contract, with their fruits, and of the price paid, with interest thereon. Therefore, it can be effected only when the person who seeks the rescission is able to return that which, on his part, he is bound to restore.

Neither shall rescission take place when the things which are the subject-matter of the contract are lawfully in the possession of third persons who have not acted in bad faith.

In such case, damages may be recovered from the person who caused the lesion.

1. See Arts. 1106 et seq., 1363, and notes under Arts. 1290 and 1291, Civil Code; Arts. 27, 36, Mortgage Law.

2. Personal property sold subject to right of vendor to rescind for nonpayment of purchase price. Held, that right of rescission may be exercised against attaching creditor of vendee and the sheriff. Guevara v. Pascual, 12 Phil. 311.
3. See also Walker v. McMicking, 14 Phil. 668; Ocejo, Perez & Co. v. Int. Bank, 37 Phil. 631; Uy Soo Lim v. Tan Unchuan, 38 Phil. 552; Pabalan v. Velaz, 22 Phil. 29; Panlilio v. Victorio, 35 Phil. 706.
4. A contract of sale to a third party who takes possession of the property in good faith cannot be rescinded at the instance of a lessee holding an unregistered option of purchase. Sikatuna v. Guevara, 43 Phil. 371.
5. The debtor seeking relief from a usurious contract must first restore or offer to restore the amount received by him. Delgado v. Alonso Duque, 44 Phil. 739; Go Chioco v. Martinez, 45 Phil. 256.
6. The acquisition of the property in good faith by a third person, who is in lawful possession thereof, bars the action for rescission. Cordovero v. Villaruz, 46 Phil. 483.
7. Rescission makes necessary the return of the thing and its fruits irrespective of whether or not the purchaser possessed it in good or bad faith. Verceluz v. Edaño, 46 Phil. 801.

ART. 1296. The rescission referred to in paragraph 2 of Article 1291 shall not be allowed with respect to contracts entered into under judicial authorization.

1. Repealed (Willard).
2. See notes under Art. 1291, Civil Code.

ART. 1297. Contracts by virtue of which the debtor gratuitously disposes of property are presumed to be made in fraud of creditors.

Alienations upon valuable consideration, made by a person against whom a judgment in any instance has been previously rendered, or against whom a writ of attachment has been issued, shall also be presumed fraudulent.

1. See Arts. 643, 1111, 1227–1277, 1291, 1294, 1706, and notes under Art. 1291, Civil Code; Arts. 880 et seq., Code of Commerce; Arts. 523, 530, 537, Penal Code; Arts. 39, 41, Mortgage Law.

2. In the following cases, the facts were held sufficient to show that the sale or transfer was in fraud of creditors. Regalado v. Luchsinger & Co., 5 Phil. 625; Bachrach v. Peterson, 7 Phil. 571; Guash v. Espiritu, 11 Phil. 184; Santos v. Robledo, 28 Phil. 245; Panlilio v. Victorio, 35 Phil. 706; Gana v. Sheriff of Laguna, 36 Phil. 236; Alpuerto v. Perez, 38 Phil. 785.

3. The presumption established by this article is only *prima facie* and may be rebutted. Uy Piaoco v. Osmeña, 9 Phil. 299; Peña v. Mitchell, 9 Phil. 587; Golingo v. Monjardin, 31 Phil. 643.

4. In the following cases, the facts were examined and found not to warrant a finding that the transfer made was in fraud of creditors; Jose v. Damian, 14 Phil. 104; Ramos v. Hijos de I. De la Rama, 15 Phil. 554.

5. Independently of the presumptions established in this Article, other facts may be proved to show that an act is in fraud of creditors. Ayles v. Reyes, 18 Phil. 243; Oria v. McMicking, 21 Phil. 243.

6. See also De Jesus v. Urrutia & Co., 33 Phil. 171; Sebrevilla v. Montinola, 22 Phil. 124; Chiong Veloso v. Roa, 37 Phil. 63.

7. Sales of real property to defeat judgment creditors are not void; and, until set aside in a rescissory action, they are legally effective, convey title, and cannot be attacked collaterally as such in a land registration proceeding. Borja v. Addison, 44 Phil. 895.

8. The provisions of this article do not apply to the sale or mortgage of attached property released from attachment upon the execution of a bond by the defendant. Manila Mercantile Co. v. Flores, 50 Phil. 759.

9. Before a conveyance can be declared fraudulent as against creditors, it must appear that the debtor, at the time of making the conveyance, had no other sufficient means to which creditors might resort for the collection of their claims. The action for the rescission or annulment of a conveyance as having been made in fraud of creditors is essentially subsidiary. Solis v. Chua Pua Hnos. et al., 50 Phil. 636.

10. A voluntary conveyance, made without consideration, is *prima facie* good as between the parties; and such a contract cannot be declared fraudulent as against creditors in the absence of proof that there was, at the time of the execution of the conveyance, a creditor, or creditors, whom it might affect adversely. Solis v. Chua Pua Hnos. et al. 50 Phil. 636.

ART. 1298. Any person who shall have acquired in bad faith property alienated in fraud of creditors shall be liable to the latter for the losses and damages caused them by the alienation whenever, for any reason whatsoever, it should be impossible for him to return such property.

1. See notes under Art. 1291, Civil Code.

ART. 1299. The action of rescission must be brought within four years.

With respect to persons subject to guardianship, and absentees, the four years shall not commence to run until the incapacity of the former has ceased to exist, or the domicile of the latter has become known.

1. See Arts. 287, 1291, 1472, Civil Code; Art. 37, Mortgage Law; Sec. 43, Code of Civil Procedure.
2. Arts. 1299 and 1301 have been repealed by the Code of Civil Procedure. Brillantes v. Margarejo, 36 Phil. 202.

CHAPTER VI.

NULLITY OF CONTRACTS.

ART. 1300. Contracts entered into with all the requisites mentioned in Article 1261 may be annulled, even though the contracting parties suffer no lesion, whenever they are tainted with any of the vices which invalidate them in accordance with law.

1. See Arts. 4 and 1266, Civil Code.
2. See Llacer v. Muñoz de Bustillo, 12 Phil. 328; Antonio v. Aloc, 25 Phil. 147.
3. One who seeks to annul a contract must first show an interest in that contract. Ibañez v. Hongkong & Sh. Bank, 22 Phil. 572.
4. See also Doronila v. Lopez, 3 Phil. 360; U. S. v. Milla, 4 Phil. 391; Tipton v. Velasco, 6 Phil. 67; Mercado v. Espiritu, 37 Phil. 215.

ART. 1301. The action of annulment shall last four years.

The term shall commence to run—

In cases of intimidation or violence from the day on which either ceased;

In those of error or deceit or falsity of consideration, from the date of the consummation of the contract;

When the purpose of the action is to invalidate the unauthorized contracts of a married woman, from the date of the dissolution of the marriage;

With respect to contracts made by minors or incapacitated persons, from the date they were released from guardianship.

1. See notes under Arts. 1299 and 1300, Civil Code.
2. Repealed (Willard).
3. But this Article was cited and applied in the following cases: Naval et al. v. Enriquez, et al., 3 Phil. 669; Boydon v. Felix, 9 Phil. 597; Ullman v. Hernaez, 30 Phil. 69; Aldecoa & Co. v. Warner, Barnes & Co., 30 Phil. 153.
4. The deed of a married woman is voidable at the option of the husband and his heirs. Carratala v. Samson, 43 Phil. 751.
5. See Tinsay v. Yusay, 47 Phil. 639.

ART. 1302. The action to annul a contract may be brought by any person principally or subsidiarily bound thereby. Persons *sui juris* cannot, however, avail themselves of the incapacity of those with whom they contracted; neither can the person who caused the intimidation or violence, employed the deceit, or induced the error, base his action on these defects of the contract.

[1459]

1. Article cited and applied. Cia. Gral. v. Topiño, 4 Phil. 33; Martell Ong. v. Jariol, 17 Phil. 244; Wolfson v. Estate of Martinez, 20 Phil. 340; Ibañez v. Hongkong & Sh. Bank, 22 Phil. 572.

ART. 1303. When an obligation has been adjudged void, the contracting parties shall restore to each other the things which have been the subject-matter of the contract,

together with their fruits, and the price paid therefor, together with interest, without prejudice to the provisions of the following articles.

[1645]

1. See notes under Art. 1302, Civil Code.
2. A commission agent, by misrepresenting to his principal the condition of the market, succeeded in inducing the latter to authorize a sale at a price much below that at which the sale was actually made. Held, that there being fraud, the contract must be annulled, and the agent must answer for the difference. Cadwallader & Co. v. Smith, Bell & Co., 7 Phil. 462.
3. Where a municipality leased a portion of its public plaza, the court held that the lease was void, and ordered that the plaza be restored to the municipality and that all the rent paid be returned to the lessee. Cavite v. Roxas, 30 Phil. 602; Dumasug v. Modelo, 34 Phil. 252.
4. The rule established by this article is applicable only as between parties who are in privity with the contract. It cannot be invoked by a stranger to the actual contractual relation. Cagayan Valley v. Molina, 41 Phil. 294.

ART. 1304. When the nullity arises from the incapacity of one of the contracting parties, the incapacitated person shall not be obliged to make restitution, except to the extent he may have profited by the thing or by the price he may have received.

1. See notes under Arts. 1300 and 1302, Civil Code.
2. A minor signed a bill of sale of all his interest in a certain estate. Upon attaining majority, he failed to disaffirm the sale within a reasonable time, but on the contrary squandered that part of the consideration which remained. For these two reasons, it was held he could not have the contract annulled. Uy Soo Lim v. Tan Unchuan, 38 Phil. 552.

ART. 1305. When the nullity arises from the illegality of the consideration or the subject-matter of the contract, if the fact constitutes a crime or misdemeanor common to both contracting parties, neither shall be entitled to maintain an action against the other, and criminal proceedings

shall be instituted against them; and, furthermore, the things or money which may have been the object of the contract shall be disposed of in accordance with the rules prescribed by the Penal Code with respect to the effects of a crime or misdemeanor and the instruments used in its commission.

This provision shall be applicable to cases in which one only of the contracting parties has been guilty of a crime or misdemeanor, but the innocent party may recover anything he may have given and shall not be bound to fulfill any promise he may have made.

1. See notes under Art. 1306, Civil Code; Arts. 62, 120 et seq., Penal Code.
2. A promise of marriage, in consideration of carnal relations, is founded upon an unlawful consideration, and breach of such promise will not support an action for damages. Batarra v. Marcos, 7 Phil. 156; Inson v. Belzunce, 32 Phil. 342 (citing other cases).
3. The plaintiff, a Filipino, was the owner of $^{1}\%_{58}$ and the defendant, a foreigner, of $^{48}\%_{58}$ interest in a certain vessel, which was licensed in the name of the plaintiff as the sole owner in order to thwart the provisions of the coastwise law. Held, that the plaintiff could recover his share of the earnings notwithstanding the illegal agreement because he was able to establish his right independently thereof. Perez v. Herranz, 7 Phil. 693.
4. See also Iribar v. Millat, 5 Phil. 362; Leung Ben v. O'Brien, 38 Phil. 182; Bough v. Cantiveros, 40 Phil. 209.
5. Articles 1305 and 1306 are not applicable to cases of nullity of usurious loans. Go Chioco v. Martinez, 45 Phil. 256.

ART. 1306. If the act which constitutes the illicit consideration is neither a crime nor a misdemeanor, the following rules shall be observed:

1. When both parties are guilty, neither of them can recover what he may have given by virtue of the contract, or enforce the performance of the undertaking of the other party;

2. When only one of the contracting parties is guilty he cannot recover anything which he may have given by virtue

of the contract, or enforce the performance of any undertaking in his favor. The other party, if he has had nothing to do with the illicit consideration, may recover anything which he may have given without being obliged to perform any undertaking he may have assumed.

1. See notes under Art. 1305.
2. See also Cadwallader & Co. v. Smith, Bell & Co., 7 Phil. 478; Bough v. Cantiveros, 40 Phil. 228.
3. Paragraph 2 of this article applies only to cases where the nullity arises from illegality of the consideration or the purpose of the contract. (Art. 1305) Bustilo v. Maravilla, 48 Phil. 442.

ART. 1307. Any person against whom a judgment for the restitution of any thing has been rendered by reason of the nullity of the contract under which he received it, and who is unable to make restitution thereof because of the loss of the thing, shall restore the fruits received and the value of the thing at the time it was lost, together with interest from the date of such loss.

1. See Arts. 1278, 1314, Civil Code.
2. Article cited and applied. Dumasug v. Modelo, 34 Phil. 252.

ART. 1308. As long as one of the contracting parties fails to return that which he is obliged to restore by virtue of the declaration of nullity, the other cannot be compelled to perform that which is incumbent upon him.

1. Article cited and applied. Liñan v. Puno, 31 Phil. 259; Uy Soo Lim v. Tan Unchuan, 38 Phil. 552.

ART. 1309. The action of nullity is extinguished from the moment the contract may have been validly ratified.

1. After a contract is validly ratified, no action to annul the same can be maintained based upon a defect affecting its original validity. Gutierrez Hnos. v. Orense, 28 Phil. 571; Vales v. Villa, 35 Phil. 769.
2. See Tan Ah Chan v. Gonzalez, XXVI Off. Gaz. 3666.

ART. 1310. Only contracts which have all the requisites mentioned in Article 1261 can be ratified.

ART. 1311. Ratification may be either express or implied. It shall be deemed that there is an implied ratification when with knowledge of the cause of nullity, and after it has ceased, he who is entitled to invoke it does something which necessarily implies an intention to waive it.

[1697]

1. See notes under Art. 1310, Civil Code.
2. Articles cited and applied. Rosales v. Reyes, 25 Phil. 495; Vales v. Villa, 35 Phil. 769.
3. Unauthorized sale of plaintiff's property held ratified by his acceptance, with knowledge of the facts, of part of the purchase price. Tacalinar v. Corro, 34 Phil. 898.
4. Before a contract can be ratified knowledge of its existence must be brought home to the parties who have the authority to ratify it, or circumstances must be shown from which such knowledge may be presumed. Yu Chuck v. Kong Li Po, 46 Phil. 608.
5. See Tan Ah Chan v. Gonzalez, XXVII Off. Gaz. 3666.
6. The owner of mortgaged real estate obligated himself to convey it to the mortgagee in payment of the debt, in case of default. After default, but without a conveyance from the mortgagor, the mortgagee sold the land to a third person. Thereafter the mortgagor in an affidavit acknowledged that the land had been conveyed to the mortgagee's grantee. Held, that such confirmation validated the transfer to the mortgagee's grantee. Dalay v. Aquiatin et al., 47 Phil. 951.

ART. 1312. Ratification shall not require the consent of the contracting party who is not entitled to bring the action of annulment.

1. See Art. 1302, Civil Code.

ART. 1313. Ratification purges the contract of all vices with which it may have been tainted as from the moment it was entered into.

1. See Arts. 1259, 1892, and notes under Arts. 1309, 1310 and 1311, Civil Code.

2. See also Fabie v. Yulo, 24 Phil. 240.
3. Any acts evincive of an intent to abide by the contract constitute an affirmance, and purge it of any vices of nullity to which it may originally have been subject. Tan Ah Chan et ux. v. Gonzalez et al., XXVII Off. Gaz. 3666.

ART. 1314. The action for the annulment of a contract shall also be extinguished when the subject-matter thereof has been lost by the fraud or fault of the person entitled to bring such action.

If the cause of the action should be the incapacity of either of the contracting parties, the loss of the thing shall not be a bar to the action, unless it has occurred by fraud or fault on the part of the plaintiff after having acquired capacity.

1. From the evidence it appeared that the plaintiff, after attaining majority, squandered all the money with which he could have made the reimbursement necessary to effect the annulment of a sale made by him during minority. Held, the sale could not be annulled. Uy Soo Lim v. Tan Unchuan, 38 Phil. 552.
2. See also Llacer v. Muñoz de Bustillo, 12 Phil. 328; Ibañez v. Hongkong & Sh. Bank, 22 Phil. 572.

TITLE III.

CONTRACTS RELATING TO PROPERTY ON OCCASION OF MARRIAGE.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1315. Persons about to be joined in matrimony may, before entering into the marriage, establish by contract the conditions to which the conjugal partnership is to be subject with respect to their present or future property, subject only to the limitations prescribed by this code.

In default of a contract relating to such property, it shall be deemed that the marriage has been contracted under the regime of the legal conjugal partnership.

1. See Arts. 50, 59, 1316 to 1318, 1364 and 1439, Civil Code; Sec. 335 (No. 3) Code of Civil Procedure.

ART. 1316. The parties to the contracts mentioned in the next preceding article shall not stipulate therein anything contrary to law or good customs, or which is derogatory to the authority in the family which corresponds to the future spouses respectively.

Any stipulation contrary to the provisions of this article shall be void.

1. See Arts. 55 to 66, 826, 831, 1412, and notes under Art. 1315, Civil Code.

ART. 1317. Any general stipulations contained in the contracts mentioned in the two articles next preceding, by which the contracting parties agree that their property shall be subject to the special law and customs of regions in which

such special law prevails, and not to the general provisions of this code, shall also be void.

1. Repealed (Willard).

ART. 1318. Any minor capable of contracting marriage in accordance with law may also make an ante-nuptial contract; but it shall be valid only when the persons designated by law to give consent to the marriage of such minor have consented to the execution of such contract.

In case the ante-nuptial contract should be void because not consented to and signed by such persons, but the marriage itself is valid, in accordance with law, the minor shall be deemed to have entered into the marriage under the regime of the conjugal partnership.

1. See Arts. 45 (No. 1), 46, 320, 1329 and 1331, 1633, Civil Code.
2. As to the persons whose consent is necessary to give validity to the contract of a minor, see Gen. Orders No. 68, No. 7.

ART. 1319. In order that any change in the ante-nuptial contract be valid it must be made before the celebration of the marriage and in the presence and with the concurrence of the persons who took part in its execution as contracting parties. The attendance of the same witnesses shall not be necessary.

No one of the persons who participated in the execution of the original contract can be substituted by another, or his presence dispensed with, unless at the time of the execution of the new contract or the modification of the original contract, it be impossible for such person to be present by reason of his death or some other lawful cause, or unless his presence is not necessary under the law.

1. See Art. 1439, and notes under Art. 1315, Civil Code.
2. In force. Witnesses not necessary according to Sec. 335, Code of Civil Procedure (Willard).

ART. 1320. After the marriage has been celebrated, a marriage contract executed prior thereto cannot be changed with respect either to present or future property.

ART. 1321. Ante-nuptial contracts and modifications thereof must be recorded in a public instrument executed before the celebration of the marriage.

Property of the class referred to in Article 1324 is excepted from the preceding rule.

1. See Art. 1280, and notes under Art. 1315, Civil Code; Art. 21, Code of Commerce.
2. Repealed. The only requisite now is that these contracts must be in writing (Willard).
3. Contracts under this Article to be valid even as between the parties must be evidenced by a public document. Velasquez v. Biala, 18 Phil. 231.

ART. 1322. Any modification which may be made in the ante-nuptial contract shall have no legal effect with respect to third persons, unless the following conditions concur:

1. That by marginal note upon the original instrument reference be made to the notarial act or instrument containing the modification of the previous contract; and

2. That in case the original contract has been recorded in the Registry of Deeds, the instrument by which it has been modified, be also recorded.

The notary shall mention these modifications in any authenticated copy he may issue of the original stipulations or contract, under penalty of responding in damages to the parties should he fail to do so.

1. See Art. 1219, and notes under Arts. 1315 and 1321, Civil Code; Arts. 168 et seq., Mortgage Law.

ART. 1323. In order that an ante-nuptial contract be valid, when entered into by one against whom an action for civil interdiction or inhabilitation* has been brought or against whom judgment has been rendered in such action, it shall require indispensably the consent and concurrence of a guardian, who for this purpose shall be appointed for

* For definition of the penalties of civil interdiction and inhabilitation, see Penal Code of Spain.

him by the persons thereto authorized by the provisions of this Code, and of the Law of Civil Procedure.

1. See Arts. 227, 230, 262 et seq., 272 Civil Code.

ART. 1324. Whenever the property brought in marriage by the spouses is not real estate, and that of the husband and wife together does not exceed a total of two thousand five hundred pesetas, and there is no notary in the town of their residence, the ante-nuptial contract may be executed before the secretary of the municipal council and two witnesses who shall state, on their responsibility, that they know the property has been delivered or that it has been brought in marriage, as the case may be.

The original contract or contracts shall be preserved, under registration, in the archives of the proper municipality.

Whenever, among the property brought to the marriage, whatever may be its value, there are one or more parcels of real estate, or the contract refers to property of this description, it must, in all cases, be executed before a notary, in accordance with the provisions of Article 1321.

1. See notes under Arts. 1315 and 1321, Civil Code.

ART. 1325. Should the marriage be contracted in a foreign country, between a Spaniard and a foreign woman or between a foreigner and a Spanish woman, and the contracting parties should not make any statement or stipulation with respect to their property, it shall be understood, when the husband is a Spaniard, that he marries under the system of the legal conjugal partnership, and when the wife is a Spaniard, that she marries under the system of law in force in the husband's country, all without prejudice to the provisions of this code with respect to real property.

1. See Art. 10, par. 1, Civil Code.

ART. 1326. Any agreement made in the stipulations or contracts referred to in the preceding articles in contempla-

tion of a future marriage shall be void and of no effect in case the marriage does not take place.

1. See Arts. 44, 1333 (No. 2), Civil Code.

CHAPTER II.

DONATIONS BY REASON OF MARRIAGE.

ART. 1327. Donations by reason of marriage are those bestowed before its celebration in consideration of the same, upon one or both of the spouses.

1. V., in 1875, undertook to give his future wife a gift *propter nuptias*. In 1894, after the Civil Code took effect, he redeemed his promise by conveying to her a parcel of land. Held, this was a gift *propter nuptias*, valid as against the husband and his creditors. Torres de Villanueva v. Standard Oil Co. of New York, 34 Phil. 370.

ART. 1328. These donations shall be governed by the rules established in Title II, Book III, in so far as they are not modified by the following articles.

1. See Arts. 618 to 656, and notes under Art. 1315, Civil Code.
2. Donations *propter nuptias* and dowries of real estate are void if not evidenced by public document. Camagay v. Lagera, 7 Phil. 397; Velasquez v. Biala, 18 Phil. 231.
3. A donation of real estate *propter nuptias* is void unless made by public instrument. Solis v. Barroso, XXVII Off. Gaz. 2716.

ART. 1329. Minors may bestow and receive donations in their ante-nuptial contracts, provided they are authorized by the persons in whom the authority to give consent to the marriage is vested.

1. See notes under Art. 1318, Civil Code.

ART. 1330. Acceptance is not necessary to the validity of such gifts.

ART. 1331. Affianced persons may give to one another by their ante-nuptial contract not to exceed one tenth of their present property; with respect to their future property they may make donations to each other to take effect only in case of the donor's death, within the limits established by this code with respect to testamentary successions.

1. See Arts. 73 (No. 3), 634 et seq., 834 et seq., and 1044 et seq., Civil Code.

ART. 1332. Any person who makes a donation by reason of marriage must free the property so bestowed from mortgages or any other charges thereon except *censos* and easements, unless otherwise provided in the ante-nuptial contract or deed of gift.

ART. 1333. A gift bestowed by reason of marriage may be revoked only in the following cases:

1. If made conditionally and the condition is not fulfilled;
2. If the marriage should not take place;
3. If the parties should marry without having obtained the consent required in accordance with the provisions of Rule 2, Article 50, or if the marriage is annulled and there was bad faith on the part of one of the spouses, in accordance with paragraph 3, Article 73, of this code.

G. O. 68. See Appendix.

1. See Arts. 44, 50 (rule 2), 73 (No. 3), 644, 647, 1114 and 1326. Civil Code.

ART. 1334. All donations between spouses made during the marriage shall be void.

Moderate gifts which spouses bestow on each other on days of festivity for the family shall not be included in this rule.

1. See Arts. 61, 628, 1458 and 1677, Civil Code.
2. Whether a gift from a husband to his wife is a moderate one depends upon the circumstances of the parties. Harding v. Commercial Union, 38 Phil. 464.

3. A gratuitous transfer whereby a married woman purports to convey to her husband her entire interest in the conjugal estate is void. Uy Coque v. Navas, 45 Phil. 430.

ART. 1335. All donations bestowed during marriage by either of the spouses upon the children whom the other spouse may have had by another marriage, or upon persons of whom he or she is a presumptive heir at the time of the gift, shall be void.

CHAPTER III.

DOWRY.

SECTION I. *The Creation and Guarantee of Dowry.*

ART. 1336. The dowry is composed of the property and rights brought as such by the wife to the marriage at the time of contracting it, and of those which she acquires during the marriage by gift, inheritance, or legacy, as dowry property.

1. See Arts. 618 et seq., 1280, 1315, 1381, 1396 et seq., and notes under Art. 1334, Civil Code.

ART. 1337. Real property acquired during the marriage shall also be considered as constituting part of the dowry in the following cases:

1. When acquired by exchange for other dowry property:
2. By right of redemption belonging to the wife;
3. By assignment in payment of the dowry; or
4. By purchase with money forming part of the dowry. [1067, 1383]

1. See notes under Art. 1334, Civil Code.

ART. 1338. The parents and relatives of the spouses and persons not belonging to the family may create a dowry in favor of the wife, either before or after the celebration of the marriage.

The husband may also create it before the marriage, but not thereafter.

1. See notes under Arts. 1315 and 1321, Civil Code.

ART. 1339. A dowry created before or at the time of the celebration of the marriage shall be governed in all matters not provided for in this chapter by the rules relating to donations made in consideration thereof. A dowry created after the marriage shall be governed by the rules relating to ordinary donations.

1. A dowry granted by a father to his daughter after her marriage partakes of the nature of a donation, and will be reduced in accordance with Art. 634, Civil Code if inofficious. Gonzales v. Gonzales Mondragon, 35 Phil. 105.

ART. 1340. The father or the mother, or whichever of them is alive, is bound to give a dowry to his or her legitimate daughters, except in cases in which, according to law, such daughters are required to obtain the consent of the father or mother to contract marriage, and marry without obtaining it.

1. See Arts. 45, 108 et seq., 122, and notes under Art. 1341, Civil Code; Arts. 449, 478, 480, Penal Code.

ART. 1341. The obligatory dowry referred to in the next preceding article shall consist in a moiety of the presumptive strict legitime. Should the daughter have property equivalent to the moiety of her legitime, this obligation shall cease. Should the value of her property not cover the moiety of the legitime, the donor shall contribute as much as may be required to complete it.

In all cases investigations with respect to the fortune of the parents for the purpose of determining the amount of the dowry are prohibited, and the courts, in proceedings of voluntary jurisdiction, shall regulate it without any further investigation than the statements of the parents who are to give the dowry and those of the two nearest adult male relatives of the daughter, one of the paternal line and the other

of the maternal, residing in the same place or within the judicial district.

In the absence of adult relatives, the courts shall decide, in the exercise of their discretion, upon the statements of the parents only.

1. In force (Willard).
2. See notes under Art. 1339, Civil Code.

ART. 1342. The parents may perform the obligation of giving dowries to their daughters, either by delivering to them the principal of the dowry or by paying them an annual income as fruits or interest thereof.

ART. 1343. When the husband alone or both spouses collectively establish a dowry for their daughters, it shall be paid from the property of the conjugal partnership. Should there be no such property, it shall be paid by moieties, or in the proportion in which the parents may have respectively bound themselves, from the separate property of each spouse. If the wife alone should bestow the dowry, whatever she may have given or promised shall be taken from her own property.

ART. 1344. A dowry acknowledged by the husband, the delivery of which does not appear of record, or which appears only in a private document, shall produce no other effect than that of a personal obligation.

1. See Arts. 170 et seq., Mortgage Law.
2. In force (Willard).

ART. 1345. Notwithstanding the provisions of the next preceding article, any married woman in whose favor a dowry has been acknowledged by her husband before the celebration of the marriage, or within the first year there-

* As the provisions of the second paragraph of Art. 1341 establish a rule of evidence they may have been repealed by implication, in the Philippines by the Code of Civil Procedure, Arts. 273 et seq.

after, may demand at any time that her husband secure it by a mortgage, provided she proves in court the existence of the dowry property or of other similar or equivalent property at the time she instituted her claim.

1. See Art. 171, Mortgage Law.
2. In force (Willard).

ART. 1346. Dowry may be either appraised or unappraised. It is appraised if the value of the property of which it consists is determined at the time of the creation of the dowry, its ownership transferred to the husband, and the latter undertakes to return its value.

It is unappraised if the wife retains the ownership of the property, whether its value is determined or not, and the husband is bound to return the same property.

If the ante-nuptial contract should not specify the kind of dowry created, it shall be deemed unappraised.

1. See Art. 1366, Civil Code; Arts. 169, 171, 172 et seq., Mortgage Law.
2. Arts. 1346 to 1351 are in force (Willard).

ART. 1347. Any increment or depreciation of the appraised dowry shall be for the account of the husband, who shall be bound only to return the amount of the valuation at which he received it and to secure the rights of the wife in the manner prescribed by the following articles.

1. See Art. 1360 and note under Art. 1346, Civil Code.

ART. 1348. Any husband who, after having received an appraised dowry, believes himself prejudiced by its appraisal may sue for relief from the error or injury suffered by him.

1. See Art. 1350, and note under Art. 1346, Civil Code.

ART. 1349. It shall be the duty of the husband:

1. To record in his name and to mortgage in favor of his wife any real property or real rights which he may have

received by way of appraised dowry, or other property sufficient to secure the appraised value thereof.

2. To secure by a sufficient voluntary mortgage any other property which may have been delivered to him by way of appraised dowry.

1. See Arts. 334, 1361, 1857, 1874 et seq., and notes under 1346, Civil Code; Arts. 168 et seq., 172, 174 et seq., 182 et seq., Mortgage Law.

ART. 1350. The sum to be secured by reason of the appraised dowry shall not exceed the amount of the valuation, and if the value of the dowry should be reduced, the mortgage shall be reduced in the same proportion.

1. See notes under Art. 1346; Art. 176, Mortgage Law.

ART. 1351. The mortgage created by the husband in favor of the wife shall be security for the restitution of the property or its appraised value in the cases in which such restitution should be made in accordance with law, and with the limitations therein specified, and it shall become inoperative and may be canceled when, for any legal cause whatsoever, the husband may be exempted from the obligation of making the restitution.

1. See Art. 73 and notes under Art. 1346, Civil Code; and Art. 175, Mortgage Law.

ART. 1352. A married woman of age may herself demand the creation of the mortgage and the registration of the property referred to in Article 1349.

Before her marriage, or, if she be a minor, even after it, this right must be enforced in her name and the sufficiency of the mortgage security passed upon by her father or mother, or by the person who may have given the dowry or property to be secured.

In default of these persons, when the woman is a minor, whether married or not, it shall be the duty of the guardian, the protutor, the family council or any of its members to require that the same rights be enforced.

1. See Arts. 334, 1857, 1874 et seq., Civil Code; Arts. 168 et seq., 172, 174 et seq., 182 et seq., Mortgage Law; Sec. 553, Code of Civil Procedure.
2. Paragraphs 2 and 3 of the Article have been repealed by Sec. 553 Code of Civil Procedure (Willard).

ART. 1353. Should the guardian, protutor, or the family council fail to demand the creation of the mortgage, the prosecuting officer shall upon his own initiative, or at the instance of any other person, demand that the husband be compelled to execute the same. It shall also be the duty of the municipal judges to see that the prosecuting officers carry out the provisions of the next preceding paragraph.

1. See Arts. 1349 et seq., Civil Code; Arts. 182 et seq., Mortgage Law.
2. Repealed (Willard).

ART. 1354. Should the husband have no property of his own upon which to create the mortgage referred to in Article 1349, it shall be his duty to so mortgage the first real estate or real rights he may acquire.

1. See Arts. 334, 1349, 1857, 1874 et seq., Civil Code; Arts. 186 et seq., Mortgage Law.

ART. 1355. Whenever all or any part of the property which constitutes an appraised dowry consists of public or other securities or bonds, until their value is secured by the mortgage which the husband is required to give, the titles, records, or documents representing the same shall be deposited in the name of the wife, with the knowledge of the husband, in some public institution maintained for such purpose.

1. See Art. 1758, Civil Code.
2. In force (Willard).

ART. 1356. In cases in which the husband is obliged to secure by mortgage personal property pertaining to an un-

appraised dowry, the provisions of Articles 1349 to 1355, with respect to appraised dowries, shall be applicable.

1. See Arts. 335 et seq., and 1346, Civil Code; Arts. 168 et seq. 177, Mortgage Law.
2. In force (Willard).

SECTION II. *Of the Administration and Usufruct of the Dowry.*

ART. 1357. The husband is the manager and usufructuary of the property which constitutes the unappraised dowry, with the rights and obligations pertaining to administration and usufruct, subject to the modifications mentioned in the following articles.

1. See Arts. 59, 467, 471, 1401, and 1435, Civil Code.

ART. 1358. The husband is not bound to give the security required of ordinary usufructuaries; but it shall be his duty to enter in the registry, if not already recorded, in the name of the wife and as unappraised dowry, any real property or real rights which he may receive as such, and to create a special sufficient mortgage as security for his administration, usufruct, and restitution of the personal property.

1. See Arts. 168, 169, 177, Mortgage Law.

ART. 1359. Notwithstanding the provisions of the two articles next preceding, if the husband should have received securities or fungible property by way of appraised or unappraised dowry, and should not have secured them by mortgage, he may, nevertheless, substitute them with other equivalent property, with the consent of the wife, should she be of age, or of the persons referred to in Article 1352, should she be a minor.

He may also alienate such property with the consent of the wife, or with that of the persons mentioned, as the case may be, on condition that its value be invested in other equally safe property or securities.

1. See Art. 1355, Civil Code; Arts. 182, 187, Mortgage Law.

ART. 1360. The wife retains the ownership of the property constituting the unappraised dowry, and, consequently, any increase or decrease in its value shall be for her account.

The husband is only liable for the deterioration which such property may suffer by his fault or negligence.

1. See Arts. 1347, 1373 and 1425, Civil Code.

ART. 1361. The wife, if of age, may with her husband's consent alienate, incumber, or mortgage the property of the unappraised dowry, or should she be a minor, with judicial authorization and with the intervention of the persons mentioned in Article 1352.

Should she alienate such property, the husband shall be bound to secure the proceeds by mortgage, in the same manner and under the same conditions as with respect to the property of the appraised dowry.

1. See Arts. 61, 1425, 1811, Civil Code; Arts. 171, 182 et seq., Mortgage Law; Secs. 569 et seq., Code of Civil Procedure.

ART. 1362. The property constituting the unappraised dowry shall be liable for the usual daily expenses of the family, incurred by the wife or by her order, with the tacit consent of the husband; but in this case the property belonging to the conjugal partnership, and that belonging to the husband, must first be exausted.

See Arts. 62 and 1385, Civil Code.

ART. 1363. The husband cannot, without the consent of the wife, lease any real property pertaining to the unappraised dowry for a longer term than six years. In any case the payment to the husband in advance of more than three years' rent shall be void.

1. See Arts. 334, 1280, 1346, 1357, 1543, 1548, Civil Code; Art. 2, Mortgage Law.

ART. 1364. If the spouses, by virtue of the provisions

of Article 1315, should have stipulated that conjugal partnership shall not exist between them, without stating the rules by which their property is to be governed, or should the wife or her heirs renounce such partnership, the provisions of this chapter shall be observed, and the husband, upon compliance with the obligations stated therein, shall receive all the fruits which would be deemed earnings of the partnership had it existed.

SECTION III. *Restitution of Dowry.*

ART. 1365. The dowry shall be returned to the wife or her heirs in the following cases:

1. When the marriage is dissolved or declared void;

2. When the management of the dowry is transferred to the wife in the case provided for in the second paragraph of Article 225;

3. When the courts order such restitution in accordance with the provisions of this code.

1. In force, except par. No. 2. See Sec. 560, Code of Civil Procedure (Willard).

ART. 1366. The restitution of an appraised dowry shall be made by the delivery by the husband or his heirs to the wife or her heirs of the sum at which it was appraised when received by the husband.

From this amount shall be deducted:

1. Any dowry created in favor of the daughters, in so far as it may be chargeable against the separate property of the wife, in accordance with Article 1343;

2. Any debts contracted by the wife before the marriage and paid by the husband.

1. In force, except that in case of the death of the husband any claim under this article by the wife should be asserted in accordance with Secs. 686 et seq., Code of Civil Procedure (Willard).

ART. 1367. The real property of the unappraised dowry shall be restored in the condition in which it may be found;

or should it have been alienated, the proceeds of the sale shall be delivered, after deducting therefrom whatever may have been applied to the payment of the exclusive obligations of the wife.

1. In force, but see Sec. 726, Code of Civil Procedure, and the note under Art. 1366, Civil Code (Willard).

ART. 1368. The allowance of the cost of any improvements made by the husband upon the unappraised dowry property or of expenses connected therewith paid by him, shall be governed by the provisions relating to the possessor in good faith.

1. See Arts. 453 et seq., Civil Code.

ART. 1369. After a marriage has been dissolved or declared void, the husband or his heirs may be compelled to make immediate restitution of the real or personal property of the unappraised dowry.

1. See note under Art. 1366, Civil Code.

ART. 1370. Until one year has elapsed, to be computed from the dissolution of the marriage, neither the husband nor his heirs can be required to return any money, fungible property or public securities which either wholly or in part are not in existence at the time of the dissolution of the conjugal partnership.

1. See Art. 337, and note under Art. 1366, Civil Code.

ART. 1371. The husband or his heirs shall pay to the wife or her heirs interest at the legal rate from the date of the dissolution of the marriage until the restitution of the dowry upon any sums they are required to pay in money and upon the value of the fungible property, and also any revenue which may be produced in the meantime by any public or other securities, according to their condition and

character, subject to the exceptions established by Article 1379.

1. See Art. 1108, and note under Art. 1366, Civil Code.

ART. 1372. In the absence of an agreement between the parties in interest, or of an express stipulation in the antenuptial contract, the unappraised dowry, or such part thereof as is not restored in the same property which constituted the dowry, or in that substituted therefor, shall be restored and paid in money.

From this rule is excepted the restitution of the value of personal dowry property no longer in existence, which may be paid with other personal property of the same kind, should there be any such among the assets of the marriage.

The restitution of unappraised fungible property shall be made by the delivery of an equal amount of property of the same kind.

1. See note under Art. 1371, Civil Code.

ART. 1373. In the same manner as that designated in the next preceding article shall be restored the part of the dowry which consists—

1. Of marriage gifts legally bestowed by the husband upon the wife to take effect after his death, subject to the provisions with respect to the spouse who may have acted in bad faith in case of the annulment of the marriage, and to the provisions of Article 1440.

2. Of indemnities which the husband may owe his wife in accordance with this code.

1. See Arts. 69, 72, 1327 et seq., 1347, 1360, 1425, 1429, and notes under Art. 1371, Civil Code.
2. See Sy Joc Lieng v. Sy Quia, 16 Phil. 137.

ART. 1374. The bed and bedding used by the spouses and her clothing and dresses in ordinary use shall be delivered to the widow without being charged against her dowry.

1. See Arts. 1379, 1420 and 1440, Civil Code; Sec. 684, Code of Civil Procedure.
2. In force (Willard).

ART. 1375. Any credits or rights brought to the marriage as unappraised dowry, or assigned with this character, shall be delivered in the condition in which they may be at the time of the dissolution of the marriage, unless through the negligence of the husband such credits have not been collected or have become unrecoverable, in which case the wife or her heirs shall be entitled to recover their value.

1. See notes under Art. 1366, Civil Code.
2. See Secs. 686 to 701, Code of Civil Procedure.

ART. 1376. When two or more dowries are to be restored at the same time they shall be paid respectively out of any property in existence of which they were originally composed or in default of such, if the estate inventoried should not be sufficient to cover both dowries, the one first constituted shall be paid preferentially.

1. See note under Art. 1366, Civil Code.

ART. 1377. In the liquidation and restitution of an unappraised dowry, the following items shall be deducted, should they have been paid by the husband:

1. The amount of any costs or expenses incurred in the recovery or defense of the dowry;

2. Any debts or obligations inherent in or which constitute a charge on the dowry, and which in accordance with the ante-nuptial contract or with the provisions of this code are not chargeable to the conjugal partnership;

3. Any sums for which the wife alone is liable, in accordance with the provisions of this code.

1. See Arts. 1315, 1329, 1346, 1408, 1410 and 1419, Civil Code.
2. Arts. 1377 and 1378 are in force. But in case of the death of the husband, see Sec. 696, Code of Civil Procedure (Willard).

ART. 1378. At the time of the restitution of the dowry allowance shall be made the husband from any marriage gifts legally bestowed upon him by the wife, subject to the provisions of this code concerning cases in which there has been a separation of property, and cases of annulment of marriage in which bad faith has existed on the part of one of the spouses.

1. See Art. 1429, and notes under Arts. 1373 and 1377, Civil Code.

ART. 1379. Should the marriage be dissolved by the death of the wife, the interest or fruits of the dowry to be restored shall accrue to her heirs from the day of dissolution of the marriage.

Should the marriage be dissolved by the death of the husband, the wife at her election may require the payment to her of the interest and fruits of the dowry for one year or that she be supported for an equal period at the cost of the estate of the husband. In any case, the widow's mourning apparel shall be paid for by the estate.

1. See Arts. 1427 and 1429, Civil Code.
2. First paragraph in force, but not the second. See Sec. 684, Code of Civil Procedure (Willard).

ART. 1380. After the marriage has been dissolved, the pending fruits or rents shall be divided *pro rata* between the surviving spouse and the heirs of the deceased in accordance with the rules which govern in the case of cessation of usufruct.

1. See Arts. 472 to 475 and 522, Civil Code.

CHAPTER IV.

PARAPHERNAL PROPERTY.

ART. 1381. Paraphernal property is that which the wife brings in marriage without including it in the dowry and

that which she may acquire after the creation of a dowry without adding it thereto.

1. See Arts. 1315, 1396, Civil Code; Art. 173, Mortgage Law.
2. Plaintiff inherited certain property during the marriage, from her mother, which was not included in her dowry. Held, that the property was paraphernal. Alvaran v. Marquez, 11 Phil. 263.
3. In a suit to recover the paraphernal property of his wife the husband cannot appear as sole party plaintiff. The wife is a necessary party. Jacinto v. Salvador, 22 Phil. 376.
4. See also Bismorte v. Aldecoa & Co., 17 Phil. 480.
5. Where community assets have been used to redeem separate property of the wife, the community property is a creditor of her estate for the amount advanced. Santos v. Bartolome, 44 Phil. 76.

ART. 1382. The wife retains the ownership of the paraphernal property.

1. See Arts. 1360 and 1387, Civil Code.
2. The husband cannot by contract bind the paraphernal property unless its administration has been transferred to him, neither can the paraphernal property be made to answer for debts incurred by the husband. Alvaran v. Marquez, 11 Phil. 263; Vargas v. Egamino, 12 Phil. 56; Veloso v. Martinez, 28 Phil. 255.
3. The mere fact that the husband has been administering his wife's paraphernal property with her consent for a long time, does not deprive her of the ownership thereof. Rodriguez v. De la Cruz, 8 Phil. 665.
4. Husband has no authority to sell property acquired with money belonging to his wife. Gefes v. Salvio, 36 Phil. 221.

ART. 1383. The husband cannot maintain actions of any kind whatsoever with respect to the paraphernal property without the intervention or consent of the wife.

1. See notes under Arts. 1381 and 1382, Civil Code; Sec. 115, Code of Civil Procedure.
2. A mortgage executed by the husband alone, without sufficient authority from the wife, is of no effect as to her paraphernal property. Bian Hin & Co. v. Tam Bomping, 48 Phil. 523.

3. Extent of husband's authority, under general power of attorney from his wife to give a note in her name to pay a pre-existing debt of his own; see Bank v. Coster, 47 Phil. 594, cited under Art. 1714.
4. See Bank v. Coster, 49 Phil. 574, cited under Art. 1727.

ART. 1384. The wife shall have the management of the paraphernal property unless she has delivered the same to her husband before a notary, for the purpose of conferring its management upon him.

In such cases it shall be the duty of the husband to execute a mortgage for the value of any personalty which may be so delivered to him or otherwise secure it in the manner prescribed with respect to dowry property.

1. See Arts. 1857, 1874 et seq., Civil Code; Arts. 168, 173, 175, 179, 182 et seq., Mortgage Law.
2. See notes under Art. 1381, Civil Code.
3. According to Willard, this article has been repealed.
4. The wife may dispose of her paraphernal property, and enter into contracts regarding the same, without the consent of her husband, unless the right to administer such property has been formally granted to him. Casalla v. Enage, 6 Phil. 475; Eliot v. Montemayor, 9 Phil. 693.
5. The paraphernal property cannot be levied upon for obligations contracted by the husband. Alvaran v. Marquez, 11 Phil. 263.
6. The mere fact that the administration of the paraphernal property has been granted to the husband does not deprive the wife of her ownership thereof. Pilapil v. Ponciano, 8 Phil. 190; Rodriguz v. De la Cruz, 8 Phil. 665.
7. Neither the husband nor the wife can be deprived of the management of their respective properties by the appointment of a receiver. Javier v. Osmeña, 34 Phil. 336.
8. See Agapito v. Molo, 50 Phil. 779.

ART. 1385. The fruits of the paraphernal property form part of the assets of the conjugal partnership, and are subject to the payment of the debts and expenses of the household.

The property itself shall also be liable, in cases falling

under Article 1362, should that of the husband and the dowry property be insufficient to cover the liabilities referred to therein.

1. In a suit to recover damages to paraphernal property, the husband is a necessary party. Bismorte v. Aldecoa & Co., 17 Phil. 480.
2. The obligations or debts contracted by the husband to defray expenses incurred in the practice of his profession are not his personal debts, but are debts chargeable to the conjugal property. Javier v. Osmeña, 34 Phil. 336.
3. See also Alvaran v. Marquez, 11 Phil. 263; Quison v. Salud, 12 Phil. 109; Gefes v. Salvio, 36 Phil. 221.
4. In default of conjugal property the spouses are jointly liable for obligations contracted during the marriage. National Bank v. Quintos, 46 Phil. 370.

ART. 1386. The fruits of the paraphernal property cannot be made subject to the payment of personal obligations of the husband, unless it be proved that such obligations redounded to the benefit of the family.

1. See notes under Art. 1385, Civil Code.

ART. 1387. The wife, without the authorization of the husband, cannot alienate, encumber or mortgage the paraphernal property, or appear in court to litigate with regard to the same, unless she has been judicially authorized to do so.

[M. L. 191]

1. See Arts. 60 et seq., 317, 1361, 1368 et seq., 1408, Civil Code; Sec. 115, Code of Civil Procedure.
2. Under Sec. 115 of Act 190 the husband is not a necessary party to a suit by a married woman to enforce rights relating to her paraphernal property. Hernandez v. Antonio, 16 Phil. 507; Ramos v. Castelo, 36 Phil. 876.
3. A married woman cannot transfer, encumber, or mortgage her paraphernal property without a special power from the husband. Mercado v. Tan Lingco, 27 Phil. 319; Mercado v. Tan Lingco, 34 Phil. 793; Gavierez v. Pena, 13 Phil. 449.

4. A married woman cannot legally, without the authorization of her husband, alienate her property except in the cases provided by law. The consent of the husband by a second bigamous marriage is ineffective. Carratala v. Samson, 43 Phil. 751.

ART. 1388. Should the paraphernal property, the management of which is reserved to the wife, consist of money or public securities or valuable personal property, the husband shall be entitled to demand that such property be deposited or invested in such manner that the alienation or pledge of the same without his consent would be impossible.

1. See Arts. 1357, 1363 and 1413, Civil Code.

ART. 1389. A husband to whom the paraphernal property may have been delivered shall be subject, with respect to the management of the same, to the rules established concerning the property of the unappraised dowry.

[1357, 1363, 1451, 1413]

1. According to Willard, Arts. 1389 to 1391 have been repealed.

ART. 1390. The alienation of the paraphernal property entitles the wife to demand security by mortgage for the amount the husband may have received. The husband as well as the wife, in the respective cases, may exercise, with regard to the proceeds of the sale, the right granted them by Articles 1384 and 1388.

1. See Arts. 1361, 1381 et seq., 1857, 1874, et seq., and notes under Art. 1389, Civil Code; Art. 169, Mortgage Law.

ART. 1391. The return of paraphernal property, the administration of which has been turned over to the husband, shall take place in the same cases and in the same manner as that of the unappraised dowry property.

1. See Arts. 1367 to 1381, and note under Art. 1389, Civil Code.

CHAPTER V.

CONJUGAL PARTNERSHIP.

SECTION I. *General Provisions.*

ART. 1392. By virtue of the conjugal partnership the earnings or profits obtained by either of the spouses during the marriage belong to the husband and the wife, share and share alike, upon its dissolution.

1. See Art. 1522, Civil Code.
2. Property purchased during the existence of a marriage is presumed to pertain to the conjugal community. Ramirez v. Bautista, 14 Phil. 528.
3. A marriage contracted in good faith, although subsequently annulled, produces juridical effect as to the innocent spouse and the children. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.
4. In the absence of clear proof to the contrary it will be presumed that the property rights of married persons are subject to the rules governing the conjugal partnership. Zaide v. Concepcion, 32 Phil. 403.

ART. 1393. The conjugal partnership shall begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void.

1. See cases cited under Art. 1392, Civil Code.
2. See also Jacinto v. Salvador, 22 Phil. 376.

ART. 1394. This partnership cannot be renounced during the marriage, except in case of judicial separation.

If the renunciation should take place by reason of a separation, or after the marriage has been dissolved or annulled, such renunciation shall be set forth in a public instrument and the creditors shall have the right granted them by Article 1001.

[61, 1236]

1. See notes under Art. 131, Civil Code.

ART. 1395. The conjugal partnership shall be governed by the rules of law applicable to the contract of partnership

in all matters in which such rules do not conflict with the express provisions of this chapter.

1. See Arts. 1431, 1681–1708, Civil Code.
2. Article cited and applied. National Bank v. Quintos, 46 Phil. 370.

SECTION II. *Separate Property of the Spouses.*

ART. 1396. The following is the separate property of each of the spouses:

1. That brought to the marriage as his or her own;
2. That acquired gratuitously by either of them during the marriage;
3. That acquired by right of re-purchase or by exchange for other property belonging to one of the spouses only;
4. That bought with money belonging exclusively to the wife or to the husband.

1. See Arts. 1336, 1337, 1398 to 1403, Civil Code.
2. Property acquired during marriage, by barter, with paraphernal property, is likewise paraphernal. Lim v. Garcia, 7 Phil. 322; Bismorte v. Aldecoa & Co., 17 Phil. 480.
3. Property acquired through inheritance by the wife is paraphernal, and not subject to attachment for husband's debts. Alvaran v. Marquez, 11 Phil. 263.
4. The husband cannot dispose of the paraphernal property without the consent of his wife. Gefes v. Salvio, 36 Phil. 221.
5. A widow who redeems her husband's property sold by the latter in his lifetime does not acquire title thereto. Guinto v. Lim, 48 Phil. 884.

ART. 1397. A person giving or promising capital to the husband shall not be liable for eviction except in case of fraud.

1. See Art. 1475, Civil Code.

ART. 1398. Property bestowed as a gift or left by will jointly to the spouses and with a designation of specific shares shall belong as dowry to the wife and as capital to the husband in the proportion fixed by the donor or testa-

tor; or, in the absence of such designation, by moieties, subject to the provisions of Article 637.

1. See Arts. 618, 657, 667, 765, 1336, Civil Code.

ART. 1399. Should such gifts be onerous, the amount of the charge shall be deducted from the dowry, or from the capital of the spouse upon whom they were bestowed, if such charges have been borne by the conjugal partnership.

ART. 1400. In case either of the spouses should have a credit payable in a certain number of years, or a life annuity, the provisions of Articles 1402 and 1403 shall be applied for the purpose of determining that which constitutes the dowry and that which constitutes the husband's capital.

[1401]

SECTION III. *Property of the Conjugal Partnership.*

ART. 1401. To the conjugal partnership belongs:

1. Property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership or for one of the spouses only;

2. Property obtained by the industry, wages or work of the spouses or of either of them;

3. The fruits, income, or interest collected or accrued during the marriage, derived from the partnership property, or from that which belongs separately to either of the spouses.

1. See Arts. 902, 1404 and 1407, Civil Code.

2. Property purchased with money borrowed on the security of the wife's paraphernal property, is presumed conjugal. Palanca v. Smith Bell & Co., 9 Phil. 131.

3. The income derived from paraphernal property, and damages recovered on account thereof, are considered conjugal property. Quison v. Salud, 12 Phil. 109; Marigsa v. Macabuntoc, 17 Phil. 107; Bismorte v. Aldecoa & Co., 17 Phil. 480; Javier v. Osmeña, 34 Phil. 336; Gefes v. Salvio, 36 Phil. 221.

4. Property acquired during the marriage is presumed to be conjugal until the contrary is shown. Ramirez v. Bautista, 14 Phil. 528; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Sison v. Ambalada, 30 Phil. 118; Staples-Howe v. Bldg. & Loan, 36 Phil. 417.
5. Where community assets have been used to redeem separate property of the wife, the community property is a creditor of her estate for the amount advanced. Santos v. Bartolome, 44 Phil. 76.
6. Property acquired by the spouses during the marriage pertains to the conjugal partnership even though the title thereto is taken in the name of one of them only. Guinguing v. Abuton, 48 Phil. 144.
7. The fact that a surviving husband obtains a Torrens title to land belonging to the conjugal estate does not make the property exclusively his. Flores v. Flores, 48 Phil. 288.
8. See Agapito v. Molo, 50 Phil. 779.

ART. 1402. Whenever a sum or credit, payable in a certain number of years, belongs to one of the spouses, the sums collected upon installments which fall due during the marriage shall not be partnership property, but shall be considered as capital of the husband or of the wife to whom the credit belongs.

ART. 1403. The right to a usufruct or periodical income, belonging to one of the spouses either in perpetuity or for life, shall form part of his or her separate property; but any fruits, income, or interest which fall due during the marriage shall be partnership property.

In this provision is included the usufruct which the spouses have in the property of their children, even though they be the issue of another marriage.

1. See notes under Art. 1401, Civil Code.
2. According to Willard, the second paragraph of this article has been repealed.

ART. 1404. Any useful expenditures made for the benefit of the separate property of either one of the spouses by

means of advances made by the partnership, or by the industry of the husband or wife, are partnership property.

Buildings constructed during the marriage on land belonging to one of the spouses shall also belong to the partnership, but the value of the land shall be paid to the spouse owning the same.

1. See Arts. 358 and 1407, Civil Code.
2. Article cited and applied. Lim v. Garcia, 7 Phil. 320; Tabotabo v. Molero, 22 Phil. 418.
3. An irrigation system is a useful improvement, and if financed by the expenditure of community assets, is chargeable against the party benefited upon liquidation of the conjugal partnership. Santos v. Bartolome, 44 Phil. 76.
4. See Dominado v. Derayunan, 49 Phil. 452, cited under Art. 354.

ART. 1405. Whenever the dowry or the capital belonging to the husband shall consist, in whole or in part, of cattle existing at the time of the dissolution of the partnership, the heads of cattle exceeding the number which were brought to the marriage shall be deemed partnership property.

ART. 1406. The earnings obtained by the husband or wife by gambling or by any other means which exempt them from restitution, shall belong to the conjugal partnership, without prejudice, in a proper case, to the enforcement of the provisions of the Penal Code.

1. See Art. 1411, Civil Code; Arts. 343 et seq., Penal Code.
2. Article cited and applied. Mapua v. Mendoza, 45 Phil. 424.

ART. 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife.

1. See Arts. 1401, 1950, Civil Code.
2. The presumption established by this article is *juris tantum*, but to overthrow it proof to the contrary must be clear and convincing. Alfonso v. Natividad, 6 Phil. 240; Lim v. Garcia, 7 Phil. 320; Leonardo v. Santiago, 7 Phil. 401; Joaquin v. Avellana, 11 Phil. 249; Yanez de Barnuevo v. Fuster, 29

Phil. 606; Sison v. Ambalada, 30 Phil. 118; Staples Howe v. Bldg. & Loan, 36 Phil. 417; Ahern v. Julian, 39 Phil. 607; Fulgencio v. Gatchalian, 21 Phil. 252.

3. The mere inscription of cattle in the name of the husband is not sufficient to rebut the presumption of this article. Marigsa v. Macabuntoc, 17 Phil. 107.
4. Facts examined and found sufficient to rebut the presumption of this article. Casiano v. Samamiego, 30 Phil. 135.
5. Proof of the existence of a valid pre-nuptial agreement to the contrary is necessary to overcome the presumption that all the property acquired during marriage is subject to the rules governing the conjugal partnership. Zaide v. Concepcion, 32 Phil. 403.
6. See Rodriguez v. Borromeo, 43 Phil. 479; Benedicto v. Yap Tico & Co., 46 Phil. 753.

SECTION IV. *Charges and Obligations of the Conjugal Partnership.*

ART. 1408. The conjugal partnership shall be liable for:

1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership;

2. Any arrears or interest, matured during the marriage, upon obligations which affect either the separate property of the spouses or that of the conjugal partnership;

3. Any minor repairs, or repairs of mere upkeep, made during the marriage upon the separate property of the husband or the wife; extensive repairs shall not be chargeable to the partnership;

4. Extensive or minor repairs to the property of the partnership;

5. The support of the family and the education of the children born of the marriage and that of the legitimate children of either of the spouses.

1. See Arts. 62, 1362, 1363, 1386 and 1413, Civil Code; Arts. 6 to 12, Code of Commerce.
2. Money borrowed by the husband on the security of the paraphernal property of his wife, is conjugal, and a house built with such money is conjugal. Palanca v. Smith, Bell & Co., 9 Phil. 131.

3. See notes under Art. 1407, Civil Code.
4. Debts contracted by the husband to defray the expenses of his business are payable out of the conjugal assets. Javier v. Osmeña, 34 Phil. 336.
5. Article cited and applied. Enriquez v. Victoria, 10 Phil. 10; Fulgencio v. Gatchalian, 21 Phil. 252; Santos v. Robledo, 28 Phil. 245; Sochayseng v. Trujillo, 31 Phil. 153.
6. Expenses incurred by the husband in connection with the last illness and funeral of the wife are not debts of the estate of the wife to be proved before the Committee of Claims against that estate, but are to be taken into account in the liquidation of the conjugal partnership. Prado v. Natividad, 47 Phil. 775.
7. A married woman, although living apart from her husband, (it not appearing affirmatively that she is at fault in this regard), is entitled to support at the charge of the conjugal partnership. Sumulong v. Cembrano, 51 Phil. 719.

ART. 1409. The conjugal partnership shall also be chargeable with anything which may have been given or promised by the husband alone to the children born of the marriage in order to obtain employment for them or give them a profession or by both spouses by common consent, should they not have stipulated that such expenditures should be borne in whole or in part by the separate property of one of them.

ART. 1410. The payment of debts contracted by the husband or by the wife before the marriage shall not be chargeable to the conjugal partnership.

Neither shall the payment of any fine or pecuniary penalties which may be imposed on either of them.

Nevertheless, the payment of debts contracted prior to the marriage by the husband or by the wife, and that of fines and pecuniary penalties imposed on either of them, may be enforced against the partnership property, after the charges mentioned in Article 1408 have been covered, if the debtor spouse should have no separate property, or if it is insufficient; but at the time of the liquidation of the partner-

ship any payments made for the causes specified shall be charged to such spouse.

[1407]

ART. 1411. Payments made during marriage by either of the spouses of losses in gambling games of any kind shall not diminish his or her respective share in the profits of the partnership.

Unpaid losses by either of the spouses in any lawful game shall be a charge upon the partnership property.

[1406]

1. Article cited and applied. Mapua v. Mendoza, 45 Phil. 424.

SECTION V. *Management of the Conjugal Partnership.*

ART. 1412. The husband shall be the manager of the conjugal partnership, subject to the provisions of Article 59.

1. See Arts. 1384, 1529, Civil Code; Sec. 575, Code of Civil Procedure.
2. Art. 59 of the Civil Code is not in force,—hence the exception established by this article has been repealed (Willard).
3. Article cited and applied. Alfonso v. Natividad, 6 Phil. 240; Enriquez v. Victoria, 10 Phil. 10; Falcon v. Manzano, 15 Phil. 441.
4. The wife cannot be deprived of the administration of her paraphernal property, or the husband of the administration of the conjugal property, by the appointment of a receiver. Javier v. Osmeña, 34 Phil. 336.
5. Concerning the liquidation of the conjugal partnership, see notes under Art. 1418, Civil Code.

ART. 1413. In addition to his powers as manager the husband may for a valuable consideration alienate and encumber the property of the conjugal partnership without the consent of the wife.

Nevertheless, no alienation or agreement which the husband may make with respect to such property in contravention of this code or in fraud of the wife shall prejudice her or her heirs.

1. See Arts. 1386 and 1419, Civil Code.

2. An injunction may be obtained by the wife against the husband to restrain him from disposing of the conjugal property during the pendency of divorce proceedings. De la Viñax v. Villareal, 41 Phil. 13.
3. Where a transfer is made by the husband in fraud of the wife and her heirs, the transaction is void, not because of any lack of power on the part of the husband but because of the inherent nature of the transaction itself. Uy Coque v. Navas, 45 Phil. 430.
4. A mortgage given by the husband upon community property, after divorce, affects the wife's interest, if the decree of divorce was not inscribed in the property register. Aenlle v. Rheims, XXVII Off. Gaz. 867.
5. While a husband, as manager of the conjugal partnership, may alienate the property for a valuable consideration without consent of the wife, a conveyance made in fraud of the wife and without consideration is a nullity; and where the wife, after the death of the husband, in the course of liquidation of the estate, is assigned property which the husband has so conveyed away, she may maintain an action against the grantee under the void deed to annul the same and cancel its inscription. Gallion v. Gayares, XXVII Off. Gaz. 1578.

ART. 1414. The husband may dispose by will of his half only of the property of the conjugal partnership.

ART. 1415. The husband may dispose of the property of the conjugal partnership for the purposes mentioned in Article 1409.

He may also make moderate donations for pious or charitable purposes, but without reserving to himself the usufruct.

1. See Arts. 50, 61 et seq., 1362, 1412, 1441 et seq., Civil Code.

ART. 1416. The wife cannot bind the property of the conjugal partnership without the consent of the husband.

Cases falling under Articles 1362, 1441, and 1442 are excepted from this rule.

1. See Gavierez v. Peña, 13 Phil. 449.

SECTION VI. *Dissolution of the Conjugal Partnership.*

ART. 1417. The conjugal partnership ceases upon the dissolution of the marriage or when it is declared void.

The spouse who, by reason of his or her bad faith, shall have given ground for the annulment of the marriage shall not receive any part of the property of the partnership.

The conjugal partnership shall also terminate in the cases mentioned in Article 1433.

1. See Art. 1429, Civil Code.
2. A marriage contracted in good faith, although afterwards declared null and void, nevertheless produces civil efforts with respect to the innocent spouse and the children born of such marriage. Sy Joc Lieng v. Sy Quia, 16 Phil. 137.

SECTION VII. *Liquidation of the Conjugal Partnership.*

ART. 1418. Upon the dissolution of the partnership an inventory shall immediately be made; but such inventory shall not be required for the liquidation:

1. If, after the partnership has been dissolved, one of the spouses or his or her successors in interest shall have renounced its effects and consequences in due time;

2. If there has been a separation of property before the dissolution of the partnership;

3. In the case to which the second paragraph of the next preceding article relates.

In case of renunciation, the right granted creditors by Article 1001 shall not be affected thereby.

[C. C. P. 685]

1. See Arts. 52, 73, 1000, 1394, 1417 et seq., Civil Code.
2. Upon the death of the wife, the husband is the liquidator of the conjugal partnership and may take possession of the conjugal as well as the paraphernal property, pending the liquidation. Upon the death of the husband, the duty of liquidating the conjugal partnership devolves upon his executor or administrator. Alfonso v. Natividad, 6 Phil. 240; Prado v. Lagera, 7 Phil. 395; De la Rama v. De la Rama, 7 Phil. 745; *In re* Estate of Amancio, 13 Phil. 297; Roxas v. Singson Tongson, 17 Phil. 476; Tabotabo v. Molero, 22 Phil. 418; Nable Jose v. Nable Jose, 41 Phil. 713.

3. As to liquidation of conjugal partnership when dissolved by death of one of the spouses, see Section 685 of Act 190, as amended by Act 3176.
4. Act 3176 is not retroactive. Debts of a conjugal partnership, dissolved by the death of the wife, incurred before its passage must be recovered by suit against the surviving husband as liquidator of the conjugal estate. Fermin v. Carlos, 48 Phil. 406.
5. The husband is not obliged to include in the inventory of the conjugal partnership, upon its dissolution, property acquired by him after the death of his wife, unless it is shown that it was acquired with money belonging to the conjugal partnership. Patricio v. Patricio, 48 Phil. 759.
6. Property which the husband transfers to his mistress during the marriage is conjugal property and should be included in the inventory. Such transfers must be held to have been made in fraud of the deceased wife. Patricio v. Patricio, 48 Phil. 759.
7. The liquidation of a conjugal partnership requires the formation of an inventory of the property actually possessed by the spouses at the time of the dissolution of the marriage; it is error to determine the amount to be divided by adding up the profits earned during each year of the existence of the marriage and treating the result as the property of the conjugal partnership for which the survivor must account. Patricio v. Patricio, 48 Phil. 759.
8. Although, when the wife dies, the surviving husband, as administrator of the community property, has authority to sell the property without the concurrence of the children of the marriage, nevertheless this power can be waived in favor of the children, with the result of bringing about a conventional ownership in common between the father and children as to such property; and any one purchasing with knowledge of the changed status of the property will acquire only the undivided interest of those members of the family who join in the act of conveyance. Prades v. Tecson, 49 Phil. 230.
9. Sale of conjugal property by surviving spouse; see Pelaez v. Bautao, XXVII Off. Gaz. 3359.
10. When there are no debts the liquidation and partition of the property of the conjugal partnership, dissolved by the death of one of the spouses, may be made in an ordinary action. Cruz v. de Jesus, XXVII Off. Gaz. 4146.

ART. 1419. The inventory shall include, for the purpose

of collating them, a statement of any sums which, having been paid by the conjugal partnership, are to be deducted from the wife's dowry or from the capital of the husband, in accordance with Articles 1366, 1377, and 1427.

The value of any gifts or alienations which, in accordance with Article 1413, are to be deemed illegal or fraudulent, shall also be collated.

1. See Estate of Amancio, 13 Phil. 297; Tabotabo v. Molero, 22 Phil. 418; Sochayseng v. Trujillo, 31 Phil. 153.
2. Property acquired by the husband after the dissolution of the conjugal partnership by the death of the wife should not be inventoried unless it has been acquired with partnership money. Patricio v. Patricio, 48 Phil. 759.

ART. 1420. The bed and bedding ordinarily used by the spouses shall not be included in the inventory, but together with any clothing and dresses in ordinary use shall be delivered to the surviving spouse.

1. See Arts. 1374, 1427 and 1440, Civil Code, Secs. 671 and 684, Code of Civil Procedure.

ART. 1421. After the inventory has been completed the dowry of the wife shall first be liquidated and paid in accordance with the rules established for its restitution by Section 3, Chapter 3, of this Title and subject to the provisions of the following articles.

1. Upon the dissolution of the conjugal partnership by reason of the husband's death, the inventory should include all the property of the partnership, the separate property of the husband, and that of the wife, whether dowry or paraphernal. Prado v. Legera, 7 Phil. 395; De la Rama v. De la Rama, 7 Phil. 745; Roxas v. Singson Tongson, 17 Phil. 476.

ART. 1422. After the dowry and the parapherna of the wife have been paid, the debts, charges and obligations of the partnership shall be paid.

If the estate inventoried should not be sufficient to meet

all the requirements of this and of the next preceding article, the provisions of Title XVII of this book shall be observed.

1. See Arts. 1336, 1366 et seq., 1408 et seq., 1911, 1922 et seq., Civil Code.
2. See notes under Art. 1421, Civil Code.
3. See also Falcon v. Manzano, 15 Phil. 441; Sochayseng v. Trujillo, 31 Phil. 153.

ART. 1423. After the debts, charges, and obligations of the partnership have been paid, the capital of the husband shall be liquidated and paid, in so far as the inventoried estate may reach, after making the proper deductions according to the same rules prescribed in Article 1366, with respect to the dowry.

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1. See notes under Arts. 1418 and 1421, Civil Code.

ART. 1424. After the deductions from the inventoried estate specified in the three articles next preceding have been made, the remainder of the estate shall constitute the assets of the conjugal partnership.

1. See Arts. 1396 and 1407, Civil Code.
2. Article cited and applied. De la Rama v. De la Rama, 7 Phil. 745; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Sochayseng v. Trujillo, 31 Phil. 153.

ART. 1425. Any losses or deterioration which the personal property belonging to either of the spouses may have suffered, even though by a fortuitous event, shall be paid out of the conjugal property, should there be any.

Losses or deterioration suffered by the real property shall not be payable in any case, except those falling upon the dowry property which shall have been caused by the fault of the husband, and which shall be indemnified in the manner prescribed in Articles 1360 and 1373.

ART. 1426. The net remainder of the partnership prop-

erty shall be divided, share and share alike, between the husband and wife, or their respective heirs.

1. See notes under Arts. 1418 and 1424, Civil Code.

ART. 1427. The mourning apparel of the widow shall be paid for out of the estate of the husband, in accordance with the provisions of Article 1379. The heirs of the husband shall advance the necessary funds therefor in accordance with their standing and means.

1. See notes under Arts. 964, 1374, 1379, 1420, 1424, and 1480, Civil Code; Sec. 684, Code of Civil Procedure.

ART. 1428. With respect to the preparation of the inventory, rules for the appraisal and sale of the property belonging to the conjugal partnership, guaranty and security for the respective dowries, and all other particulars not expressly provided for in this chapter, the provisions of Section V, Chapter V, Title III, Book III, and Sections II and III, Chapter III, of this title shall be observed.

1. See Arts. 1010 et seq., 1357 et seq., and notes under Art. 1418, Civil Code.
2. In appraising the real property of the conjugal partnership, it is not the purchase price but the market or assessed value at the time of liquidation which must be taken into account. Prado v. Natividad, 47 Phil. 775.

ART. 1429. When the conjugal partnership is dissolved by the annulment of the marriage, the provisions of Articles 1373, 1378, 1417, and 1440 shall be observed; and should it be dissolved by reason of the separation of the property of the spouses the provisions of Chapter VI of this title shall be observed.

1. See Art. 1432, Civil Code.
2. See Sy Joc Lieng v. Sy Quia, 16 Phil. 137.

ART. 1430. The surviving spouse and his or her children shall be given an allowance for their support out of the general estate, pending the liquidation of the inventoried es-

tate, and until their share has been delivered to them, but it shall be deducted from their portion in so far as it exceeds what they may have been entitled to as fruits or income.

1. See Secs. 671 and 684, Code of Civil Procedure.
2. This article has been modified by Sections 671 and 684 of the Code of Civil Procedure. Concepción v. Jose, 46 Phil. 813.
3. Article cited and applied. Santos v. Bartolome, 44 Phil. 76.
4. If it appears, upon the death of the husband, that the liabilities of the conjugal partnership and of the husband's personal estate exceed the assets, no allowance pending liquidation may be made to the widow, as such allowance, when granted, is an advance payment upon the amount due upon final liquidation of the estate. Moore etc. Co. v. Wagner, 50 Phil. 128.

ART. 1431. Whenever the liquidation of the partnership property of two or more marriages contracted by the same person may have to be made simultaneously, in order to determine the funds of each partnership every kind of proof shall be admitted, in the absence of inventories; and in case of doubt the partnership property shall be divided between the different partnerships in proportion to the time of their duration and to the property owned by the respective spouses.

1. See Arts. 1215 and 1376, Civil Code.
2. Article cited. Tabotabo v. Molero, 22 Phil. 418.

CHAPTER VI.

SEPARATION OF THE PROPERTY OF THE SPOUSES AND ITS MANAGEMENT BY THE WIFE DURING THE MARRIAGE.

ART. 1432. In default of a specific declaration in the ante-nuptial contract, no separation of the property of the spouses shall take place during the marriage save by virtue of a judicial decree, except in the case provided for by Article 50.

1. See Art. 73, Civil Code.

2. Contract between husband and wife providing for separation of the conjugal property is void. Quintana v. Lerma, 24 Phil. 285.
3. The wife cannot be sued for the debts of the conjugal partnership. Palomar Baldovi v. Sarte, 36 Phil. 550.

ART. 1433. Either the husband or the wife may sue for a separation of property, and it shall be decreed whenever the spouse of the plaintiff shall have been condemned to a penalty which carries with it that of civil interdiction, or shall have been declared an absentee, or shall have given cause for divorce.

In order that such separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in any one of the three cases above mentioned.

1. See Arts. 73, 102 and 186, Civil Code; Arts. 42, 54, 56, Penal Code.

ART. 1434. When a separation of property is decreed the conjugal partnership shall be thereupon dissolved and shall be liquidated in accordance with the provisions of this code.

Nevertheless, the husband and the wife shall owe each other support during the separation, and shall be required to contribute to the support and education of their children, all in proportion to their respective means.

1. See Arts. 152, 1418 et seq., 1436, and notes under Art. 1433, Civil Code; Sec. 771, Code of Civil Procedure.

ART. 1435. The power to manage the property of the matrimonial estate, granted to the husband by this code, shall continue in force if the separation should have been granted at his instance; but, in such case, the wife shall not have any right to the subsequent profits, and the rights and obligations of the husband shall be governed by the provisions of Sections II and III, Chapter III of this title.

1. See Arts. 1357, 1385, Civil Code.

ART. 1436. If the separation should have been granted at the instance of the wife by reason of the civil interdiction of the husband, the management of all the property of the marriage and the right to all the future profits shall be transferred to the wife, to the exclusion of the husband.

If the separation should be granted because the husband has been declared an absentee, or because he has given cause for divorce, the wife shall enter upon the management of her dowry and of all other property which may have been allotted to her as a result of the liquidation.

In all the cases referred to in this article the wife shall be obliged to comply with the provisions of the second paragraph of Article 1434.

1. See Arts. 186 and 1441, Civil Code.
2. See notes under Art. 1434, Civil Code.

ART. 1437. Every complaint praying for a separation and the final judgment granting it, when real property is involved, must be entered and recorded in the proper Registries of Deeds.

1. See Arts. 73, 82, 1432 et seq., and notes under Art. 1433, Civil Code.

ART. 1438. The separation of the property shall not prejudice rights previously acquired by creditors.

ART. 1439. If the separation should terminate by reconciliation, in cases of divorce, or because, in the other cases, the causes therefor have disappeared, the property of the marriage shall again be governed by the same rules as before the separation, without prejudice to that which may have been legally done during such separation.

At the time of the reunion the spouses shall specify in a public instrument the property which they bring anew to the marriage, and such property shall constitute the separate estate of each one of them respectively.

In the case mentioned in this article, all such property

shall always be treated as property newly brought to the marriage, even though it be the same, either partially or wholly, that existed before the liquidation made by reason of the separation.

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1. See notes under Art. 131, Civil Code.

ART. 1440. A separation shall not entitle the spouses to exercise any rights stipulated for in the event of the death of either of them, or those granted them by Articles 1374 and 1420; but it shall not be a bar to their exercise, when such event occurs, subject to the provisions of Article 73.

1. In force, except as to Art. 73 (Willard).

ART. 1441. The management of the property belonging to the marriage shall be transferred to the wife:

1. When she is the guardian of her husband in accordance with Article 220;

2. When she institutes proceedings to have her husband adjudged an absentee, in accordance with Articles 183 and 185;

3. In the case provided for by the first paragraph of Article 1436.

The courts shall also confer the management upon the wife, with such limitations as they may deem advisable, if the husband should be a fugitive from justice or should have been adjudged in default in a criminal cause, or, if, being absolutely disqualified for the administration, he should have taken no steps with respect thereto.

1. See Art. 1443, Civil Code.

ART. 1442. A wife, upon whom the management of all the property of the marriage may devolve, shall have, with respect thereto, the same powers and liabilities as those of the husband when he exercises it, but always subject to the provisions contained in the last paragraph of the next preceding article and in Article 1444.

ART. 1443. The management of her dowry shall be transferred to the wife in the case provided for in Article 225 or whenever the court so orders by virtue of the provisions of Article 1441; but she shall remain subject to the provisions of the second paragraph of Article 1434.

1. Art. 225 having been repealed, the first part of this article must be considered repealed also (Willard).

GENERAL PROVISION.

ART. 1444. While the marriage subsists the wife, without judicial authorization, cannot alienate or encumber any real property which may have been allotted to her in case of a separation, or any real property the management of which may have been transferred to her.

The authorization shall be granted whenever the advisability or necessity of the alienation has been proved.

When such alienation involves public securities or stock of commercial enterprises and companies and cannot be postponed without serious or imminent injury to the estate in administration, the wife, with the intervention of an agent or broker, may sell them, placing the proceeds in judicial deposit until the approval of the judge or court of competent jurisdiction has been obtained.

It shall be the duty of the agent or broker, upon his personal responsibility, to see that the deposit mentioned in the next preceding paragraph is made.

1. See Arts. 61, 1361, 1388, 1435 et seq., Civil Code.
2. While coverture continues the wife, without judicial authority or the consent of her husband, cannot alienate or encumber real property allotted to her in case of separation or the management of which may have been granted to her; and such authority should not be given except upon convincing proof of its necessity. Samson v. Carratala, 50 Phil. 647.

TITLE IV.

CONTRACT OF PURCHASE AND SALE.

CHAPTER I.

NATURE AND FORM OF THIS CONTRACT.

ART. 1445. By the contract of purchase and sale one of the contracting parties binds himself to deliver a determinate thing and the other to pay a certain price therefor in money or in something representing the same.

1. See Arts. 1254, 1261, 1271 et seq., 1447, 1448, 1461, 1538, and notes under Art. 1447, Civil Code; Art. 325, Code of Commerce.
2. A contract for the sale of land, although evidenced merely by a private document, was perfected from the moment the parties consented to sell a definite thing for a definite price. Irureta Goyena v. Tambunting, 1 Phil. 490.
3. The judgment debtor may legally sell his right of redemption. Lichauco v. Olegario, 43 Phil. 540.
4. Things which have a potential, but no actual present existence, may be the subject matter of a contract of sale. Sibal v. Valdez, 50 Phil. 512.

ART. 1446. If the price of the article sold should consist partly of money and partly of something else, the character of the contract shall be determined by the manifest intention of the contracting parties. If this intention should not appear, the contract shall be considered one of barter if the value of the thing given as a part of the price exceeds that of the money or its equivalent; otherwise it shall be considered as a sale.

ART. 1447. In order that the price may be considered certain, it shall be sufficient that it be so in relation to some

other certain thing, or that its determination be left to the judgment of some particular person.

Should such person be unable or unwilling to fix the price, the contract shall be inoperative.

1. See Art. 65, Mortgage Law.
2. See notes under Art. 1445, Civil Code.
3. Contract of sale not void for uncertainty when price, though not directly specified, can be made certain by reference to invoices identified in the agreement. McCullough v. Aenlle & Co., 3 Phil. 285.
4. See also in connection with "price certain." Majarabas v. Leonardo, 11 Phil. 272; Barretto v. Santa Marina, 26 Phil. 200; Mitsui Bussan Kaisha v. Manila R. etc. Co., 39 Phil. 624.
5. An agreement to buy certain things at a valuation to be determined by an appraisal to be effected jointly by buyer and seller obligates the buyer to proceed with the appraisal in good faith, and he cannot escape liability on the contract by frustrating the appraisal. The making of the appraisal in such case is not a condition prerequisite to the liability of the buyer, and if he fails to join in the appraisal, he is liable for the true value of the things to which the contract relates as the same may be established in the usual course of proof. Robles v. Lizarraga Hnos., 50 Phil. 387.

ART. 1448. The price of securities, grains, liquids, and of other fungible things shall also be deemed certain when it is agreed to pay that which the thing sold may bring upon a certain day, or in any particular exchange or market, or when a certain amount is fixed above or below the price ruling on such day in such exchange or market, provided that it be certain.

1. See Art. 1447, Civil Code.

ART. 1449. The designation of the price can never be left to the determination of one of the contracting parties.

1. See Art. 1447, Civil Code.

ART. 1450. The sale shall be perfected between vendor

and vendee and shall be binding on both of them if they have agreed upon the thing which is the subject-matter of the contract and upon the price, even if neither has been delivered.

1. See Sec. 335, Code of Civil Procedure; Secs. 520 to 531, and 536, Administrative Code of 1917.
2. See notes under Art. 1447, Civil Code.
3. Grimalt agreed to purchase at a certain price the launch Santa Marina provided the documents of title were in proper shape. The record title was later found not to be in the name of the vendor. Held, no sale having been perfected, the vendor must bear the loss of the launch, which was destroyed after the conditional agreement was entered into. Roman v. Grimalt, 6 Phil. 96.
4. See Ocejo Perez & Co. v. Int. Bank, 37 Phil. 635; Barretto v. Santa Marina, 26 Phil. 200; Asiatic Petroleum Co. v. Int. Rev., 38 Phil. 510.
5. A mere perfected contract for the sale of land does not transmit the ownership. It only creates a personal right to compel performance. Borromeo v. Franco, 5 Phil. 49; Mas v. Lanusa, 5 Phil. 457.
6. Where a term for the payment of goods purchased is stipulated, the duty to deliver is not conditioned on payment. Warner, Barner & Co. v. Inza, 43 Phil. 505.
7. See Agudo v. Roman Gueriguet, 43 Phil. 400.
8. Conditions of auction sale may be established by vendor; see Leoquinco v. Postal Savings Bank, 47 Phil. 772, cited under Art. 1262.

ART. 1451. A promise to sell or buy, when there is an agreement as to the thing and the price, entitles the contracting parties reciprocally to demand the fulfilment of the contract.

Whenever the promise to purchase and sell cannot be fulfilled, the provisions relating to obligations and contracts contained in this book shall be applicable in the respective cases to the vendor and vendee.

C. C. P. 335 (4); Act. 637, Sec. 20.

1. See Arts. 1182, 1262, and notes under Art. 1450, Civil Code.

ART. 1452. Any deterioration or improvement of the

thing sold, after the contract has been perfected, shall be governed by the provisions of Articles 1096 and 1182.

This rule shall be applied to the sale of fungible things, made independently and for a single price, or without regard to their weight, number, or measure.

If fungible things should be sold for a price fixed with relation to weight, number, or measure, they shall not be at the vendee's risk until they have been weighed, counted, or measured, unless the vendee should be in default.

1. See Arts. 337, 1096, 1100 et seq., 1182 et seq., Civil Code; Arts. 331 and 333, Code of Commerce.
2. Sale of sugar of certain quantity and quality, without designation of particular lot. Held, until segregation risk of loss carried by vendor. Yu Tek & Co. v. Gonzalez, 29 Phil. 384.

ART. 1453. A sale made subject to approval or trial of the thing sold, and sales of things which it is usual to test or try before they are accepted, shall always be considered as made under a suspensive condition.

1. See Arts. 1114 and 1122, Civil Code; Arts. 327 et seq., Code of Commerce.
2. See Kelly Springfield, etc., Co. v. Sideco, 16 Phil. 352.

ART. 1454. When earnest money or a pledge has been given to bind the contract of purchase and sale, the contract may be rescinded if the vendee should be willing to forfeit the earnest money or pledge or the vendor to return double the amount.

1. See Arts. 1290 et seq., Civil Code; Art. 334, Code of Commerce.
2. Purchase money paid as the price of land which is the subject of a sale will not be treated as earnest money or as a mere pledge to bind the agreement in the absence of something in the contract to show that such was the intention of the contracting parties. Rodriguez v. Leuterio, 47 Phil. 818.

ART. 1455. The expense of the execution of the deed or bill of sale shall be for the account of the vendor, and that of the first copy and of others made after the sale shall be

for the account of the vendee, unless there is an agreement to the contrary.

1. See Arts. 1280 and 1465, Civil Code.
2. The latter part of this article is obsolete (Willard).

ART. 1456. Compulsory expropriation of property taken for public use shall be governed by the provisions of special laws.

1. See notes under Art. 349, Civil Code.

CHAPTER II.

Hernandez v. Villanueva, 40 Phil. 777.

CAPACITY TO PURCHASE OR SELL.

ART. 1457. The contract of purchase and sale may be entered into by all persons who, in accordance with this code, are qualified to bind themselves, subject to the exceptions established by the following articles.

1. Legal capacity to engage in the contract of purchase and sale discussed, citing Manresa. Distinction between absolute and relative incapacity. Wolfson v. Estate of Martinez, 20 Phil. 340.
2. As to sales during minority, see Mercado v. Espiritu, 37 Phil. 215, and Bambalan v. Maramba, XXVI Off. Gaz. 3563.
3. After the agency has been terminated by the renunciation of the agent the latter may become the purchaser of the property to which the agency related, as a bidder at an execution sale upon a judgment against the principal. Valera v. Velasco, XXVII Off. Gaz. 30.
4. The holder of a certificate of sale of friar lands, who has not fully paid the purchase price, may transfer and convey his rights; but the transferee or grantee is not subrogated thereto until the transfer has been approved by the Director of Lands and registered in the registry book of the Bureau of Public Lands. Arayata v. Joya et al., 51 Phil. 417.

ART. 1458. The husband and the wife cannot sell property to each other, except in case a separation of property

has been agreed upon or when a judicial separation of such property has been decreed in accordance with the provisions of Chapter VI, Title III, of this book.

1. See Arts. 61, 1315, 1432 et seq., and notes under Art. 1457, Civil Code.
2. *Arras* was promised by a man to his fiancée, in 1875, in consideration of marriage. The property promised as *arras* was, however, not conveyed until 1895, after the marriage. Held, that the conveyance was a gift *propter nuptias,* valid as against the husband and his creditors. Torres de Villanueva v. Standard Oil Co. of New York, 34 Phil. 370. Cited in Mitsui Bussan Kaisha v. Hongkong & Sh. Bank, 36 Phil. 27.
3. A conveyance from husband to wife cannot be successfully assailed by a creditor of the husband whose rights accrued after the conveyance was made. Cook v. McMicking, 27 Phil. 10.
4. A gratuitous transfer whereby a married woman purports to convey to her husband her entire interest in the conjugal estate is void. Uy Coque v. Navas, 45 Phil. 430.

ART. 1459. The following persons cannot take by purchase, even at a public or judicial auction, either in person or through the mediation of another:

1. A guardian or *protutor,* the property of the person or persons who may be under his guardianship;

2. An agent, any property of which the management or sale may have been intrusted to him;

3. Executors, the property intrusted to their care;

4. Public officials, the property of the State, municipalities, towns, or of public institutions, the management of which has been intrusted to them.

This provision shall apply to judges and experts who, in any manner whatsoever, take part in the sale.

5. Justices, judges, members of the department of public prosecution, clerks of superior and inferior courts, and other officers of such courts, the property and rights in litigation before the court within whose jurisdiction or territory they perform their respective duties. This prohibition shall include the acquisition of such property by assignment.

Actions between co-heirs concerning the hereditary property, assignments in payment of debts, or to secure the property of such persons, shall be excluded from this rule.

The prohibition contained in this fifth paragraph shall include lawyers and solicitors with respect to any property or rights involved in any litigation in which they may take part by virtue of their profession and office.

1. See Arts. 1275 and 1458, Civil Code.
2. The prohibition in paragraph 3 does not apply to the purchase by the executor of a will of the undivided interest in the estate of one of the heirs. Naval v. Enriquez, 3 Phil. 669.
3. It is unlawful for an attorney to be interested in the purchase of property belonging to an estate in his charge. In re Calderon, 7 Phil. 427.
4. The meaning of "property in litigation" in paragraph 5 of this article explained. Gan Tingco v. Pabinguit, 35 Phil. 81.
5. See also Baldovino v. Amenos, 9 Phil. 537; Hernandez v. Villanueva, 40 Phil. 775; Wolfson v. Estate of Martinez, 20 Phil. 340.
6. A receiver, trustee, attorney, agent, or other person occupying fiduciary relations respecting property or persons cannot acquire for his own benefit the property committed to his custody for management. Severino v. Severino, 44 Phil. 343.
7. An agreement between a judgment creditor and one claiming an interest in the thing about to be sold under an execution, that neither shall bid against the other, is void, unless all parties concerned know of the arrangement and consent thereto. Diaz v. Kapunan, 45 Phil. 482.

CHAPTER III.

EFFECT OF THE CONTRACT OF PURCHASE AND SALE WHEN THE THING SOLD HAS BEEN LOST.

ART. 1460. If, at the time of making the sale, the thing which is the subject-matter thereof has been wholly lost, the contract shall be inoperative.

But if the thing should be lost in part only, the vendee may elect to withdraw from the contract or demand the

existing part by paying its value in proportion to the total sum agreed upon.

1. See Arts. 1182 et seq., Civil Code; Arts. 330 et seq., Code of Commerce.
2. Where a sale is made subject to a condition precedent the loss of the thing, before the performance of the condition, falls upon the vendor. Roman v. Grimault, 6 Phil. 96.

CHAPTER IV.

OBLIGATIONS OF THE VENDOR.

SECTION I. *General Provision.*

ART. 1461. The vendor is bound to deliver and warrant the thing which is the subject-matter of the sale.

1. See Arts. 1474 and 1495, and notes under Art. 1457, Civil Code.
2. Sale of tobacco by samples. There is an implied warranty that merchandise is equal in quality to the samples. McCullough v. Aenlle & Co., 3 Phil. 285.
3. See Yu Tek & Co. v. Gonzalez, 29 Phil. 384.
4. Delay on the part of the seller in dispatching goods is sufficiently excused where it appears not only that the delay was requested by the buyer but also was rendered necessary by the inability of the purchaser to comply with an agreement to supply the credit necessary to transport the goods. Engel v. Velasco & Co., 47 Phil. 115.
5. Failure of the vendor of land to place the vendee in possession, when required to do so by the terms of the deed, is ground for rescission of the contract at the suit of the vendee. Gonzalez et al. v. Haberer, 47 Phil. 380.
6. See Pampanga Sugar Mills v. Chong Tiaopoc, 49 Phil. 1003, cited under Art. 1101.
7. A purchaser of real property at a sheriff's sale is not entitled to possession until after the expiration of the period of redemption. Flores v. Lim, 50 Phil. 738.
8. A purchaser at an execution sale is not entitled to possession until after the expiration of the period of redemption. Gonzalez v. Calimbas et al., 51 Phil. 355.

SECTION II. *The Delivery of the Thing Sold.*

ART. 1462. The thing sold shall be deemed delivered

when the vendee is placed in the control and possession thereof.

If the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the subject-matter of the contract unless the contrary appears or is clearly to be inferred from such instrument.

1. See Arts. 1096, 1124, 1279, 1466 to 1474, and notes under Art. 1461, Civil Code; Arts. 329 and 345, Code of Commerce.
2. Cases in which delivery was held to have been made:
   a. Mere execution of a public document. Naval v. Enriquez, 3 Phil. 669; Buencamino v. Viceo, 13 Phil. 97; Yap Unki v. Chua Jamco, 14 Phil. 602; Florendo v. Foz, 20 Phil. 388; Barretto v. Sta. Marina, 26 Phil. 200; Ocejo, Perez & Co. v. International Bank, 37 Phil. 631; E. Viegelman & Co. v. Perez, 37 Phil. 678.
   b. Delivery at the warehouse of the vendee. Tan Leonco v. Go Inqui, 8 Phil. 531.
   c. Execution and delivery of formal notarial bill of sale of shares of stock, without endorsement or manual delivery of the share certificates. Uy Piaco v. McMicking, 10 Phil. 286.
   d. Distinction between constructive possession and actual possession. Gonzaga v. Javellana, 23 Phil. 125.
3. Cases wherein it was held that there was no delivery:
   a. Non-fulfillment of condition upon which delivery was made to depend. Gonzales v. Rojas, 16 Phil. 51; Barretto v. Lane, 29 Phil. 487.
   b. When the vendor does not have the thing at his disposal, constructive delivery by him is not possible. Addison v. Felix, 39 Phil. 404.
4. A vendor who sells goods as in transit, although the prompt transportation of the same depends upon an importer, is responsible to the purchaser for delays in delivery. Soler v. Chesley, 43 Phil. 529.
5. Article cited and construed. Aviles v. Arcega, 44 Phil. 924.

ART. 1463. With the exception of the cases mentioned in the next preceding article, the delivery of personal property shall be made by the delivery of the keys of the place or depository where it is stored or kept; and by the mere con-

sent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession in some other capacity.

1. See notes under Art. 1462, Civil Code.
2. By agreement of the parties a depository was given possession of the thing pledged, but it remained in the same place where it was before the pledge. Held, that the pledge was consummated by symbolic delivery. Banco Español v. Peterson, 7 Phil. 409.
3. See Bean v. Cadwallader Co., 10 Phil. 606.

ART. 1464. With respect to incorporeal things, the provisions of the second paragraph of Article 1462 shall govern. In any other case in which these provisions cannot be applied, the placing of the muniments of title in the possession of the vendee or the exercise by him of his rights, with the consent of the vendor, shall be deemed a delivery.

1. See Art. 438 and notes under Art. 1462, Civil Code.
2. An oral agreement for the sale of land, accompanied by the delivery of title papers, was enough to transmit dominium, under the law prior to the Code of Civil Procedure. Marella v. Reyes, 12 Phil. 1.
3. Article cited and applied. Tablante v. Aquino, 28 Phil. 35.

ART. 1465. The cost of the delivery of the thing sold shall be borne by the vendor, and that of its removal or transportation by the vendee, except in case of a special agreement.

ART. 1466. The vendor shall not be bound to deliver the thing sold if the vendee should not have paid him the price, or if no term for the payment has been fixed in the contract.

1. See Art. 1128, Civil Code; Art. 337, Code of Commerce.
2. Article cited and applied. Lafont v. Pascasio, 5 Phil. 391.
3. The deed of sale stated that the price was to be paid within a certain time. Held, that payment of the price at the time of the signing of the deed of sale was not necessary to entitle the vendee to compel delivery. Florendo v. Foz, 20 Phil. 388.

4. Mere failure on the part of the buyer to pay the price within the period stipulated is not ground for the resolution of the sale, in the absence of a condition that such default should operate to resolve the contract. Warner, Barnes & Co. v. Inza, 43 Phil. 505.

ART. 1467. Neither shall the vendor be obliged to deliver the thing sold, when a postponement or a term for the payment has been agreed upon, should it be discovered after the sale that the vendee is insolvent, so that the vendor is in imminent danger of losing the price.

From this rule is excepted the case in which the vendee gives security for payment within the time agreed upon.

ART. 1468. The vendor must deliver the thing sold in its condition at the time the contract was perfected.

All the fruits shall belong to the vendee from the day on which the contract was perfected.

1. See Arts. 353, 354, 1095 to 1097, Civil Code; Art. 112, Mortgage Law.
2. The measure of damages for failure of the vendor to deliver merchandise is the difference between the contract and the market prices at the date agreed upon for delivery. Suiliong & Co. v. Ylagan, 43 Phil. 393; Warner, Barnes & Co. v. Inza, 43 Phil. 505; Lim Siengco v. Lo Seng, 45 Phil. 732.

ART. 1469. The obligation to deliver the thing sold includes that of placing in the possession of the vendee all that is specified in the contract, according to the following rules:

If a sale of real property should be made with a statement of its area, at a certain price for each unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should require it, all that which has been specified in the contract; but should this not be possible, the vendee may choose between a proportional reduction in the price or the rescission of the contract, provided that in the latter case the deficiency be not less than one tenth of the stated area of the property.

The same rule shall apply, even if the area is the same, if any part of the property is not of the quality stipulated in the contract.

In such cases the vendee may rescind the contract only when the inferiority in value of the thing sold exceeds one tenth of the price agreed upon.

1. See Arts. 347, 1290, 1294 et seq., Civil Code.
2. The deed of sale and the facts examined, and held that the parties did not contemplate a sale by the square meter, but the sale of a definite unit of land. Irureta Goyena v. Tambunting, 1 Phil. 490.

ART. 1470. If in the case mentioned in the next preceding article the area of the realty should be greater than that specified in the contract, the vendee shall be obliged to pay the price of the excess if the greater area should not exceed one twentieth of that specified in the contract; but should it be more than one twentieth, the vendee may choose between paying the greater value of the property or withdrawing from the contract.

1. See notes under Art. 1469, Civil Code.

ART. 1471. In case of the sale of real estate for a lump sum and not at the rate of a specified price for each unit of measure or number there shall be no increase or decrease of the price even if the area or number be found to be more or less than that stated in the contract.

The same rule shall apply when two or more real properties are sold for a single price; but, if in addition to a statement of the boundaries, which is indispensable in every conveyance of real estate, their area or number should be designated in the contract, the vendor shall be obliged to deliver all that is included within such boundaries, even should it exceed the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction of the price in proportion to what is lacking of the area or number, unless the contract be annulled by reason of the

vendee's refusal to accept anything other than that which was stipulated.

1. See Art. 1479, par. 2; See notes under Art. 1469, Civil Code.
2. Article discussed and construed. Asiain v. Jalandoni, 45 Phil. 296.
3. Term "more or less" defined. Asiain v. Jalandoni, 45 Phil. 296.
4. Article construed and applied. Azarraga v. Gay, XXVII Off. Gaz. 3622.

ART. 1472. The actions arising from the three articles next preceding shall prescribe after six months, counted from the day of the delivery.

1. Repealed by Sec. 43, Code of Civil Procedure (Willard).

ART. 1473. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property.

Should it be real property, it shall belong to the purchaser who first recorded it in the Registry of Deeds.

Should it not be recorded, the property shall belong to the person who first took possession of it in good faith; or, in default of possession, to the person who presents the oldest title, provided there is good faith.

1. See Arts. 445, 609 and 1952, Civil Code; Arts. 17, 23 et seq., 38, Mortgage Law.
2. First possessor. Alo v. Rocamora, 6 Phil. 197; Yatco v. Gana, 13 Phil. 305; Cojuanco v. Rodriguez, 15 Phil. 311; Gonzales v. Rojas, 16 Phil. 51; Montañez v. Sheriff, 18 Phil. 119; Samson v. Garcia, 34 Phil. 805; Asencio v. Bautista, 36 Phil. 470; Aitken v. Lao, 36 Phil. 510; Rivera v. Ong Che, 37 Phil. 355; Estiva v. Alvero, 37 Phil. 497.
3. Where anterior possession is in bad faith, or obtained by force, rule does not apply. Savella v. Sabellano, 22 Phil. 197.
4. The first who registers. Mendiola v. Pacalda, 10 Phil. 705; Gonzaga v. Javellana, 23 Phil. 125; Gutierrez Hnos. v. Ramirez, 27 Phil. 281.
5. But when the registered document of sale is fictitious, rule does not apply. Cruzado v. Bustos, 34 Phil. 17.

6. Anterior possession will not avail when the person from whom the thing was purchased was not the owner. Olsen v. Yearsley, 11 Phil. 178; Williams v. McMicking, 17 Phil. 412.
7. Effect of *anotación preventiva*. Veguillas v. Jaucian, 25 Phil. 315; Manas v. Rafael, 27 Phil. 419.
8. Good faith under this article explained. Leung Yee v. Strong, 37 Phil. 644.
9. Possession under this article includes not only actual, but also symbolic or constructive, possession. Bautista v. Sioson, 39 Phil. 615; Lichauco v. Berenguer, 39 Phil. 643.
10. See also Fabian v. Smith, Bell & Co., 8 Phil. 496; Davis v. Neyra, 24 Phil. 417; Legarda v. Saleeby, 31 Phil. 590; Rubiso v. Rivera, 37 Phil. 72; Chinchilla v. Rafel, 39 Phil. 888.
11. The inscription in the Registry, to be effective, must have been made in good faith. Palanca v. Director of Lands, 43 Phil. 149; Fernandez v. Mercader, 43 Phil. 581.
12. This article applies to donations. Cagaoan v. Cagaoan, 43 Phil. 554.
13. See Aviles v. Arcega, 44 Phil. 924.
14. When one purchases property with full knowledge of the fact that his vendor has theretofore sold the same to another person, he obtains only the right which the vendor then had, subject to the obligations which his vendor had assumed. Ramos et al. v. Dueño et al., 50 Phil. 786.
15. As to conflicting registrations under Torrens systems, see Reyes et al. v. Borbon et al., 50 Phil. 791.
16. An unregistered sale by the owner of record of land registered under the Torrens system is valid as against a purchaser at execution sale. Lanci v. Yangco, XXVII Off. Gaz. 1020.
17. Effect of issuance of Torrens certificate upon forged deed of conveyance, see Emas v. Zuzuarregui, XXVII Off. Gaz. 4059.

SECTION III. *Warranty.*

ART. 1474. By virtue of the warranty referred to in Article 1461 the vendor shall be responsible to the vendee for:

1. The legal and peaceful possession of the thing sold;
2. For any hidden faults or defects therein.

1. See Arts. 430, 1069, 1461, 1475 and 1484, Civil Code; Art. 345, Code of Commerce.
2. When sale is by sample, the vendee cannot insist upon a quality different from the sample. McCullough v. Aenlle, 3 Phil. 285.

3. When there was no agreement as to specific quality, the vendor is liable only for hidden defects. Chang Yon Tek v. Santos, 13 Phil. 52.
4. Before a vendor may be sued for eviction, there must be a final judgment, rendered after notice to him of the pendency of the action. City of Manila v. Lack, 19 Phil. 324.

PAR. 1.

WARRANTY IN CASE OF EVICTION.

ART. 1475. Eviction exists when by a final judgment based upon a right prior to the sale, the vendee is deprived of the whole or of any part of the thing purchased.

The vendor shall be liable for the eviction even though the contract be silent on the subject.

The contracting parties may, however, augment, diminish, or eliminate this legal obligation of the vendor.

1. See Arts. 1069, 1461, 1474, 1476 et seq., and 1532, Civil Code; Art. 345, Code of Commerce.
2. Conditions precedent to a suit for eviction. The mere fact that vendee did not appeal from the judgment is not a bar to a suit for eviction. Canizares v. Torrejon, 21 Phil. 127.
3. Government is not liable for eviction to purchaser at tax sale. Government of the P. I. v. Adriano, 41 Phil. 112.

ART. 1476. Any stipulation exempting the vendor from the obligation of answering for an eviction shall be void if there should have been bad faith on his part.

ART. 1477. If the vendee has waived his right to the vendor's warranty against eviction, and such eviction occurs, it shall be the duty of the vendor to pay only the value of the thing sold as of the time of the eviction, unless the vendee made the waiver with knowledge of the danger of eviction and assumed the risk.

1. See notes under Art. 1475, Civil Code.

ART. 1478. If a warranty should have been stipulated, or if there has been no agreement with respect thereto, the

vendee in case of eviction shall be entitled to demand of the vendor;

1. The restitution of the value which the thing sold had at the time of the eviction, whether it be greater or less than the price for which it was sold;

2. The fruits or proceeds, should he have been required by the judgment to deliver them to the successful party in the suit brought against him;

3. The costs of the suit which resulted in the eviction and, in case of litigation, those of the suit instituted against the vendor to enforce the warranty;

4. The expenses of the contract, if the vendee should have paid them;

5. Damages and interest and all voluntary expenditures, or expenditures made merely for recreation or ornamentation, should the sale have been made in bad faith.

1. See Art. 1455, Civil Code.
2. "Costs" under this article does not include transportation and other incidental expenses. Orense v. Jaucian, 18 Phil. 553.
3. See also Ahag v. Cabiling, 18 Phil. 415.

ART. 1479. Should the vendee, on account of the eviction, lose a part of the thing sold of such importance, in relation to the whole, that he would not have purchased it without such part, he may demand the rescission of the contract; but with the obligation of restoring the thing without other charges than those to which it was subject when he acquired it.

The same rule shall be applied when two or more things are sold jointly for a lump sum, or for a separate price for each one of them, should it clearly appear that the vendee would not have purchased one without the other.

ART. 1480. The warranty cannot be enforced until a final judgment has been rendered by which the vendee is deprived of the thing sold or of a part thereof.

1. See notes under Art. 1475, Civil Code.

ART. 1481. The vendor shall be bound to make good the warranty whenever it is proved that he was given notice, at the instance of the vendee, of the suit for eviction. In the absence of such notice the vendor shall not be bound to the warranty.

1. See notes under Art. 1475, Civil Code.
2. A purchaser at an execution sale may recover from the judgment creditor the price paid by him should the judgment debtor be found to have had no interest whatever in the property sold. Bonzon v. Standard Oil Co., 27 Phil. 141.
3. Unless the vendor is given notice by the vendee of the suit for eviction, in time to enable him to defend it, his liability upon his warranty ceases absolutely. Jovellano v. Lualhati, 47 Phil. 371.
4. Where a warranty against eviction was expressly agreed upon in a contract of sale, and the purchaser sold the same land to a third party, expressly assigning to him the right to the warranty, the second purchaser has a right of action against the original vendor to demand such warranty. The rule set forth in Article 1257 of the Civil Code, that a contract binds only the parties thereto and their heirs, is not applicable to this case. Riva v. Escobar et al., 51 Phil. 243.
5. The notice to the vendor required in order that he may be held to respond upon his warranty of title must be given in the action brought by the holder of the superior title for the eviction of the purchaser, and not in an action brought to enforce the warranty itself. Riva v. Escobar, 51 Phil. 243.

ART. 1482. The defendant vendee, within the time fixed by the Law of Civil Procedure for answering the complaint, shall cause notice thereof to be served upon the vendor or vendors within the shortest period possible.

This notification shall be made in the manner established in said law for the summoning of defendants.

The vendee's time to answer shall be stayed until the expiration of that granted the vendor or vendors to appear and answer the complaint, which period shall be the same as that granted all defendants by the Law of Civil Pro-

cedure, counted from the notification prescribed by the first paragraph of this article.

Should the persons summoned to defend against the eviction fail to appear at the proper time and in the proper manner, the running of the time in which to answer the complaint shall re-commence with regard to the vendee.

1. The Spanish Law of Civil Procedure having been repealed this article must be deemed to refer to the present Code of Civil Procedure. Jovellano & Joyosa v. Lualhati et al., 47 Phil. 371.

ART. 1483. If the property sold should be subject to any incumbrance or non-apparent easement, not mentioned in the deed, of such a nature that it must be presumed that the vendee would not have purchased the property had he been aware thereof, he may demand the rescission of the contract, or damages, at his option.

Within one year from the date of the execution of the instrument of sale the vendee may either institute the rescissory action or sue for his damages.

After the lapse of one year, he may sue for such damages only, within an equal period, to be computed from the date on which the incumbrance or easement was discovered by him.

1. See Secs. 43 and 113, Code of Civil Procedure.

PAR. 2.

WARRANTY AGAINST HIDDEN DEFECTS IN OR INCUMBRANCES UPON THE THING SOLD.

ART. 1484. The vendor is liable for any hidden defects which the thing sold may have should they render it unfit for the use for which it was intended, or if they should diminish its adaptability to such use to such an extent that had the vendee had knowledge thereof he would not have bought it or would have given a lower price for it; but such vendor shall not be liable for patent or visible defects, or

for those which are not visible, if the vendee should be an expert who by reason of his trade or profession ought easily to become aware of them.

1. See Arts. 1266 and 1474, Civil Code; Art. 342, Code of Commerce.
2. Applying this article to a contract of lease, a lessee is entitled to damages only if he elects to rescind, and shows bad faith on the part of the lessor. Yap Kin Chuan v. Tiaoqui, 31 Phil. 433.
3. A vessel is not merchandise within the meaning of Article 342, Code of Commerce; and if not purchased for the purpose of resale, the transaction falls under Articles 1484 and 1485. Bryan v. Hankins, 44 Phil. 87.
4. An honest mistake as to the number of cocoanut trees on the land sold will not subject the vendor to liability when the buyer had an equally good opportunity to inform himself. Gochangco v. Dean, 47 Phil. 687.
5. When the buyer investigates the seller's statements concerning the thing to be sold, and the latter does nothing to prevent a complete inquiry, the sale is not subject to rescission upon the ground that it was induced by false representations by the seller concerning the facts so investigated. Azarraga v. Gay, XXVII Off. Gaz. 3622.

ART. 1485. The vendor is liable to the vendee for any latent faults or defects in the thing sold, even if they were unknown to him.

This provision shall not apply if the contrary has been stipulated and the vendor was not aware of such latent faults or defects.

1. See notes under Art. 1484, Civil Code.
2. See McCullough v. Aenlle, 3 Phil. 285.

ART. 1486. In cases falling within the two articles next preceding the vendee may elect to withdraw from the contract, the expenses which he may have incurred being returned to him, or demand a proportional reduction of the price, according to the judgment of experts.

If the vendor was aware of the latent faults or defects in the thing sold and did not give notice thereof to the vendee,

the latter shall have the same option, and shall also be entitled to recover his damages, should he elect to rescind.

1. See Art. 1499, Civil Code.
2. See McCullough v. Aenlle & Co., 3 Phil. 292; Yap Kim Chuan v. Tiaoqui, 31 Phil. 456.

ART. 1487. If the thing sold should be lost on account of hidden faults, and the vendor was aware of them, he shall bear the loss, return the price, and pay the expenses of the contract, with damages. If he was not aware thereof, he shall only return the price and repay any expenses of the contract which the vendee may have incurred.

1. See Arts. 1101 et seq., 1266, 1455, 1488 et seq., Civil Code; Arts. 333, 342, Code of Commerce.

ART. 1488. If the thing sold had any hidden fault at the time of the sale, and should be lost afterwards by a fortuitous event or by fault of the vendee, the latter may recover of the vendor the price paid therefor, less the value of the thing when lost.

If the vendor acted in bad faith, he shall be liable to the vendee for damages and interest.

1. See Arts. 1101 et seq., 1266, 1455, 1488 et seq., Civil Code; Arts. 333 et seq., Code of Commerce.

ART. 1489. There shall be no liability for damages in judicial sales; but all the other provisions of the preceding articles shall be applicable.

ART. 1490. Actions arising from the provisions of the five preceding articles shall be barred in six months, computed from the delivery of the thing sold.

1. See Chapter III, Code of Civil Procedure.

ART. 1491. If two or more animals should be sold together, whether it be for a lump sum or for a separate price for each, the redhibitory vice of either shall only cause the

redhibition of the same and not that of the other or others, unless it appears that the vendee would not have purchased the sound animal or animals without the defective one.

The latter shall be presumed when a team, yoke, pair, or set is bought, even when a special price has been fixed for each one of the animals composing the same.

ART. 1492. The provisions of the next preceding article with respect to the sale of animals shall also be applicable to the sale of other things.

ART. 1493. Warranty against the hidden vices of animals and cattle shall not obtain in sales made at fairs or at public auctions, nor in the sale of horses sold as condemned, except in the case mentioned in the following article.

1. See Arts. 82 et seq., Code of Commerce.

ART. 1494. Cattle or other animals suffering from contagious diseases shall not be the subject-matter of a contract of sale. Any contract made with respect to the same shall be void.

A contract of sale of cattle or other animals shall also be void when the use or service for which they are intended having been stated, they are found to be useless therefor.

1. See Arts. 1305, 1306, Civil Code.

ART. 1495. If the hidden vice of animals, even if a professional inspection has been made, should be of such a nature that the knowledge of experts is not sufficient to discover it, it shall be considered as redhibitory.

But if the veterinarian should fail to discover or to give notice of it through ignorance or bad faith, he shall be liable in damages.

ART. 1496. The redhibitory action, based on the vices or defects of animals, must be instituted within forty days counted from their delivery to the vendee, unless, in accord-

ance with the customs of the locality, longer or shorter periods are established.

This action in the sale of animals may only be enforced with respect to such vices and defects of the same as are specified by law or by local customs.

1. See Art. 43, Code of Civil Procedure.

ART. 1497. If the animal should die within three days after its purchase the vendor shall be liable, provided that, in the judgment of veterinarians the disease that caused the death existed before the contract.

ART. 1498. If the sale is resolved the animal must be returned in the condition in which it was sold and delivered, the vendee being liable for any deterioration due to his negligence and which does not arise from the redhibitory vice or defect.

1. See Arts. 1104, 1295, Civil Code.

ART. 1499. In the sale of cattle and other animals subject to redhibitory vices the vendee shall also enjoy the privilege mentioned in Article 1486; but he must make use thereof within the same periods which have been respectively fixed for the exercise of the redhibitory actions.

1. See notes under Art. 1496, Civil Code.

CHAPTER V.

OBLIGATIONS OF THE VENDEE.

ART. 1500. The vendee is obligated to pay the price of the thing sold at the time and place stipulated in the contract.

In the absence of an agreement with respect thereto, the payment must be made at the time and place at which the thing sold is delivered.

1. See Arts. 1113, 1125, 1171 and 1465, Civil Code; Art. 87, Code of Commerce.
2. Article applied. Lafont v. Pascasio, 5 Phil. 391.
3. If no time for payment has been agreed upon, it is presumed that the price is demandable at any time. Ocejo, Perez & Co. v. International Bank, 37 Phil. 631.
4. See also Cabanos v. Register of Deeds, 40 Phil. 620.
5. The purchaser of merchandise will not be released from his obligation to accept and pay for the goods by deviation on the part of the seller from the exact terms of the contract if the purchaser acquiesces in such deviation after due notice thereof. Engel v. Velasco & Co., 47 Phil. 115.
6. The fact, known to the seller, that the buyer intends to use the thing sold for a certain purpose for which it subsequently becomes unsuited, does not release the buyer from his obligation to accept delivery and make payment. Chinese-American Bank v. Uy Choco Sons & Co. 48 Phil. 108.

ART. 1501. In the three following cases the vendee shall owe interest from the time the thing is delivered until the payment of the price:

1. Should it have been so stipulated;
2. Should the thing sold and delivered produce fruits or income;
3. Should he be in default in accordance with Article 1100.

ART. 1502. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should he have reasonable grounds to fear being disturbed by an action of replevin, ejectment, or foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless he gives security for the restitution of the price should the occasion arise, or should it have been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment.

1. See Arts. 1100, 1108, Civil Code; Art. 341, Code of Commerce.

ART. 1503. Should the vendee have reasonable ground to fear the loss of any real property sold and of its price, he may immediately sue for a resolution of the sale.

Should such grounds not exist, the provisions of Article 1124 shall be applicable.

ART. 1504. In the sale of real property, even though it may have been stipulated that in default of the payment of the price within the time agreed upon, the resolution of the contract shall take place *ipso facto,* the vendee may pay even after the expiration of the period, at any time before demand has been made upon him either by suit or by notarial act. After such demand has been made the judge cannot grant him further time.

1. See Arts. 1114, 1450, Civil Code.
2. By taking a mortgage on the property to secure the balance of the purchase price, the vendor waives his right to rescind the sale for nonpayment. Villruel v. Tan King, 43 Phil. 251.

ART. 1505. With respect to personal property, the resolution of the sale shall take place *ipso facto* for the benefit of the vendor if the vendee, before the lapse of the period fixed for the delivery of the thing, does not appear to take delivery thereof, or if having appeared he should not have tendered the price at the same time, unless a longer period has been stipulated for the payment thereof.

1. See Arts. 335 et seq., 1462 et seq., 1500, Civil Code.

CHAPTER VI.

RESOLUTION OF THE SALE.

ART. 1506. Sales are resolved by the same causes as all other obligations, and furthermore by those mentioned in the preceding chapters and by conventional or legal redemption.

1. See Art. 1124, Civil Code.
2. Personalty sold subject to rescission of sale if price not paid when due. Property attached by creditor of vendee. Held, unpaid vendee may rescind as against sheriff and attaching creditor. Guevara v. Pascual, 12 Phil. 311.
3. The power to rescind under this article and under Art. 1124 is not absolute, and replevin will not lie upon the mere election of the vendor to rescind without appealing to the courts. Ocejo, Perez & Co. v. Int. Bank, 37 Phil. 631.
4. See Pabalan v. Velez, 22 Phil. 29; Addison v. Felix, 38 Phil. 404.
5. The mere default on the part of the buyer in the payment of the price within the period stipulated is not ground for the resolution of the sale, in the absence of a condition that such default shall operate to resolve the contract. Warner, Barnes & Co. v. Inza, 43 Phil. 505.
6. Where the resolution of a contract for the sale of land is decreed on account of the failure of the vendor to deliver possession, the purchaser is entitled to recover the purchase price paid by him, with interest from the date when the payment was made. Rodriguez v. Leuterio, 47 Phil. 818.

SECTION I. *Conventional Redemption.*

ART. 1507. Conventional redemption shall take place when the vendor reserves to himself the right to re-purchase the thing sold, subject to the obligation of complying with the provisions of Article 1518, and whatever else may have been agreed upon.

[1281]

1. In case of doubt as to the exact nature of a contract it will be held to be that contract which involves the least transmission of rights. Cruz v. Joaquin, 2 Phil. 503; Olino v. Medina, 13 Phil. 379; Padilla v. Linsangan, 19 Phil. 65.
2. Difference between mortgage and *pacto retro*. Basilio v. Encarnacion, 5 Phil. 360.
3. Difference between *pacto retro* and antichresis. Davis v. Neyra, 24 Phil. 417.
4. If no time is fixed within which to redeem, or if redemption cannot be made except after a certain date, the period is presumed to be four years. España v. Lucido, 8 Phil. 419; Alano v. Babasa, 10 Phil. 511; Lucido v. Calupitan, 27 Phil. 148.

5. The right of a vendor to redeem is a real right and may be enforced against anyone who claims title under the purchaser. Mortera v. Martinez, 14 Phil. 541.

6. A purchaser who has consolidated his title may be substituted in place of the vendor as applicant for the registration of the land sold. Ortiz v. Ortiz, 26 Phil. 280.

7. A purchaser under *pacto retro* cannot bring a suit for *reivindicación* against the vendor who registered his title after the sale, but may bring the personal action to compel performance. Cabanos v. Register of Deeds, 40 Phil. 620. But see Nolan v. Gonzaga, 16 Phil. 306.

8. See also Patricio v. Aragon, 4 Phil. 615; Lafont v. Pascasio, 5 Phil. 391; Espiritu v. Luis, 5 Phil. 482; Lichauco v. Berenguer, 20 Phil. 12; Endroso v. Sablan, 25 Phil. 295; Magayano v. Gapuzan, 33 Phil. 453; Castillo v. Belisario, 35 Phil. 89.

9. The right of redemption is enforceable against any third person claiming under the purchaser. Macapinlac v. Gutierrez, 43 Phil. 770.

10. A chattel mortgage under Act No. 1508 differs from the sale with *pacto de retro* authorized by the Civil Code, in that while in form it is a conditional conveyance it is given for security only; and if the mortgaged property does not sell for an amount sufficient to satisfy the secured debt the creditor may proceed against the debtor for the recovery of the balance. Manila Trading & Supply Co. v. Tamaraw Plantation Co. 47 Phil. 513.

11. A sale with *pacto de retro* transfers the legal title to the vendee, and in the absence of an agreement to the contrary carries with it the right to the possession of the property sold. Alderete v. Amandoron, 46 Phil. 488.

12. A widow, who, pursuant to a stipulation for repurchase, redeems property of her deceased husband from a contract of sale executed during the life of the husband does not thereby acquire the property in her own absolute right. In such case the title reverts to the heirs of the deceased husband, subject to a lien in favor of the widow for the amount paid out by her to redeem the property. Guinto v. Lim Bonfing et al., 48 Phil. 884.

13. A third person who advances money to a widow to enable her to redeem community real property sold by her husband under a *pacto de retro* and thereafter becomes the purchaser of the property by conveyance from the widow, acquires

only the widow's rights therein, consisting of her usufructuary interest and her lien for the amount expended in the redemption. He does not acquire the share of the children of the deceased but has an equitable lien to secure their portion of such amount. Guinto v. Lim Bonfing et al., 48 Phil. 884.

14. In determining whether a transaction purporting to be a sale with *pacto de retro* is or is not in reality a loan and mortgage the inadequacy of the amount paid in relation to the actual value of the land is an important factor. Cabigao v. Lim, 50 Phil. 844.

15. A person who redeems property belonging to another, which has been sold under contract with *pacto de retro,* with the understanding that the income of the property shall be applied to the reimbursement of the capital, with interest, and other expenses incidental to the administration of the property, until the whole shall be liquidated, whereupon the property shall be restored to the owner, occupies the position of a trustee; and when the purpose of such a trust has been accomplished, the trustee is bound to surrender the property to the owner or his successors. Cristobal v. Gomez, 50 Phil. 810.

16. Contention that rent constitutes usurious interest; see Tolentino v. Gonzalez, 50 Phil. 559; cited under Art. 1108.

17. When an instrument purports to evidence a sale subject to a *pacto de retro,* an assertion by the seller that it was intended by both parties to be security for a loan will be upheld only when there is something in the language used, or in the conduct of the parties, which shows clearly and beyond doubt that they intended the contract to be a mortgage and not a *pacto de retro.* Tolentino et al. v. Gonzalez, 50 Phil. 550.

18. Evidence held insufficient to show that a contract purporting to be a *pacto de retro* was intended to be a mortgage. Paguio v. Manlapid, XXVII Off. Gaz. 3474.

ART. 1508. The right referred to in the next preceding article, in default of an express agreement, shall endure four years, counted from the date of the contract.

Should there be an agreement, the period shall not exceed ten years.

1. See notes under Art. 1507, Civil Code.

2. Stipulation that vendor cannot redeem the property until after three years have elapsed. Held, vendor had seven years after the third year within which to redeem. Rosales v. Reyes, 25 Phil. 495.
3. If the period agreed upon is more than ten years, only the excess will be considered null and void. Montiero v. Salgado, 27 Phil. 631.
4. The period agreed upon originally may be extended, provided any one extension is not in excess of ten years. Umale v. Fernandez, 28 Phil. 89.
5. Stipulation to redeem in the month of March of any year. Held, that redemption could be made in the month of March of any year up to the tenth year. Bandong v. Austria, 31 Phil. 479.
6. Period was left at the will of the vendor. Held, period cannot exceed ten years. Estira v. Alvero, 37 Phil. 497.
7. In the following cases, the period was held to have expired and the title consolidated in the purchaser. Patricio v. Aragon, 4 Phil. 615; Jumero v. Lizares, 17 Phil. 112; Yadao v. Yadao, 24 Phil. 260; Tuason v. Goduco, 23 Phil. 342; Magayano v. Gapuzan, 33 Phil. 453; Dorado v. Viriña, 34 Phil. 264.
8. A contract of sale of real property having been entered into with the right to repurchase within ten years, the stipulation subsequently entered into by the vendor's heirs with the purchaser to the effect that said right to repurchase shall not be exercised until after the lapse of fourteen years, is not a promise to sell—an independent contract—but a simple modification of the agreement concerning the right to repurchase, with respect to its exercise. So construed, such stipulation is contrary to Article 1508, paragraph 2, of the Civil Code, and the repurchase may and should be effected within the ten years immediately following the perfection of the contract of sale. Ramos v. Icasiano et al. 51 Phil. 343.
9. When it is stipulated in a sale with *pacto de retro* that the vendor may repurchase "whenever he or his heirs has the means, the right of repurchase must be exercised within ten years; but the nullity of the clause relating to the term of redemption, in so far as it exceeds the maximum permitted by the statute, does not affect the validity of the contract of sale. Alojado v. Lim Siongco, XXVI Off. Gaz. 2011.

10. When it is stipulated in a contract of sale of real property that the vendor shall be entitled to repurchase it when he has established a certain business, such a stipulation does not express a period, but the suspension of the right of repurchase until the establishment of the business; and therefore, the period for the repurchase is that of four years fixed by law for cases wherein the parties have not fixed it, said period to be computed from the date of the contract. Medel v. Francisco, 51 Phil. 367.

ART. 1509. If the vendor does not comply with the provisions of Article 1518, the vendee shall acquire irrevocably the ownership of the thing sold.

1. See notes under Art. 1508, Civil Code.
2. Where it was agreed that the amount of a loan was to be considered as the purchase price if repayment is not made on the date stipulated, it was held, that title became vested in the creditor upon default. Nolan v. Gonzaga, 16 Phil. 306.
3. If vendee refuses offer to pay, vendor must deposit the price in court. Angao v. Clavano, 17 Phil. 152.
4. The right as vendee under *pacto retro* may be assigned, and upon default the assignee becomes the owner. Rafols v. Rafols, 22 Phil. 236.
5. A contract of *pacto retro* stipulated that upon failure to pay rent the title became vested in the vendee. Upon default the vendee agreed to take possession of the property and apply the fruits of the property to the rent. Held, that this was a waiver of the vendee's right, and did not produce the consolidation of the title in the vendee. Vitug v. Coronel, 40 Phil. 686.
6. See also Cruz v. Joaquin, 2 Phil. 503; Patricio v. Aragon, 4 Phil. 615; Basilio v. Encarnacion, 5 Phil. 360; Espiritu v. Luis, 5 Phil. 482; Tuazon v. Goduco, 23 Phil. 342; Racca v. Vilosca, 26 Phil. 120; Ortiz v. Ortiz, 26 Phil. 280.
7. If the purchaser of land under a *pacto de retro* contract remains in possession after the vendor has taken the steps necessary to the exercise of his right of redemption, the possessor is liable to the vendor for the reasonable value of the occupation of the premises while retained by him. Cho Chun Chac v. Garcia, 47 Phil. 530.
8. When the vendor of real estate with right of repurchase withholds possession of the property after the expiration of the

period of redemption, the buyer may maintain an action of forcible entry and detainer against him in the court of the justice of the peace. Gonzalez et al. v. Salas, 49 Phil. 1.

9. See Krapfenbauer v. Orbeta, XXVII Off. Gaz. 278.

ART. 1510. The vendor may bring his action against any possessor who holds under the vendee, even though in the second contract no mention should have been made of the conventional redemption, saving always the provisions of the Mortgage Law with respect to third persons.

[1281, 1507] M. L. 24–27, 36–38, 109.

1. The right to repurchase is a real right which goes with the land and may be claimed against any possessor deriving title from the vendee. Hence, it may be registered under Act 496. Pandaquila v. Gaza, 12 Phil. 663; Mortera v. Martinez, 14 Phil. 541; Lucido v. Calupitan, 27 Phil. 148.

ART. 1511. The vendee is subrogated to all the rights and actions of the vendor.

1. See Arts. 1525 and 1572, Civil Code.
2. See Edroso v. Sablan, 25 Phil. 295.

ART. 1512. The creditors of the vendor cannot make use of the conventional redemption against the vendee until they have exhausted the property of the vendor.

1. See Arts. 1507, 1510, Civil Code.

ART. 1513. The purchaser, subject to a pact of re-sale, of an undivided interest in real property, who becomes the owner of the whole thereof, if the case falls within the terms of Article 404, may compel his vendor, if he wishes to make use of his right of redemption, to redeem the entire property.

ART. 1514. If several persons, collectively and in the same contract, should sell undivided realty, reserving the right of re-purchase, none of them can exercise this right for more than his respective share.

The same rule shall be applied if a person who alone has sold such realty leaves several heirs, in which case each of the latter can redeem only the part which he may have acquired.

1. See Arts. 1515 et seq., 392, 399, 1507, Civil Code; Arts. 702, 703, 704, Code of Civil Procedure.

ART. 1515. In the cases falling under the next preceding article, the vendee may require all the vendors or coheirs to come to an agreement with respect to the redemption of the whole of the thing sold; and should they fail to do so, the vendee cannot be compelled to consent to a partial redemption.

1. See notes under Art. 1514, Civil Code.

ART. 1516. Any one of the co-owners of undivided real estate who has sold his share separately may exercise the right of redemption independently as to his respective share and the vendee cannot force him to redeem the entire property.

ART. 1517. Should the vendee leave several heirs, the action of redemption cannot be brought against each of them, except for his respective share, whether it be undivided, or whether it has been distributed among them.

But if the inheritance has been divided, and the thing sold has been allotted to one of the heirs, the action of redemption may be brought against him for the whole.

1. See notes under Art. 1514, Civil Code.

ART. 1518. The vendor cannot exercise the right of redemption without returning to the vendee the price of the sale, and furthermore:

1. The expenses of the contract and any other lawful payments made by reason of the sale;

2. The useful and necessary expenditures incurred upon the thing sold.

1. See Arts. 453, 1455, 1465, 1507 et seq., 1529, Civil Code.
2. See notes under Arts. 1507 to 1509, Civil Code.

ART. 1519. If at the time of the execution of the sale there were any visible fruits upon the property, no allowance or payment *pro rata* shall be made for those existing at the time of the redemption.

Should there have been no fruits in existence at the time of the sale, but such exist at the time of the redemption, they shall be divided *pro rata* between the redemptioner and the vendee, giving to the latter a share proportionate to the time he possessed the property during the last year, counted from the date of the sale.

1. See Art. 357, Civil Code.

ART. 1520. If the vendor redeems the thing sold he shall receive it free of any charges or mortgage imposed by the vendee, but he shall be obliged to respect any lease made by the latter in good faith and in accordance with the customs of the place where it is situated.

1. See Art. 1571, Civil Code.
2. Article cited and applied. Lafont v. Pascasio, 5 Phil. 391; Mortera v. Martinez, 14 Phil. 541; Montiero v. Salgado, 27 Phil. 631.

SECTION II. *Legal Redemption.*

ART. 1521. Legal redemption is the right to be subrogated, under the same conditions as those stipulated in the contract, in the place of a person who acquires a thing by purchase or in payment of a debt.

1. See Arts. 1067, 1506, 1572, 1636 and 1656, Civil Code; Art. 38, Mortgage Law.
2. *"Cosa"* as used in this article may mean either real or personal property. U. S. v. Caballero, 25 Phil. 356.
3. Object of *"retracto legal"* explained. If the purchaser is also an adjoining owner, there is no *"retracto legal."* Del Pilar v. Catindig, 35 Phil. 263.
4. Possession of land during period of redemption after execution sale; see Flores v. Lim, 50 Phil. 738.

5. Improvements to land made by purchaser at execution sale during period of redemption; see Flores v. Lim, 50 Phil. 738.
6. As to time and manner of disputing the validity of a sale of the right to redeem property sold on execution, see Valera v. Velasco, 51 Phil. 695.

ART. 1522. Any co-owner of a thing held in common may exercise the right of redemption in case the shares of all the other co-owners, or any of them, are sold to a third person.

When two or more co-owners wish to exercise the right of redemption, they may do so only in proportion to the share each may have in the thing owned in common.

1. See Arts. 392, 1067, and 1523, Civil Code.
2. If the purchaser is also a co-owner, there is no *"retracto legal."* Estrada v. Reyes, 33 Phil. 31.
3. See also U. S. v. Caballero, 25 Phil. 356.
4. The right of legal redemption is available not only to the original co-owners but to their successors while the cotenancy exists. Viola et al. v. Tecson, 49 Phil. 808.

ART. 1523. The owners of the adjacent lands shall also have the right of redemption in case of the sale of a rural estate whose area does not exceed one hectare.

The right referred to in the next preceding paragraph does not exist with respect to adjacent lands which are divided by brooks, aqueducts, ravines, roads, or other apparent easements pertaining to other estates.

If two or more adjacent owners should desire to make use of the right of redemption at the same time, the one who is owner of the adjacent land of lesser area shall be preferred; or, should both be equal in area, the one who first requested it.

1. See notes under Art. 1521, Civil Code.
2. See Alpuerto v. Perez Pastor, 38 Phil. 785.
3. The right of redemption between adjacent owners exists only when both the land of the one exercising the right of redemption and the adjacent property sought to be redeemed are rural. Cortes v. Flores, 47 Phil. 992.

ART. 1524. The right of legal redemption can be exercised only within nine days, counted from the date of the record of the transfer in the Registry of Deeds, or in default thereof, from the time the redemptioner may have had knowledge of the sale.

The right of redemption of co-owners excludes that of adjacent owners.

1. See Sec. 40, Code of Civil Procedure.
2. A cotenant's right of redemption under this article is substantive and the term of its duration is restricted to nine days. The time has not been extended by the provisions of the Code of Civil Procedure as to the prescription of actions. Sempio v. Del Rosario, 44 Phil. 1.
3. Article 1067, not this article, is applicable to redemption by a co-heir. Wenceslao v. Calimon, 46 Phil. 906.
4. The right of a mortgagor to redeem property sold under foreclosure commences from the date of confirmation of the sale. Gonzalez v. National Bank, 48 Phil. 824.

ART. 1525. In legal redemptions the provisions of Articles 1511 and 1518 shall be applicable.

1. See Art. 38, Mortgage Law; and Art. 575, Code of Commerce.

CHAPTER VII.

TRANSFERS OF CREDITS AND OTHER INCORPOREAL RIGHTS.

ART. 1526. The assignment of a credit, right, or action shall produce no effect as against third persons except from the time its date may be deemed fixed, in accordance with Articles 1218 and 1227.

If such assignment involves real property, from the date of its record in the Registry of Deeds.

1. See Arts. 334, 606, 1000, 1198, 1212, 1218, and 1280, Civil Code; Arts. 25, 27 et seq., 39, 152–155, Mortgage Law; Sec. 114, Code of Civil Procedure.
2. The assignment of a mortgage is valid although not inscribed. Inscription is only necessary to affect third persons. Lopez v. Alvarez, 9 Phil. 28.

3. If a credit is assigned *pendente lite*, the suit may be continued to judgment in the name of the assignor, with the consent of the assignee, to whom the assignor will be accountable for the proceeds of the judgment. Oria Hnos. v. Gutierrez Hnos. XXVII Off. Gaz. 170.

ART. 1527. Any debtor who pays his creditor, before having knowledge of the assignment, shall be released from the obligation.

1. See Art. 1198 and notes under Art. 1526, Civil Code; Sec. 114, Code of Civil Procedure.
2. The inscription of an assignment of a chattel mortgage in the registry of property is not constructive notice to the debtor under this article because such inscription is not required by the law. Sison v. Yap Tico, 37 Phil. 584.
3. Where an agreement is made between a debtor and his creditor that the debt of the latter should be paid out of a fund belonging to the debtor in the hands of a third party, and the agreement is communicated to such third party and is assented to by him, this will be effective in equity to transfer an interest in such fund to the extent of his debt to the creditor. Pacific Commercial Co. v. Hernaez et al., 51 Phil. 494.

ART. 1528. The sale or assignment of a credit includes that of all accessory rights, such as guaranty, suretyship, mortgage, pledge, or privilege.

1. A mortgage creditor who assigns a mortgage to a third person is a proper party to a suit to foreclose; and the court may, as an incident to the foreclosure proceeding, give judgment against the creditor upon his guaranty to respond for any balance of the secured debt subsidiarily to the mortgagor. Ledesma v. Del Rosario et al., 49 Phil. 35.

ART. 1529. A vendor in good faith shall be responsible for the existence and legality of the credit at the time of the sale, unless it should have been sold as doubtful; but he shall not be responsible for the solvency of the debtor unless it has been so expressly stipulated, or unless the insolvency of the latter should be prior to the sale and a matter of public knowledge.

Even in these cases he shall only be liable for the price received and for the expenses mentioned in paragraph 1 of Article 1518.

A vendor in bad faith shall always be liable for the payment of all the expenses, and in damages.

1. See Act No. 2031, Philippine Legislature.

ART. 1530. If an assignor in good faith should have made himself liable for the solvency of the debtor, and the contracting parties should not have stipulated anything with respect to the duration of the liability, it shall last one year only, to be counted from the assignment of the credit, if already matured.

If the credit should be payable within a term or period which has not yet expired, the liability shall cease one year after its maturity.

Should the credit consist of a perpetual income, the liability shall be extinguished in ten years from the date of the assignment.

1. See Act No. 2031.

ART. 1531. One who sells an inheritance without enumerating the things of which it is composed shall be liable only as warrantor of the fact of his heirship.

ART. 1532. Any person who sells for a lump sum certain rights, incomes, or products, as a whole, shall be liable as warrantor of the legality of his title to the whole in general, but he shall not be liable as warrantor of each of the parts of which it may be composed, except in case of eviction from the whole or of the greater part thereof.

ART. 1533. Should the vendor of an inheritance have profited by any of the fruits thereof or should he have received anything therefrom, he must pay the vendee therefor, in default of an agreement to the contrary.

ART. 1534. The vendee must, on his part, reimburse the

vendor for any sums the latter may have expended in satisfying or discharging debts or charges on the estate and pay him for any credits he may have against the same, in default of an agreement to the contrary.

ART. 1535. When a credit in litigation is sold, the debtor shall be entitled to extinguish it by reimbursing the assignee for the price the latter paid for it, any court costs incurred by him, and interest on the price from the day on which the same was paid.

A credit shall be considered in litigation from the time of the filing of an answer to the complaint relating to the same.

The debtor may make use of his right within nine days, counted from the day on which the assignee demands payment of him.

1. See notes under Arts. 1529 and 1530, Civil Code.
2. See Chapter III, Code of Civil Procedure.
3. The claim not having been presented within nine days as provided in this article, the counterclaim was denied. Aldeguer v. Aposaga, 5 Phil. 584.
4. It is not sufficient that the credit may be the subject of a suit. It is necessary that it be actually litigated. Robinson v. Garry, 8 Phil. 275.

ART. 1536. From the provisions of the next preceding article are excepted assignments or sales made:

1. To a co-heir or co-owner of the right assigned;
2. To a creditor in payment of his credit;
3. To the possessor of real property subject to the right in litigation so assigned.

CHAPTER VIII.

GENERAL PROVISION.

ART. 1537. All that is prescribed in this title is to be understood as subject to the provisions of the Mortgage Law with respect to real property.

TITLE V.

BARTER.

ART. 1538. Barter is a contract by which each of the contracting parties binds himself to give one thing in order to receive another.

1. See Arts. 1088, 1254, 1261, Civil Code; Art. 346, Code of Commerce.

ART. 1539. If one of the contracting parties should have received the thing promised to him in barter, and should prove that it did not belong to the person who gave it, he cannot be compelled to deliver the thing he offered in exchange, and shall be discharged of his obligation upon returning the thing received by him.

ART. 1540. Any person who loses by eviction a thing acquired by barter may at his election recover the thing which he gave in exchange for it or an indemnity for his damages; but he can only make use of the right to recover the thing which he delivered while it remains in the possession of the other party, and subject to any rights acquired therein in good faith in the meantime by any third person.

1. See Arts. 1295 et seq., 1375, 1475, 1478, Civil Code; Arts. 25, 27 et seq., Mortgage Law.

ART. 1541. Barter shall be governed by the provisions relating to sales as to all matters not specially provided for in this title.

1. See Art. 345, Civil Code; Art. 346, Code of Commerce; Art. 2, Mortgage Law.

TITLE VI.

CONTRACTS OF LEASE.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1542. A lease may be of things or of works or services.

1. See Enriquez v. Watson & Co., 22 Phil. 623.

ART. 1543. In a lease of things, one of the parties thereto binds himself to give to the other the enjoyment or use of a thing for a definite period and for a certain price.

1. Article cited and applied. Eleizegui v. Manila Lawn, 2 Phil. 309; Enriquez v. Watson & Co., 22 Phil. 623.
2. A contract of lease may be for an indefinite time. Ottofy v. Dunn, 38 Phil. 438.
3. Article cited and applied. Rodriguez v. Borromeo, 43 Phil. 479.
4. Lease defined; see Tolentino et al. v. Gonzalez, 50 Phil. 559.

ART. 1544. In a lease of work or services, one of the parties binds himself to make or construct something or to render a service to the other for a certain price.

1. See notes under Art. 1547, Civil Code.
2. *"Precio cierto"* in a lease of services may be established by proof of reasonable value. Perez v. Pomar, 2 Phil. 682; Herrer v. Cruz Herrera, 7 Phil. 274; Imperial v. Alejandre, 14 Phil. 203.
3. There is a fixed price if the contract furnishes the basis or measure whereby the amount agreed upon may be determined. Majarabas v. Leonardo, 11 Phil. 272.
4. Compensation for the salvage of a steamer in distress can be recovered although it was undertaken without an express

agreement as to the price. Urrutia & Co. v. Pasig etc. Co., 22 Phil. 330.

ART. 1545. Fungible things which are consumed by use cannot be the subject-matter of this contract.

CHAPTER II.

LEASES OF RURAL AND URBAN PROPERTY.

SECTION I. *General Provisions.*

ART. 1546. The person who binds himself to cede to another the use of a thing, to make or construct something, or to render a service is called the lessor; and the one who acquires the use of the thing or right to the work or service, for which he undertakes to pay, is called the lessee.

ART. 1547. When the performance of a verbal contract of lease has begun and evidence of the price agreed upon is lacking, the lessee shall return to the lessor the thing leased, paying him for the time during which he has enjoyed such thing such price as may be adjusted.

1. See Art. 1543, and notes under Art. 1544, Civil Code.

ART. 1548. No lease for a term of more than six years shall be made by the husband with respect to the property of his wife, by the father with respect to that of his children, by the guardian with respect to that of his minor ward, or in default of special power, by a manager of property.

1. See Arts. 163, 264, 269, 1363, 1389 and 1713, Civil Code; Art. 2, Mortgage Law; Secs. 554 and 565, Code of Civil Procedure.
2. Persons coming within the prohibition of this article cannot execute leases for more than six years, in the absence of a special power or a special law authorizing the lease. The

contract will, however, be considered void only as to the excess over the six-year period. Tipton v. Andueza, 5 Phil. 477; Enriquez v. Watson, 6 Phil. 84–114.

3. This limitation does not apply to property held in common. Although one of the co-owners is a minor, the will of the majority governs. Enriquez v. Watson, 6 Phil. 84–114.
4. Article cited and construed. Rodriquez v. Borromeo, 43 Phil. 479.
5. A lease for more than six years of the property of a minor is voidable if made without judicial authorization; but the lessee under such lease is a possessor in good faith. Lichauco v. Tan Pho, 51 Phil. 862.

ART. 1549. Leases of real property which are not duly recorded in the Registry of Deeds shall be of no effect as against third persons.

1. See Arts. 334, 606, 1280 and 1543, Civil Code; Arts. 2, 5, 24, 25, 27, 389, Mortgage Law; Sec. 335 (No. 5), Code of Civil Procedure.
2. An unrecorded sale, mortgage, or lease of registered land operates only as a contract between the parties and does not affect the rights of third persons. Quimson v. Suarez, 45 Phil. 901.
3. Where a purchaser of land, at the time of purchase, has full knowledge of the fact that the land has been leased to a third person and is informed of the terms of such lease, he is bound to respect it, although it is not entered upon the Certificate of Title, and it is not error to hold that the lease in effect became a part of the contract of sale. Gustilo v. Maravilla, 48 Phil. 442.

ART. 1550. Should it not be expressly forbidden in the contract of lease of a thing, the lessee may sub-let the whole or any part of the thing leased, without prejudice to his liability for the performance of his contract with the lessor.

1. Article cited and applied. Enriquez v. Watson & Co., 22 Phil. 623.
2. The lessor may bring an action directly against the sublessee for any damages to the thing leased for which the sublessee is responsible. Pasig Steamer etc. Co. v. Madrigal, 36 Phil. 572.

3. The lessee of real or personal property may, without the consent of the lessor (unless expressly prohibited by the contract) assign the lease; and thereafter the rights created by the lease are enforcible only against the landlord, and not against the assignor of the lease. Sy Juco et al. v. Montemayor et al., XXVI Off. Gaz. 3575.

ART. 1551. A sub-tenant, without prejudice to his obligation with respect to the sub-lessor, shall be liable to the lessor for all the acts which concern the use and preservation of the thing leased, in the manner agreed upon between the lessor and the lessee.

ART. 1552. The sub-lessee shall also be liable to the lessor for any part of the rent agreed upon in the sub-lease which may be due at the time of the demand. No allowance shall be made for payments made in advance, unless it be customary to do so.

1. See Art. 1126, Civil Code.

ART. 1553. The provisions relating to warranty, contained in the title relating to purchase and sale, are applicable to contracts of lease.

In cases in which the price must be returned, a reduction thereof shall be made in proportion to the time during which the lessee may have enjoyed the thing.

1. See Arts. 1474 to 1499, Civil Code.
2. Landlord's liability to tenant for damages due to defects known to landlord, but undisclosed by him. Yap Kin Chuan v. Tiaqui, 31 Phil. 433.
3. Landlord authorized tenant of upper story to make changes requiring partial removal of roof. Rain entered causing damage to tenant of lower story. Held, landlord not liable. Goldstein v. Roces, 34 Phil. 562.

SECTION II. *Rights and Obligations of the Lessor and Lessee.*

ART. 1554. It shall be the duty of the lessor:

1. To deliver to the lessee the thing which is the subject-matter of the contract;

2. To make thereon, during the lease, all repairs necessary in order to keep it in serviceable condition for the purpose for which it was intended;

3. To maintain the lessee in the peaceful enjoyment of the lease during the entire term of the contract.

1. See Arts. 1559 and 1580, and notes under Arts. 1105, 1553 and 1563, Civil Code; Art. 485, Penal Code.
2. The landlord's duty to make repairs does not include the filling of leased land to raise the level. Alburo v. Villanueva, 7 Phil. 277.
3. Measure of damages if lessee fails to take possession of leased premises. De la Cruz v. Seminario of Manila, 18 Phil. 330.
4. Leaks in the roof of the house were due to torrential rain. Held, not covered by the warranty. Yap Kin Chuan v. Tiaoqui, 31 Phil. 433.
5. To repair under this article does not mean to rebuild, if property destroyed by fortuitous event. Lizares v. Hernaez, 40 Phil. 981.
6. A landlord is not responsible for the damages caused his tenant by eviction through condemnation proceedings. Sayo v. Manila R. R. Co., 43 Phil. 551.

ART. 1555. It shall be the duty of the lessee:

1. To pay the price of the lease in the manner agreed upon;

2. To use the thing leased as a diligent father of a family would, applying the same to the use agreed upon, or, in default of an agreement, to the use which may be inferred to have been intended from the nature of the thing leased, according to the custom of the country;

3. To pay the expenses of the execution of the instrument containing the contract.

1. See Arts. 1171, 1966 and notes under Art. 1554, Civil Code.
2. If the lessee does not pay the stipulated rent, or comply with the obligations imposed by this article, the lessor may rescind the contract and demand indemnity for damages, or compel its performance. Parrado v. Jo Juayco, 4 Phil. 710; Sugar Estate Co. v. Irribar, 5 Phil. 316; Co Tiongco v. Co-Quieng-Co., 6 Phil. 46; Moncada v. Caguigan, 21 Phil. 184; Enriquez v. Watson & Co., 22 Phil. 623.

3. See also Eleizegui v. Manila Lawn, 2 Phil. 309; Yap Kin Chuan v. Tiaoqui, 31 Phil. 433; Hernaez v. Montelibano, 34 Phil. 954; Velasco v. Lao Tam, 23 Phil. 495; Legarda v. Zarate, 36 Phil. 68.

ART. 1556. Failure on the part of the lessor or lessee to comply with the obligations mentioned in the next preceding articles shall be ground for the rescission of the contract and the recovery of damages, or the latter only leaving the contract in force.

1. See Arts. 1124, 1569, and notes under Arts. 1554 and 1555, Civil Code.
2. A lessee not in possession cannot sue the occupant of a house for damages caused by his refusal to surrender the premises. Donaldson, Sim & Co. v. Smith, Bell Co., 2 Phil. 766.
3. Cost of filling the land leased cannot be recovered by the lessee as a "necessary expense." Alburo v. Villanueva, 7 Phil. 277.
4. As to right to rescind, see Yunti v. Dy-Yco, 6 Phil. 352; Yap Kin Chuan v. Tiaoqui, 31 Phil. 433; Hernaez v. Montelibano, 34 Phil. 954.
5. Damages do not include future rents. Rios v. Jacinto, Palma y Hnos., 49 Phil. 7.

ART. 1557. The lessor cannot change the form of the thing leased.

1. A masonry wall was torn down, and a concrete wall put in its place. Held, that such a change did not violate this article. Enriquez v. Watson & Co., 22 Phil. 623.

ART. 1558. If, during the lease, it should be necessary to make any urgent repairs upon the thing leased which cannot be postponed until the expiration thereof, the lessee shall be obliged to permit the work, even though it be very annoying to him, and even if in the course of such repairs he may be deprived of a part of the property.

If the work of making the repairs should continue more than forty days, the price of the lease shall be reduced in proportion to the time and to the part of the property of which the lessee is deprived.

If the work should be of such a nature that the part which the lessee and his family require for their dwelling becomes uninhabitable, he may rescind the contract.

1. See notes under Art. 1556, Civil Code.

ART. 1559. It shall be the duty of the lessee to give notice to the owner with the least possible delay of any trespass or injurious alterations which any other person may have made or is openly preparing to make upon the thing leased.

He is also obliged to give notice to the owner with the same urgency of the necessity of any of the repairs mentioned in paragraph 2 of Article 1554.

In either case the lessee shall be liable for any damages which may be caused the owner by reason of his negligence.

1. See notes under Art. 1556, Civil Code.
2. Article applied. Simpao v. Dizon, 1 Phil. 261.
3. The fact that a building is under lease does not affect the right of the owner to maintain an action to prevent encroachments by the owner of the adjoining property. Roxas v. Mijares, 9 Phil. 252.

ART. 1560. The lessor shall not be liable for any act of mere trespass by a third person upon the leased property; but the lessee shall have a direct action against the trespasser.

There is no trespass if the third person, whether he be an agent of the government or a private person, has acted by virtue of a right belonging to him.

1. See Art. 27, Mortgage Law.
2. See notes under Arts. 1556 and 1557, Civil Code.
3. Disturbance in fact (*de mero hecho*) defined. Goldstein v. Roces, 34 Phil. 562.

ART. 1561. The lessee must return the property at the expiration of the lease in the same condition as that in which he received it, saving any part thereof which may

have perished or suffered deterioration by the passage of time or through any other inevitable cause.

1. See Art. 1573, and notes under Arts. 1555, 1560 and 1563, Civil Code.
2. See also Yunti v. Dy-Yco, 6 Phil. 352; Manila Bldg. & Loan Assn. v. Peñalosa, 13 Phil. 575.

ART. 1562. In default of a statement concerning the condition of the property at the time it was leased, the legal presumption, in the absence of proof to the contrary, is that the lessee received it in good condition.

1. Article cited and applied. Yap Kin Chuan v. Tiaoqui, 31 Phil. 433.

ART. 1563. The lessee is liable for any deterioration or loss suffered by the thing leased, unless he proves that it took place without his fault.

1. See notes under Arts. 1105, 1554, 1182 and 1183, Civil Code.
2. The thing leased was destroyed by fire. The lessee proved that he had exercised ordinary care. Held, lessee was not liable for the loss. Lizares v. Hernaez, 40 Phil. 981.

ART. 1564. The lessee is liable for any deterioration caused by members of his household.

1. See Arts. 1546, 1557, 1902 et seq., Civil Code; Arts. 18 et seq., 119 et seq., Penal Code.

ART. 1565. If the lease has been made for a specified time, it expires on the day fixed, without necessity of notice.

1. Article cited and applied. Gonzales v. Crisanto, 2 Phil. 404; Cruz v. Co Cuaco, 4 Phil. 489.
2. Lease at a monthly rent, with the stipulation that lease is to continue until one of the parties gives notice to the other terminating the lease. Held, that this is lease for an indefinite period to continue until demand by either party terminating it. Ottofy v. Dunn, 38 Phil. 438.

ART. 1566. If, on the expiration of the contract, the lessee, with the acquiescence of the lessor, continues for fifteen

days to enjoy the thing leased, it shall be deemed that there has been an implied renewal for the time mentioned in Articles 1577 and 1581, unless notice to vacate has previously been given.

1. See notes under Art. 1565, Civil Code.
2. A contract for a definite period, rent payable monthly. Implied renewal in this case cannot exceed one month at any time. Gonzales v. Crisanto, 2 Phil. 404.
3. Article cited and applied. Soriano v. Roxas, 4 Phil. 638; Perez v. Garcia, 7 Phil. 162; Ayllon v. Archbishop of Manila, 40 Phil. 23.

ART. 1567. In case of an implied renewal any obligations contracted by a third person for the security of the original contract shall cease with respect to such renewal.

1. See Art. 1257, Civil Code.

ART. 1568. If the thing leased should be lost or either of the contracting parties fails to comply with his undertaking, the provisions of Articles 1182 and 1183 and of Articles 1101 and 1124 respectively shall be observed.[1]

ART. 1569. The lessor may dispossess the lessee by suit for any of the following causes:

1. The expiration of the conventional period or the one fixed for the duration of leases by Articles 1577 and 1581;

2. Default in the payment of the rent agreed upon;

3. Breach of any of the conditions stipulated in the contract;

4. The use of the thing leased for purposes or services not stipulated and which diminish its value, or the failure of the lessee to comply, with respect to its use, with the provisions of paragraph 2 of Article 1555.

[1587]

1. See Sec. 80, Code of Civil Procedure.
2. Article applied. De la Rama v. Benedicto, 1 Phil. 495; Hernaez v. Montelibano, 34 Phil. 954; Cruz v. Co Cuaco, 4 Phil. 489; Zarraga v. Sleeper, 25 Phil. 650.

[1] "In the original editions the last two articles were not cited, but they appear both in the *Coleccion Legislativa* and in the official edition." (Medina y Marañon, Leyes Civiles de España, p. 261.)

3. If the term of the lease is left to the will of the lessee it must be fixed by the courts. The reservation of a monthly rental does not make such a contract a lease from month to month. Eleizegui v. Manila Lawn Tennis Club, 2 Phil. 309.
4. The three days' notice required in Sec. 80 of Act 190 applies only to proceedings in Justice of the Peace Courts. Co-Tiongco v. Co-Quing-Co., 6 Phil. 46.
5. A lessee is not justified in refusing to pay rent simply because he has the right to repurchase the property under a *pacto de retro*. Beech v. Jimenez, 12 Phil. 212.
6. Option to extend term. Legarda Koh v. Angsiaca, 36 Phil. 185.
7. The lessor has the right not only to terminate the lease at the expiration of the term, but also to demand a new rate of rent, which may be enforced, if reasonable. Cortes v. Ramos, 46 Phil. 184.

ART. 1570. With the exception of the cases mentioned in the next preceding article, the lessee shall be entitled to avail himself of the terms fixed by Articles 1577 and 1581.

1. See notes under Art. 1569, Civil Code.

ART. 1571. The purchaser of leased realty shall be entitled to terminate any lease in force at the time of making the sale, unless the contrary is stipulated, and subject to the provisions of the Mortgage Law.

If the purchaser should make use of this right, the lessee may demand that he be permitted to gather the fruits of the crop corresponding to the current agricultural year and may recover of the vendor any damages he may have suffered.

1. See Arts. 1106 et seq., 1511, 1520, Civil Code; Arts. 2, 23, 24, Mortgage Law.
2. Lease being registered, vendee was bound to respect it. Co-Tiongco v. Co-Guia, 1 Phil. 210.
3. Lease not being registered, vendee was not bound to respect it. Saul v. Hawkins, 1 Phil. 275; Ventura v. Miller, 2 Phil. 22.
4. But see Pang Lim et al. v. Lo Seng, 42 Phil. 282.
5. The leases to which this article relates are leases for a fixed term, not leases from month to month. Rivera v. Trinidad, 48 Phil. 396.

6. The purchaser of a leased estate who is informed of the lease is bound to respect it. Gustilo v. Maravilla, 48 Phil. 442.
7. Second paragraph of article construed. Lim v. Granados, XXIII Off. Gaz. 2657.
8. See Winkleman v. Veluz, 43 Phil. 604.

ART. 1572. When the sale is made subject to the right of the vendor to re-purchase, the vendee may not make use of the right to oust the lessee until after the expiration of the term within which the vendor might have re-purchased the property.

1. See Art. 1520, Civil Code.
2. Article cited and explained. Dorado v. Viriña, 34 Phil. 264.

ART. 1573. A lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to usufructuaries.

1. See Arts. 487, 488, Civil Code.
2. A lessee, in the absence of a stipulation to the contrary, may make improvements upon the leased property, not affecting its form or substance, and may remove such improvements if this can be done without injury to the property. Alburo v. Villanueva, 7 Phil. 277; Enriquez v. Watson & Co., 22 Phil. 623.
3. The improvements may not be registered independently of the thing leased. Manila Bldg. & Loan Assn. v. Peffalosa, 13 Phil. 575.
4. Article cited and applied. Cortes v. Ramos, 46 Phil. 184.
5. The tenant, upon the expiration of a tenancy from month to month, may remove improvements made by him, provided he leaves the land substantially as he found it. Rivera v. Trinidad, 48 Phil. 396.
6. See Lichauco v. Tan Pho, 51 Phil. 862, cited under Article 1548.

ART. 1574. In default of an agreement with respect to the place and time of the payment of rent, the provisions of Article 1171 shall govern as to place, and the customs of the country as to time.

1. See Arts. 1551, 1555, Civil Code.

SECTION III. *Special Provisions for Rural Leases.*

ART. 1575. A lessee shall not be entitled to a reduction of the rent on account of the sterility of the land leased or on account of the loss of the fruits through ordinary fortuitous events; but shall be entitled to such reduction in case of the loss of more than half of the fruits through extraordinary and unforeseen fortuitous events, unless there is a special agreement to the contrary.

By extraordinary fortuitous events shall be understood fire, war, pestilence, extraordinary inundations, locusts, earthquakes, or any other equally unusual events which the contracting parties could not have reasonably foreseen.

1. Lease of an hacienda with a warehouse, which was burnt in a fire. *Quære,* whether lessee was entitled to a reduction of the rent. Lizares v. Hernaez, 40 Phil. 995.
2. See also De la Rama v. Benedicto, 1 Phil. 495.

ART. 1576. Neither shall a lessee be entitled to a reduction of the rent when the fruits have been lost after having been separated from the root, tree or plant.

ART. 1577. The lease of a rural estate, when its duration is not fixed, shall be understood as made for the full time required for the gathering of the fruits which the whole estate leased might produce in one year, or all it could produce in one period, even though two or more years may be necessary to obtain them.

Leases of arable lands divided into two or more tracts cultivated in rotation shall be considered as made for as many years as there are such tracts.

1. See Art. 480, and notes, under Art. 1566, Civil Code.
2. See Iturralde v. Garduño, 9 Phil. 607; Antipolo v. Cainta, 2 Phil. 206.

ART. 1578. The outgoing lessee must permit the incoming lessee to make use of such space and other facilities as may be necessary for the preparatory labor for the following year; the incoming lessee, in turn, must permit the out-

going lessee to do anything which may be necessary for the gathering and enjoyment of the fruits, all in accordance with the customs of the place.

1. See notes under Art. 1575, Civil Code.

ART. 1579. Leases on shares of arable land, breeding cattle, and of industrial or manufacturing establishments shall be governed by the provisions relating to the contract of partnership and by the agreements of the contracting parties, or, in default thereof, by the customs of the country.

1. A cropper cultivating land on shares who appropriates more than his share of the crop is not guilty of theft. U. S. v. Reyes, 6 Phil. 441.

SECTION IV. *Special Provisions for Urban Leases.*

ART. 1580. In the absence of a special agreement as to the repairs of urban property which are to be borne by the owner, the customs of the town shall be observed. In case of doubt, such repairs shall be understood to be for the account of the owner.

1. See Art. 396, Civil Code.
2. There is no custom requiring the lessee to make sanitary improvements on the thing leased. Icaza v. Ortega, 5 Phil. 166.

ART. 1581. In default of an agreement as to the duration of the lease, it is understood as being from year to year, when an annual rent has been fixed; from month to month, when the rent is monthly; and from day to day when it is daily.

In either case the lease shall terminate without necessity of a special notice, upon the expiration of the term.

1. See notes under Arts. 1565 and 1566, Civil Code.
2. Article cited and applied. Sitia Teco v. Ventura Hocorma, 1 Phil. 497; Gonzales v. Crisanto, 2 Phil. 404; Cruz v. Co-Cuaco, 4 Phil. 489; Soriano v. Roxas, 4 Phil. 638.
3. If term of lease is left to the will of lessee, it must be fixed by the courts, although rent is payable monthly. Eleizegui v. Manila Lawn etc., Club, 2 Phil. 309.

4. Rule applied by analogy to hiring of personal property. Cerrano v. Tan Chuco, 38 Phil. 392.
5. See also, as to personal service contracts. Barretto v. Santa Marina, 26 Phil. 450.
6. An agreement by which the owner of land authorizes another to occupy it for an indefinite period, in consideration of a monthly rental, creates a lease from month to month, terminable without special notice, upon the expiration of any month. Rivera v. Trinidad, 48 Phil. 396.

ART. 1582. If the lessor of a house, or of a part thereof, used as a dwelling for a family, or of a store or warehouse or industrial establishment, leases the furniture also, the latter shall be understood as leased for a term equal to that of the lease of the house.

CHAPTER III.

WORK AND LABOR.

SECTION I. *Labor of Servants and Wage-earners.*

ART. 1583. This class of service may be contracted for a definite or indefinite period, or for any specific work. A hiring for life is void.

1. See Arts. 1544 and 1709, Civil Code.
2. A stipulation not to engage, within a certain period of time after expiration of contract, in the same business as that in which the defendant was employed, is valid. Gsell v. Koch, 16 Phil. 1.
3. See De los Reyes v. Alojado, 16 Phil. 499.
4. The duration of contracts of employment, in default of express stipulation, is implicitly fixed by the periods at which the remuneration of the employee is payable. Barretto v. Santa Marina, 26 Phil. 450.
5. Contracts by virtue of which one promises not to engage in a particular business for a definite time and within a limited area are generally held to be valid. Del Castillo v. Richmond, 45 Phil. 679.

ART. 1584. A domestic servant hired for a definite peri-

od and to be employed in the personal service of his master, or of the family of the latter, may leave the service or be discharged before the expiration of the term; but if the master dismisses the servant without sufficient cause, he shall indemnify him by paying him fifteen days' wages in addition to the wages due.

The amount of the wages of the domestic servant and the payment of the wages earned by him shall be established by the means of evidence recognized by law. (As amended by Act 3600 of the Philippine Legislature, approved November 29, 1929.)

1. See Arts. 1554, 1924, and notes under Art. 1583, Civil Code; Sec. 273, Code of Civil Procedure.
2. See Ray v. Carpender, 43 Phil. 320; Berbari v. General Oil Co., 43 Phil. 414.

ART. 1585. In addition to the provisions contained in the preceding articles with respect to masters and servants those of the special laws and ordinances shall be observed.

1. See notes under Art. 1583, Civil Code.
2. See Acts 1874, 2071, 2098, 2300, 2399, 3071 and 3385.

ART. 1586. Field hands, mechanics, artisans, and other laborers hired for a certain time or for certain work cannot leave or be dismissed without just cause, before the fulfillment of the contract.

1. Action by employee against employer for damages by reason of his discharge before the expiration of contract. Employer offered to take him back. Held, this is not a complete defense, but may be shown in diminution of damages. The burden to show that no damages were suffered is on the employer. Lemoine v. Alkan, 33 Phil. 162; Knust v. Morse, 41 Phil. 184.
2. See also Pomar v. Hotel de France, 42 Phil. 670.

ART. 1587. The dismissal of the servants, mechanics, artisans, and other hired laborers to whom the preceding articles refer gives the right to dispossess them of any im-

plements or buildings of which they may have possession by reason of their duties.

1. See Pomar v. Hotel de France, 42 Phil. 670.

SECTION II. *Construction Work for a Fixed Price.*

ART. 1588. The execution of construction work may be contracted for upon the agreement that the person who is to execute the same shall contribute his labor or industry only, or that he shall provide the materials also.

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ART. 1589. If the person who contracted to do the work bound himself to furnish the materials, he shall bear the loss in case of the destruction of the work before it is delivered, unless its acceptance has been delayed by the default of the other party.

1. Article cited and applied. Tuason v. Zamora, 2 Phil. 305; Atlantic Gulf v. Insular Gov't, 10 Phil. 166.

ART. 1590. One who has undertaken to contribute his labor or industry only cannot demand any payment if the work is destroyed before it is delivered, unless its acceptance has been delayed by the default of the other party, or the destruction shall have been due to the bad quality of the materials, provided that he shall have given due notice of this fact to the owner.

ART. 1591. The contractor of a building which becomes ruinous by reason of defects in the construction shall be liable in damages if such ruin occurs within ten years, to be counted from the completion of the construction. The architect who directed the work shall be subject to the same liability and for the same length of time if the ruin should be due to defects in the ground or to improper direction.

If the cause should be noncompliance on the part of the contractor with the conditions of the contract, the action for damages may be brought within fifteen years.

1. See Art. 1909, Civil Code; Chapter III, Code of Civil Procedure.
2. Acceptance of a building amounts, as a rule, to an acknowledgment that it was according to contract, except as to hidden defects. Defects under this article must refer to the construction, and minor defects are not included. Choy v. Heredia, 12 Phil. 259; Bosque v. Yu Chipco, 14 Phil. 95; Limjap v. Machuca & Co., 38 Phil. 451.

ART. 1592. Any person who undertakes to do any work by the piece or by measure may require the owner to receive it in installments, and to pay therefor in proportion. The part paid for shall be presumed to have been received as satisfactory.

1. In the absence of express stipulation to such effect, the owner of the building constructed by a building contractor is not estopped from claiming damages for inefficient construction by the circumstance that the cost of construction has been paid to the contractor, before discovery of the defects, upon certificates as to progress of the work issued by the architect representing the owner. Hospicio de San José v. Findlay Millar Timber Co., 50 Phil. 227.

ART. 1593. No architect or contractor who, for a lump sum, undertakes the construction of a building, or any other work to be done in accordance with a plan agreed upon with the owner of the ground, may demand an increase of the price, even if the cost of the materials or labor has increased; but he may do so when any change increasing the work is made in the plans, provided the owner has given his consent thereto.

1. Effect on original contract of changes and alterations made in a building. Tiu Suco v. Habana, 45 Phil. 707.

ART. 1594. The owner may desist at will from the construction of the work, even after it has been commenced, by indemnifying the contractor for all his expenses and labor and for any profits which he might have obtained from the same.

1. See Art. 1588, Civil Code.

2. Unlike an ordinary mutual contract, the owner in a building contract has the absolute right to withdraw, provided damages are paid. Adams & Smith v. Naton, 39 Phil. 838.

ART. 1595. When a certain work has been entrusted to a person by reason of his personal qualifications, the contract is rescinded by the death of such person.

In such case, the owner shall pay to the heirs of the constructor, in proportion to the price agreed upon, the value of the work done and that of the materials prepared, should he derive any benefit from such materials.

The same rule shall be applied if the person who contracted to do the work cannot finish it by reason of any cause independent of his will.

ART. 1596. The contractor is responsible for the work done by the persons employed by him.

1. A steamship company is liable for damages suffered by a shipper due to the negligence of persons in charge of loading and unloading cargo. Being a contractual obligation, it is no defense to prove that the carrier exercised due diligence in the selection of its employees. Manila Railroad v. Compania Transatlantica, 38 Phil. 875.

ART. 1597. Those who furnish their labor and materials for work undertaken by a contractor for a lump sum have no action against the owner, except for the amount the latter may owe the former when the action is brought.

1. Article cited and applied. Uy Tam v. Leonard, 30 Phil. 471.

ART. 1598. When it is agreed that the work is to be done to the satisfaction of the owner, it shall be understood, in case of a disagreement, that the approval of the work is to be submitted to the decision of experts. If the person who is to approve the work is an outsider, his decision shall be final.

1. See Art. 27, Mortgage Law.

2. A contract specified the repairs to be made to a boiler. There was no agreement that it was subject to the approval of a third person. Held, that the refusal of the city engineer to grant a permit for the use of the boiler does not constitute a defense to a suit to recover the money due under the contract. Taylor v. Pierce, 20 Phil. 103.
3. When it is provided in a building contract that payment shall be made by the owner upon the certificate of the architect that the building has been completed in accordance with the specifications, the owner is bound by the architect's certificate. Takao v. Iturralde, 49 Phil. 957.

ART. 1599. Should there be no agreement or custom to the contrary, the price of the work must be paid upon delivery.

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ART. 1600. Any person who has done work on personal property is entitled to retain the same as a pledge until he is paid.

1. The mortgagee of an automobile delivered it to a mechanic for repairs. Held, mechanic's rights not limited to lien, but mortgagee personally liable for the work. Bachrach v. Mantel, 25 Phil. 410.
2. See Bachrach Motor Co. v. Mendoza, 43 Phil. 410.

SECTION III. *Transportation by Water and Land of Persons and Property.*

ART. 1601. Carriers of goods by land or by water shall be subject, with respect to the care and preservation of the things entrusted to them, to the same obligations as those imposed on innkeepers by Articles 1783 and 1784.

The provisions of this article shall be understood to be without prejudice to those of the Code of Commerce with respect to transportation by sea and land.

1. See Arts. 55, 98, 603, 275.
2. A towage contract is not a contract of carriage, and therefore the loss of the tow does not *ipso facto* create a presumption of negligence on the part of the master of the tug. Baer Senior & Co. v. Compañia Maritima, 6 Phil. 215; Guzman v. Behn, Meyer & Co., 9 Phil. 112.

3. In the event of loss of goods in transit the burden rests upon the carrier to show that such loss was due to a fortuitous event or *force majeure*. Tan Chiong Sian v. Inchausti & Co., 22 Phil. 152.
4. See also Freixas & Co. v. Pacific Mail S. S. Co., 42 Phil. 201.
5. Neither under American nor Spanish law is a carrier of passengers an absolute insurer against the risks of travel. Lasam v. Smith, 45 Phil. 657.
6. Clause in bill of lading limiting carrier's liability; see Mirasol v. Robert Dollar Co., XXVII Off. Gaz. 3067.

ART. 1602. Carriers are also liable for the loss of and damage to the things which they receive, unless they prove that the loss or damage arose from a fortuitous event or *force majeure*.

1. See Art. 1105 and notes under Art. 1601, Civil Code; Arts. 361 et seq., 660, 806, 846 et seq., Code of Commerce.
2. Carriers by sea being required to furnish a seaworthy vessel and a capable crew, the mere fact that a strong wind was blowing when the vessel sunk will not warrant the conclusion that the loss of her cargo is attributable to fortuitous cause or *force majeure*. Chan Keep v. Chan Gioco, 14 Phil. 5.
3. Burden of proof of cause of damage to goods in the course of transportation; see Mirasol v. Robert Dollar Co., XXVII Off. Gaz. 3067.

ART. 1603. The provisions of these articles are understood to be without prejudice to the provisions of special laws and regulations.

TITLE VII.

CENSOS.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1604. A *censo* is constituted when real property is subjected to the payment of an annual income in consideration of a cash payment, or of the transfer of the full or partial ownership of the property subjected to the charge.

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ART. 1605. A *censo* is emphyteutic when one person transfers to another the beneficial ownership of a landed estate reserving to himself the bare legal title and the right to receive from the emphyteuticary an annual income in recognition of such ownership.

ART. 1606. The *censo* is consignative when the owner of land imposes upon it the charge of a periodical payment which he binds himself to make to another in consideration of a sum in cash which he has received from the latter.

ART. 1607. The *censo* is reservative when one person transfers to another the full ownership of real estate, reserving to himself the right to receive from the owner thereof a certain annual payment which constitutes a charge upon the land so conveyed.

ART. 1608. It is of the nature of the *censo* that the transfer of the capital or of the land should be perpetual or for an unlimited time; however, the person paying the charge may redeem it at will, even though the contrary should be

stipulated. This provision shall be applicable to *censos* now existing.

It may, however, be stipulated that the redemption of the *censo* shall not be made during the lifetime of the annuitant or of some other specified person, or that it may not be redeemed within a certain number of years, which cannot exceed twenty as to consignative *censos,* or sixty years as to reservative and emphyteutic *censos.*

1. See Arts. 334, 1606, 1651, 1658, 1662, Civil Code.
2. See also Eleizegui v. Manila Lawn, 2 Phil. 325.

ART. 1609. In order to effect the redemption, the person paying the annuity must give notice thereof one year in advance to the annuitant or must pay to him, in advance, the amount of one year's income.

ART. 1610. *Censos* cannot be partially redeemed except by virtue of an express agreement.

Neither can they be redeemed against the will of the annuitant unless all the income due has been paid.

1. See Art. 1086, Civil Code.

ART. 1611. The redemption of *censos* constituted before the promulgation of this code, should the principal be unknown, shall be regulated by the principal found by capitalizing the income at three per cent.

If the income is paid in fruits, they shall be appraised, for the purpose of determining the capital, at the average price they may have sold for during the last five years.

The provisions of this title shall not apply to *foros, subforos,* surface rights, or any other similar encumbrances, as to which the principle of redemption of ownership shall be determined by a special law.

ART. 1612. The expenses arising from the redemption and liberation of *censos* shall be borne by the person paying

the annuity, except such as may arise from opposition which, in the judgment of the courts, is unjustifiable.

1. See Art. 1608, Civil Code; Art. 140, Mortgage Law.

ART. 1613. The income secured by the *censos* shall be determined by the parties at the time of making the contract.

It may consist of money or fruits.

ART. 1614. The income shall be paid at the periods agreed upon, or, in default of an agreement, should it consist of money, at the end of each year, counted from the date of the contract; and if of fruits, at the end of the harvest of the respective crops.

ART. 1615. If the place at which the income is to be paid should not have been designated in the contract, this obligation shall be performed at the place in which the property which is charged with the *censo* is located, provided the annuitant or his agent are domiciled in the municipal district of the same town. Should this not be the case, but should the person paying the annuity reside there, the payment shall be made at the domicile of the latter.

ART. 1616. The annuitant, at the time of the delivery of the receipt for any installment of the income, may require the person paying the annuity to give him a memorandum acknowledging that the payment has been made.

ART. 1617. Lands charged with *censos* may be conveyed gratuitously or for a valuable consideration, as may also be the right to receive the income.

ART. 1618. Lands charged with *censos* cannot be divided among two or more persons without the express consent of the annuitant, even when acquired by inheritance.

If the annuitant should permit the division, the part of

the *censo* with which each portion remains charged shall be designated, with his consent, as many different *censos* being constituted as there are portions into which the estate is divided.

ART. 1619. If the estate charged with a *censo* is to be allotted to several heirs, and the annuitant does not give his consent to its partition, it shall be put up at auction among such heirs.

In the absence of an agreement or if none of the parties in interest should offer the appraised valuation, the estate shall be sold subject to the charge, the proceeds being distributed among the heirs.

1. See Secs. 181, 196, 762, Code of Civil Procedure.

ART. 1620. The principal as well as the income of *censos* prescribes in accordance with the provisions of Title 18 of this book.

1. See Arts. 1214, 1930 et seq., 1973, Civil Code; Chapter III, Code of Civil Procedure.

ART. 1621. Notwithstanding the provisions of Article 1110, the payment of two consecutive installments shall be necessary to create the presumption that all the preceding ones have been paid.

1. See Sec. 334, No. 9, Code of Civil Procedure.

ART. 1622. It shall be incumbent upon the person paying the annuity to pay the taxes and any other imposts affecting the estate charged with the *censo*.

At the time of paying the annuity the person paying the same may deduct therefrom such part of the tax as is to be borne by the annuitant.

ART. 1623. *Censos* give rise to a real action against the land charged. Besides the real action, the annuitant may

bring a personal action for the payment of the income in arrears, and for damages and interest, when proper.

1. See Arts. 1106 et seq., Civil Code.

ART. 1624. The person paying the annuity is not entitled to a remission or reduction of the income on account of accidental sterility of the land or on account of the loss of its fruits.

1. See Velasco v. Lao Tam, 23 Phil. 506.

ART. 1625. When property charged with a *censo* is totally destroyed or rendered useless by *force majeure* or by a fortuitous event, the *censo* shall be extinguished and the payment of the income discontinued.

If it is destroyed in part only, the person paying the annuity shall not be exempt from the payment of the income, unless he prefers to abandon the property to the annuitant.

When there is fault on the part of the person paying the annuity, he shall, in both cases, be liable in damages.

1. See Art. 1575, Civil Code.
2. See University of Sto. Thomas v. Descals, 38 Phil. 267.

ART. 1626. In cases falling under the first paragraph of the article next preceding, if the property should be insured, the insurance money shall be liable for the payment of the principal of the *censo* and of matured installments of the income, unless the person paying the annuity should prefer to invest it in reconstructing the property, in which case the *censo* shall revive with all its effects, including the payment of the matured installments of income. The annuitant may demand of the person paying the annuity that he give security for the investment of the insurance money in the reconstruction of the property.

ART. 1627. If real property charged with a *censo* is taken in the exercise of the right of eminent domain, the money paid for it shall be subject to the payment of the principal

of the *censo* and of the matured installments of the income, the *censo* being extinguished.

The foregoing provision is also applicable in case a part only of the property is so taken, should the price be sufficient to cover the principal of the *censo*.

Should it not be sufficient, the *censo* shall continue to be a charge on the remainder of the property, provided its value be sufficient to cover the principal of the *censo* and twenty-five per cent in addition. Otherwise the person paying the income shall be bound either to substitute the part taken with other security or to redeem the *censo*, at his option, without prejudice to the provisions of Article 1631, with regard to emphyteutic *censos*.

1. See notes under Art. 1625, Civil Code; Secs. 241 et seq., Code of Civil Procedure; Acts Nos. 294, 665.

CHAPTER II.

EMPHYTEUTIC CENSOS.

SECTION I. *Provisions Relative to Emphyteusis.*

ART. 1628. An emphyteutic *censo* can only be created upon real property and by public instrument.

1. See Art. 1279, Civil Code.
2. The mere use of the word "canon" does not mean that a *censo* was created. *Quære*, whether public document is necessary. Legarda v. Rocha, 10 Phil. 474.

ART. 1629. At the time of the constitution of the emphyteutic *censo* the value of the realty and the annual income to be paid shall be determined in the contract, under penalty of nullity.

ART. 1630. If the income reserved should consist of a fixed amount of fruits, the kind and quality thereof shall be determined in the contract.

Should it consist of an aliquot part of such crops as the

land may produce, in the absence of an express stipulation as to the intervention which the owner of the *dominium directum* may exercise, the emphyteuticary shall give such owner or his representative previous notice of the day on which he intends to commence the harvesting of each crop, in order that he may, either personally or through his representative, inspect all the operations until he receives the share belonging to him.

After the notice has been given, the emphyteuticary may harvest the crops, even though neither the owner nor his representative or agent is present.

ART. 1631. In case of the exercise of the power of eminent domain, the provisions of the first paragraph of Article 1627 shall be observed, if the entire property should be thus taken.

Should it be thus taken only in part, the price of that which has been taken shall be divided between the respective owners of the *dominium directum* and the *dominium utile,* the former receiving such part of the principal of the *censo* as proportionally corresponds to the part taken, according to the valuation of the entire estate when the *censo* was constituted, or which was to serve as a basis for its redemption, and the remainder shall belong to the emphyteuticary.

In this case the *censo* shall continue with respect to the remainder of the estate, with the proper reduction of the principal and income, unless the emphyteuticary should elect to make a complete redemption or to abandon the estate in favor of the owner of the *dominium directum.*

If it has been agreed that a fine is to be paid for alienation (*laudemio*) the owner of the *dominium directum* shall receive what is due him on this account only upon the part of the price which corresponds to the emphyteuticary.

Laudemium.—Acknowledgment money paid at the time of the transfer as an indication of the recognition of the right of the owner of the superior title.

1. See Arts. 1605, 1610, 1627, 1629, Civil Code; Art. 386, Mortgage Law.

ART. 1632. The products of the estate and of its accessions belong to the emphyteuticary.

He has the same rights which the owner would have in any treasure or mines which may be discovered on the estate charged with the emphyteusis.

ART. 1633. The emphyteuticary may dispose of the emphyteutic estate and of its accessions by acts *inter vivos* as well as by will, subject to the rights of the owner of the *dominium directum* and to the provisions of the following articles.

ART. 1634. If the pension should consist of an aliquot part of the fruits of the emphyteutic estate, no easement or any other charge which may diminish the proceeds of the same shall be imposed upon it without the express consent of the owner of the *dominium directum*.

ART. 1635. The emphyteuticary may freely bestow the estate as a gift or exchange it for other property, giving notice thereof to the owner of the *dominium directum*.

ART. 1636. The respective owners of the *dominium directum* and of the *dominium utile* shall enjoy reciprocally the rights of pre-emption and of redemption, should they sell or assign their respective interests in the emphyteutic estate.

This provision is not applicable to compulsory alienations under the power of eminent domain.

1. See Arts. 1521 et seq., Civil Code.

ART. 1637. For the purposes of the article next preceding, a person desiring to alienate the ownership of land held in emphyteusis must give notice thereof to the other co-owner, stating the exact price which has been offered him, or the one for which he desires to alienate his ownership.

Within the twenty days following the day of notice, the

co-owner may make use of the right of pre-emption by paying the price indicated. Should he not do so, he shall lose such right and the alienation may take place.

1. See Chapter III, and Secs. 257, 463, 464, Code of Civil Procedure.

ART. 1638. If the owner of the *dominium directum* or the emphyteuticary, as the case may be, should not have made use of the right of pre-emption to which the next preceding article relates, he may make use of that of redemption, to acquire the estate for the price at which it has been sold.

In such case the right of redemption must be exercised within the nine working days following that of the execution of the deed of sale. If the sale should be concealed, this period shall be computed from the date of its registration in the Registry of Deeds.

Concealment is presumed when the instrument is not filed in the Registry within the nine days following that of its execution.

Independently of this presumption, the concealment may be proven by any other legal evidence.

1. See Arts. 606, 1249 et seq., Civil Code; Art. 28 Mortgage Law.
2. See notes under Art. 1637, Civil Code.

ART. 1639. If the alienation has taken place without the previous notice prescribed by Article 1637, the owner of the *dominium directum* or of the *dominium utile* as the case may be, may exercise his right of redemption at any time within one year, to be computed from the day the alienation is entered in the Registry of Deeds.

1. See Art. 28, Mortgage Law.
2. See notes under Art. 1637, Civil Code.

ART. 1640. In judicial sales of emphyteutic estates, the owners of the *dominium directum* and the *dominium utile* respectively may exercise the right of redemption within

the period fixed in the notice of the execution sale, by paying the price which is to serve as a basis for the auction, or may exercise the right of redemption within the nine working days following that of the execution of the deed.

In such case, the previous notice required by Article 1637 shall not be necessary.

1. See notes under Art. 1637, Civil Code.

ART. 1641. In case of the alienation of several estates charged with the same emphyteusis, the right of pre-emption or redemption cannot be exercised with respect to some of them and to the exclusion of others.

ART. 1642. When the *dominium directum* or *utile* is vested in several persons *pro indiviso*, each one of them may make use of the right of redemption subject to the rules established for redemption between co-owners, preference being given to the owner of the *dominium directum* if a part of the *dominium utile* should have been alienated, or to the emphyteuticary if the *dominium directum* should have been alienated.

ART. 1643. If the emphyteuticary should be disturbed in his right by a third party who disputes the *dominium directum* or the validity of the emphyteusis, he cannot recover damages from the owner of the *dominium directum* if he fails to notify him to appear and defend against the eviction, in accordance with the provisions of Article 1481.

1. See Arts. 1475, 1478, 1480 et seq., Civil Code.

ART. 1644. In onerous alienations of emphyteutic estates, *laudemio* shall be paid to the owner of the *dominium directum* only when it has been expressly stipulated in the contract of emphyteusis.

If, when it has been stipulated, a fixed sum has not been specified, it shall consist of two per cent of the price of the alienation.

Where the right to *laudemio* exists with respect to emphyteutic *censos* created prior to the promulgation of this code, even though not expressly stipulated, the obligation shall be performed as heretofore; *provided,* that the *laudemio* shall not exceed two per cent of the selling price, unless a larger amount has been agreed upon.

ART. 1645. The obligation to pay the *laudemio* is incumbent upon the person who acquires the estate, unless there is a stipulation to the contrary.

ART. 1646. If the emphyteuticary should have obtained permission from the owner of the *dominium directum* to make the alienation, or should have given him the previous notice prescribed in Article 1637, such owner cannot demand the payment of *laudemio* except within a year following the day on which the public instrument is recorded in the Registry of Deeds. With the exception of these cases this action shall be subject to ordinary prescription.

1. See Arts. 1637, 1963, 1966, Civil Code; Art. 28, Mortgage Law; Chapter III, Code of Civil Procedure.

ART. 1647. Every twenty-nine years the owner of the *dominium directum* may demand an acknowledgment of his right by the person who is in possession of the emphyteutic estate.

The expenses of the acknowledgment shall be borne by the emphyteuticary, but no other undertaking whatever shall be required of him in this regard.

ART. 1648. The estate shall be forfeited and the owner of the *dominium directum* may demand its restitution:

1. For nonpayment of the income for three consecutive years;

2. If the emphyteuticary does not comply with the conditions stipulated in the contract or seriously impairs the estate.

1. See Art. 118, Mortgage Law.

Art. 1649. In order that the owner of the *dominium directum* may demand the forfeiture in the first case mentioned in the next preceding article, he must demand payment of the emphyteuticary, either judicially or through a notary, and should the latter not pay within the thirty days following the demand the owner may enforce his rights.

Art. 1650. The emphyteuticary may relieve himself from the forfeiture, in every case, by redeeming the *censo* and paying the income due within the thirty days following the formal demand for payment or service of the complaint.

The creditors of the emphyteuticary may exercise the same right within thirty days following that on which the owner of the *dominium directum* may have recovered the full ownership.

1. See Arts. 1610, 1611, Civil Code.

Art. 1651. The redemption of the emphyteusis shall be effected by the delivery in cash, in a single payment, to the owner of the *dominium directum* of the capital which may have been fixed as the value of the estate at the time of the constitution of the *censo,* and no other prestation may be exacted, unless it should have been stipulated.

1. See Arts. 1608 et seq., 1629, Civil Code; Art. 150, Mortgage Law.

Art. 1652. In case of forfeiture, or of the rescission of the contract of emphyteusis for any reason whatsoever, the owner of the *dominium directum* must pay for any improvements which may have increased the value of the estate, provided such increase exists at the time of the restitution.

If the estate has deteriorated through fault or negligence on the part of the emphyteuticary, the deterioration shall be set off against the improvements, and should these not suffice, the emphyteuticary shall be personally liable to pay the deficit. He shall, in like manner, be liable for the pay-

ment of the installments of the income, until the action for their recovery is barred by prescription.

ART. 1653. In default of testamentary heirs, descendants, ascendants, surviving spouse, or relatives within the sixth degree of the last emphyteuticary, the estate shall revert to the owner of the *dominium directum* in its existing condition, if the emphyteuticary has not otherwise disposed of it.

1. See Sec. 751, Code of Civil Procedure.

ART. 1654. The contract of sub-emphyteusis shall not be valid hereafter.

SECTION II. *Foros and Other Contracts Analogous to that of Emphyteusis.*

ART. 1655. Foros and other incumbrances of a similar character which may be established after the promulgation of this code, should they be unlimited as to time, shall be governed by the provisions established with respect to emphyteusis in the next preceding section.

Should they be temporary or for a limited period, they shall be considered as leases and shall be governed by the provisions relating to such contracts.

ART. 1656. The contract by virtue of which the owner of land grants its use for the planting of grapevines during the time that the first rootstocks may live, the tenant paying him an annual income or rent in fruits or in money, shall be governed by the following rules:

1. It shall be considered extinguished fifty years after the concession, when no other time has been expressly fixed therein;

2. It shall also be extinguished by the death of the first rootstocks, or when two-thirds of those planted have become barren;

3. The tenant may plant sprigs or shoots from new vines during the time of the contract;

4. This contract does not lose its character by the power of growing other things on the land granted, provided the main object should be the plantation of grapevines;

5. The tenant may freely transmit his right, gratuitously or for a valuable consideration, but the use of the estate cannot be divided unless the landlord expressly consents thereto;

6. In alienations for a valuable consideration the landlord and tenant shall reciprocally enjoy the rights of preemption and redemption, in accordance with the provisions concerning emphyteusis, subject to the obligation of giving the previous notice prescribed in Article 1637;

7. The tenant may relinquish or return the estate to the landlord when convenient, upon paying for any impairments caused by his fault;

8. The tenant shall have no right to the improvements existing on the estate at the time of the expiration of the contract, provided they were necessary or have been made in fulfillment of the agreement;

With respect to useful and voluntary improvements, he shall not be entitled to be paid for the same, unless he made them with the written consent of the owner of the land and the latter undertook to pay for them. In such case said improvements shall be paid for according to the value they may have when the estate is returned;

9. The landlord may evict the tenant upon the expiration of the term of the contract;

10. If, after the expiration of the term of fifty years or the one expressly fixed by the persons interested, the tenant should continue in the use and enjoyment of the estate with the implied consent of the grantor, the former cannot be dispossessed without previous notice, which the owner must give him a year in advance in order to terminate the contract.

1. See Arts. 1569, 1656, Civil Code.

CHAPTER III.

CONSIGNATIVE CENSOS.

ART. 1657. When the payment of the income of a consignative *censo* is stipulated in fruits, the species, quantity, and quality of the same must be fixed. Such payment cannot consist of an aliquot part of the fruits which the estate charged with the *censo* may produce.

1. See Art. 1663, Civil Code.

ART. 1658. The redemption of a consignative *censo* shall consist in the return to the annuitant, in cash and in one payment, of the principal paid for the establishment of the *censo*.

1. See Arts. 1606 et seq., Civil Code; Art. 150, Mortgage Law.

ART. 1659. When a real action is brought against an estate charged with the *censo*, to enforce the payment of the income, if the remainder of the value of the same is not sufficient to cover the principal of the annuity and twenty-five per centum in addition, the annuitant may at his option oblige the person paying the annuity to redeem the *censo* or to complete the security or to abandon the remainder of the estate to him.

1. See Arts. 1623, 1664, Civil Code; Arts. 152 et seq., Mortgage Law.

ART. 1660. The annuitant may also make use of the right conferred by the next preceding article in any other cases in which the value of the property should be insufficient to cover the principal of the annuity, and twenty-five per cent in addition, if either of the following circumstances exists:

1. If the value of the property should have decreased by the fault or negligence of the owner of the property subject to the *censo*;

In such case the latter shall also be liable in damages.

2. When the owner of the property subject to the *censo* has failed to pay the income for two consecutive years;

3. When the owner of the property subject to the *censo* has been declared a bankrupt or insolvent.

1. See Arts. 1104, 1106 et seq., 1659, 1664, Civil Code; Arts. 152 et seq., Mortgage Law.
2. See also Arts. 874 et seq., 886, Code of Commerce.

CHAPTER IV.

RESERVATIVE CENSOS.

ART. 1661. Reservative *censos* cannot be validly constituted until the value of the estate has been determined by agreement of the parties or by expert appraisal.

ART. 1662. The redemption of this *censo* shall be effected by delivery to the annuitant in cash and in one payment of the principal which may have been fixed in accordance with the preceding article.

ART. 1663. The provisions of Article 1657 are applicable to reservative *censos*.

ART. 1664. In cases falling under Articles 1659 and 1660 the debtor of the reservative *censo* can only be obliged to redeem the *censo* or to abandon the estate in favor of the annuitant.

TITLE VIII.

PARTNERSHIP.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1665. Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.

1. See Arts. 35 et seq., Civil Code; Art. 116, Code of Commerce.
2. Co-ownership and partnership distinguished. Fernandez v. De la Rosa, 1 Phil. 671; Red Men v. Veteran Army, 7 Phil. 685; Gallemit v. Tabiliran, 20 Phil. 241.
3. Mercantile and civil partnership distinguished. Prautch & Co. v. Hernandez, 1 Phil. 705; Comp. Agricola v. Reyes, 4 Phil. 2.
4. A registered engineering association held to be a civil partnership with the form of a *sociedad anonima.* Mead v. McCullough, 21 Phil. 95.
5. Facts examined and held that there was no partnership but only a loan secured by the vessels. Pastor v. Gaspar, 2 Phil. 592.
6. A civil partnership may be composed exclusively of industrial partners. Compañia Maritima v. Muñoz, 9 Phil. 334.
7. See also U. S. v. Clarin, 17 Phil. 84.
8. The existence of a partnership cannot be established by general reputation, rumor, or hearsay. Kiel v. Estate of Sabert, 46 Phil. 194.
9. See Jo Chung Cang v. Pacific Commercial Co., 45 Phil. 142.

ART. 1666. A partnership must have a lawful object, and must be established for the common benefit of the partners.

When the dissolution of an unlawful partnership is decreed, the profits shall be given to the charitable institutions

of the domicile of the partnership, or, in default of such, to those of the province.

1. See Arts. 188 to 192, Penal Code.
2. See also Compania Agricola de Ultramar v. Reyes, 4 Phil. 2; Mead v. McCullough, 21 Phil. 97.

ART. 1667. Civil partnerships may be established in any form whatever, unless real property or real rights are contributed to the same, in which case a public instrument shall be necessary.

1. See Art. 119, Code of Commerce.
2. See notes under Art. 1665, Civil Code.
3. As to the form of a mercantile partnership, see Thunga Chui v. Que Bentec, 2 Phil. 561.
4. A surviving husband may form a partnership with the heirs of his deceased wife as to the community property. Borja v. Addison, 44 Phil. 895.

ART. 1668. The contract of partnership shall be void, if real property is contributed to the same, unless an inventory of such property is made, signed by the parties, and attached to the articles.

1. See Secs. 664 and 665, Code of Civil Procedure.
2. See notes under Art. 1665, Civil Code.
3. This article does not apply to a mercantile partnership. Guevara v. De Ocampo, 7 Phil. 104.

ART. 1669. Partnerships whose articles are kept secret among the partners, and in which each one of the latter contracts in his own name with third persons, shall have no juridical personality.

Partnerships of this kind shall be governed by the provisions relating to property held in common.

1. See Arts. 35, 37, 392 et seq., and 1666, Civil Code; Arts. 116 and 119, Code of Commerce.
2. See notes under Art. 1665, Civil Code.
3. Co-owners must sue as such in their individual names, and not as an entity. Smith v. Lopez, 5 Phil. 78.

ART. 1670. Partnerships which on account of the purpose to which they are devoted are civil may adopt any of the forms recognized by the Code of Commerce. In such cases its provisions shall be applicable to them in so far as they do not conflict with those of this code.

1. See Arts. 122 et seq., 1700, par. 2, Code of Commerce.
2. See notes under Arts. 1665 and 1669, Civil Code.
3. See also Lichauco v. Lichauco, 33 Phil. 350.

ART. 1671. Partnerships are universal or particular.

1. See Comp. Agricola v. Reyes, 4 Phil. 2.

ART. 1672. Universal partnerships may embrace all the present property or all the profits.

ART. 1673. Partnerships of all present property are those in which the parties contribute to a common fund all the property which belongs to them at the time, with the intention of dividing the same among themselves, as well as all the profits they may acquire therefrom.

ART. 1674. In universal partnerships of all present property, that which belonged to each of the partners becomes the common property of all, as well as any profits which they may acquire therewith.

An agreement for reciprocal participation in any other profits may also be made, but the property which the partners acquire subsequently by inheritance, legacy, or donation shall not be included in the same, but the fruits of such property may be.

ART. 1675. A universal partnership of profits includes all that the partners may acquire by their industry or work during the continuation of the partnership.

Personal or real property which each of the partners may possess at the time of entering into the agreement shall con-

tinue to be their individual property, the usufruct only passing to the partnership.

1. See Arts. 334 et seq., 467, 1655 and 1671, Civil Code.
2. Liability of an industrial partner for the debts of the partnership. Comp. Maritima v. Muñoz, 9 Phil. 326.
3. See Jackson v. Blum, 1 Phil. 4.

ART. 1676. A contract of universal partnership made without specifying its kind shall constitute a universal partnership of profits only.

ART. 1677. Persons who are forbidden to grant each other gifts or benefits cannot contract a universal partnership.

ART. 1678. A particular partnership has for its subject-matter specified things only, their use or profits, or a specified undertaking, or the exercise of a profession or art.

1. See Comp. Maritima v. Muñoz, 9 Phil. 334.

CHAPTER II.

OBLIGATIONS OF PARTNERS.

SECTION I. *Reciprocal Obligations.*

ART. 1679. A partnership begins from the moment of the making of the contract, if not otherwise stipulated.

1. See Comp. Maritima v. Muñoz, 9 Phil. 326.

ART. 1680. A partnership continues during the time agreed upon; in the absence of an agreement, for such time as the business which has been the exclusive object of the partnership may last, if by its nature it has a limited duration; and in any other case during the lives of the partners, without prejudice to the rights reserved to them by Article 1700 and to the provisions of Article 1704.

ART. 1681. Every partner is a debtor of the partnership for whatever he has promised to contribute thereto.

He is also bound to respond as warrantor of the title to any specified and determinate things he may have contributed to the partnership in the same cases and in the same manner as a vendor is bound with respect to the vendee.

ART. 1682. A partner who has undertaken to contribute a sum of money and fails to do so becomes, *ipso jure*, a debtor for the interest thereon from the day on which he should have contributed the same, without prejudice furthermore to his liability for any damages he may have caused thereby.

The same rule shall apply with respect to any money he may have taken from the common fund, and interest shall accrue thereon from the day on which he converted it to his private use.

1. See Arts. 1095, 1100, 1101, 1106 et seq., 1727, Civil Code; Art. 171, Code of Commerce.

ART. 1683. An industrial partner owes to the partnership any profits which, during its existence, he may have earned in the same branch of industry as that in which the partnership is engaged.

1. See Comp. Maritima v. Muñoz, 9 Phil. 329.

ART. 1684. If a managing partner collects a demandable sum which was owed to him individually, from a person who owed the partnership another sum, also demandable, the sum collected shall be applied to the satisfaction of the two credits in proportion to their respective amounts, even though he may have given a receipt for his own account only; but should he have given it on account of the partnership funds, it shall all be applied to the credit of the latter.

The provisions of this article are understood to be without prejudice to the exercise by the debtor of the privilege

granted to him by Article 1172, but only in case his debt to the partner individually is the more burdensome to him.

ART. 1685. Any partner who has received in full his share of a partnership credit, when the other partners have not collected theirs, shall be obliged, if the debtor afterwards becomes insolvent, to bring into the partnership funds that which he received, even though he may have given the receipt for his own share only.

ART. 1686. Every partner shall be liable to the partnership for any damages suffered by it through his fault, and he cannot compensate them with the profits which he may have earned for the partnership by his services.

ART. 1687. Certain, specific, and unconsumable things contributed to the partnership solely for the purpose of making their use and fruits common to all, shall be at the risk of the partner owning them.

If the things contributed are consumable, or if they cannot be kept without deteriorating, or if they were contributed to be sold, the risk shall be borne by the partnership. It shall also be borne by the partnership, in the absence of a special agreement, with respect to the things contributed under appraisal in the inventory, and, in such case, the claim shall be limited to the value at which they were appraised.

1. See Arts. 337, 1673 et seq., Civil Code.

ART. 1688. The partnership is liable to each partner for any money he may have disbursed for its account and for the corresponding interest; it shall also be liable to each partner upon any obligations he may have contracted in good faith for the benefit of the partnership business, and for risks inseparable from its management.

1. See Martinez v. Ong Pong, 14 Phil. 726.

ART. 1689. The profit and loss shall be distributed in accordance with the agreement. If an agreement exists only with respect to the share of each one in the profits, his share in the losses shall be in the same proportion.

In the absence of an agreement, the share of each partner in the profits and losses shall be in proportion to what he may have contributed. A partner who contributes his services only shall receive a share equal to the one who has contributed the least capital. If, besides his services, he should have contributed capital, he shall also receive the proportionate share thereby due him.

1. See Arts. 1691 and 1708, Civil Code.
2. Article cited and applied. Fernandez v. De la Rosa, 1 Phil. 671; Chaves v. Linan, 2 Phil. 12; Duterte v. Rallos, 2 Phil. 509; Cia. Maritima v. Muñoz, 9 Phil. 326; Hibberd v. McElroy, 25 Phil. 164.

ART. 1690. If the partners have agreed to entrust to a third person the designation of the share each is to have in the profits and losses, such designation can be contested only when it is clearly inequitable. In no case shall a partner who has commenced to carry out the decision of the third person or who has not contested the same within a period of three months from the time he had knowledge thereof, be allowed to oppose it.

Such designation of the profits and losses cannot be entrusted to one of the partners.

ART. 1691. Any agreement for the exclusion of one or more of the partners from any share in the profits or losses is void.

Only the industrial partner may be exempted from all liability for losses.

1. See notes under Art. 1689, Civil Code.

ART. 1692. The partner upon whom the management has been conferred by the articles of co-partnership may carry out any administrative acts, notwithstanding the opposi-

tion of his partners, unless he should be acting in bad faith; and his power is irrevocable except for good cause.

A power executed subsequently to the contract of partnership, in the absence of any agreement therein that it should be so conferred, may be revoked at any time.

1. See Art. 1733, Civil Code.

ART. 1693. If two or more partners have been entrusted with the management of the partnership without their duties having been determined or without the condition that one of them shall not act without the consent of the others, each one may severally perform any acts of administration; but either of them may oppose the acts of the others before they have become legally binding.

ART. 1694. In case it should have been agreed that the managing partners are not to act without the consent of all, the consent of all shall be necessary for the validity of their acts; and the absence or incapacity of any one of them shall not excuse a disregard of this limitation except in cases of imminent danger of a serious or irreparable injury to the partnership.

ART. 1695. Should no agreement have been made with respect to the form of management, the following rules shall be observed:

1. All the partners shall be considered agents, and whatever any one of them may do individually shall bind the partnership; but each one may oppose any act of the others before it has become legally binding;

2. Each partner may make use of the things which constitute the partnership capital, according to the customs of the country, provided he does not do so against the interests of the partnership or in such a manner as to prevent the use thereof to which his co-partners are entitled;

3. Each partner may require the others to contribute with him to defray any expenses necessary for the preservation of the things owned in common;

4. None of the partners may, without the consent of the others, make any alteration in the partnership real property, even should he contend that it is useful to the partnership.

1. See Arts. 394 et seq. and notes under Art. 1689, Civil Code.
2. The association was governed according to its by-laws. Held, that this article does not apply. Red Men v. Veteran Army, 7 Phil. 685.
3. Article cited and applied. Martinez v. Ong Pong Co., 14 Phil. 728; Bachrach v. La Protectora, 37 Phil. 441.

ART. 1696. Any partner may form a partnership with another person with respect to his share, but such person shall not become a member of the partnership without the unanimous consent of the other partners, even when the former is the manager.

SECTION II. *Obligations of Partners with Respect to Third Persons.*

ART. 1697. In order that the partnership may be liable to a third person for the acts of one of the partners, it shall be necessary:

1. That the partner should have acted as such for the account of the partnership;
2. That he should have the power to bind the partnership by virtue of his express or implied authority;
3. That he shall have acted within the scope of his power or authority.

1. Notes of a civil partnership executed in its name by one of the members with the approval of the others create a liability by each of the partners for the payment of his aliquot part of the debt. Bachrach v. La Protectora, 37 Phil. 441.
2. See also Compañia Maritima v. Muñoz, 9 Phil. 326.
3. Liability of members of a mercantile partnership operating under fictitious name; see National Bank v. Lo, 50 Phil. 802.

ART. 1698. Partners are not liable *in solidum* for the debts of the partnership, and no one of them can bind the others by any personal act, unless they have granted him authority therefor.

The partnership shall not be liable with respect to third persons for any acts which one partner may have performed in his own name or without a power from the partnership therefor; but it shall be liable to the partner in so far as such acts have benefited the partnership.

The provisions of this article shall be understood as being without prejudice to the provisions of rule first of Article 1695.

1. See Arts. 1137, 1697, 1902, and notes under Art. 1697, Civil Code.
2. The liability of the members of a civil partnership is only joint (mancomunada), and not solidary. Go Pitco v. Yulo, 8 Phil. 545; Martinez v. Ong Pong Co., 14 Phil. 730; Dietrich v. Freeman, 18 Phil. 341.
3. The provisions of this article are applicable to conjugal partnerships. National Bank v. Quintos, 46 Phil. 370.
4. See Jo Chung Cang v. Pacific Commercial Co., 45 Phil. 142.
5. Only the manager or managers of an unregistered mercantile partnership are liable for its debts. The other members are free from responsibility; but the manager or managers are liable *in solidum*. Manila R. R. Co. v. Salmon, 48 Phil. 132.
6. All the members of a civil partnership are liable *pro rata* for all debts incurred by the management by their authority. Manila R. R. Co. v. Salmon, 48 Phil. 132.

ART. 1699. The creditors of the partnership shall be preferred to the creditors of each partner with respect to the partnership property. Without prejudice to this right, the individual creditors of each partner may demand the attachment and sale of the latter's share in the partnership capital.

1. See notes under Art. 1697, Civil Code.

SECTION III. *Manners of Dissolving Partnerships.*

ART. 1700. A partnership is dissolved—

1. By the expiration of the term for which it was constituted;

2. By the loss of the thing or the termination of the business which was its subject-matter;

3. By the natural death, civil interdiction, or insolvency

of any of the partners, and in the case mentioned in Article 1699;

4. By the will of any of the partners, subject to the provisions of Articles 1705 and 1707.

The partnerships referred to in Article 1670 are excepted from the provisions of paragraphs 3 and 4 of this article, in the cases in which they should be continued, in accordance with the Code of Commerce.

1. See Arts. 32, 1121, 1122, 1680 and 1704, Civil Code; Arts. 54 and 56, Penal Code.
2. See notes under Art. 1670, Civil Code.
3. When the partnership is not commercial, it will be dissolved by the death of either of the partners unless there is a stipulation to the contrary. Bearneza v. Dequilla, 43 Phil. 237.
4. See Po Yeng Chec v. Lim Ka Yam, 44 Phil. 172.
5. Effect of dissolution upon pending obligations; see Mota v. Serra, 47 Phil. 464, cited under Art. 1125.
6. The dissolution of a partnership does not extinguish its existing obligations. The partnership continues until its obligations are liquidated although it may not incur any obligations. Estate of Mota v. Serra, 47 Phil. 464.

ART. 1701. If any specific thing which any partner has undertaken to contribute to the partnership should perish before its delivery has been effected, its loss effects a dissolution of the partnership.

A partnership shall also be dissolved, in any case, by the loss of the thing which constitutes its subject-matter when the partner who contributed it reserved to himself the ownership thereof and transferred to the partnership its use or enjoyment only.

But the partnership shall not be dissolved by the loss of the thing when this loss occurs after the ownership thereof has been acquired by the partnership.

ART. 1702. A partnership established for a specified time may be extended by the consent of all the partners.

Such consent may be express or implied and it may be proven by the ordinary means.

ART. 1703. If the partnership is extended after the expiration of its term it shall be understood that a new partnership has been established. If it is extended before the expiration of the term, the original partnership continues.

ART. 1704. A stipulation that on the death of one of the partners the partnership shall continue among the survivors is valid. In such case the heir of the deceased partner shall only be entitled to have a partition made as of the day of the death of his decedent; and he shall participate in the subsequent rights and obligations only in so far as they are a necessary consequence of what has been done before such day.

If the stipulation should be that the partnership shall continue with the heir, it shall be enforced, without prejudice to the provisions of paragraph 4 of Article 1700.

1. See Arts. 1121, 1680, Civil Code.
2. See notes under Art. 1668, Civil Code.

ART. 1705. The dissolution of the partnership by the will or withdrawal of one of the partners shall take place only when a term for its duration has not been fixed, or if such term is not to be inferred from the nature of the business.

In order that the withdrawal may be effective, it must be made in good faith at an appropriate time; notice thereof shall also be given to the other partners.

1. See Art. 1680 and notes under Art. 1700, Civil Code.
2. See Fernandez v. De la Rosa, 1 Phil. 671.

ART. 1706. A withdrawal is in bad faith when the person who makes it proposes to appropriate to himself alone any benefit which should be common to all. In such case the person who seeks to withdraw does not free himself from liability to his partners, but they shall have the power to expel him from the partnership.

A withdrawal shall be deemed to have been made at an inappropriate time when the partnership capital is not in-

tact, and it is to the interest of the partnership to defer its dissolution. In such case the partnership shall continue until the conclusion of the pending transactions.

1. Article cited and applied. Lichauco v. Soriano, 26 Phil. 593.

ART. 1707. No partner can demand the dissolution of a partnership which, either by a provision of its articles or by inference from the nature of its business, has been constituted for a specified time, except for some cause which the court may deem sufficient, such as when one of the partners fails to comply with his obligations, or when he becomes incapacitated for the partnership business, or any other similar cause.

1. See Arts. 1680, 1700, Civil Code.

ART. 1708. The partition of the partnership assets shall be governed by the rules relating to the partition of inheritances, with respect both to its form and to obligations arising therefrom. A partner who has contributed his services only shall not be given any part of the property contributed, but only in its fruits and the profits, in accordance with the provisions of Article 1689, unless the contrary has been expressly stipulated.

1. See Arts. 1051, 1058, 1067, 1700, Civil Code.
2. See Po Yeng Cheo v. Lim Ka Yam, 44 Phil. 172.
3. The partner of a deceased person has such an interest in the estate as to entitle him to be heard in connection with the approval of the accounts of the executor or administrator. In re Florentino, (Deceased,) 47 Phil. 780.
4. When, to prevent the appointment of a receiver of the assets of a partnership at the instance of the heirs of another partner the managing partner gives a bond and continues the business, his subsequent responsibility is that of a receiver, and as such he is personally responsible for losses in transactions undertaken without express judicial authority. De la Rosa v. Ortega, 48 Phil. 605.

TITLE IX.

AGENCY.

CHAPTER I.

CHARACTER, FORM, AND KINDS OF AGENCY.

ART. 1709. By the contract of agency, one person binds himself to render some service, or to do something for the account or at the request of another.

1. See Arts. 1088, 1544 and 1583, Civil Code; Arts. 244, 281, 283, 292 et seq., Code of Commerce.
2. The relations of an agent to his principal are fiduciary, and he is estopped from acquiring or asserting a title to property to which the agency relates adverse to that of the principal. Severino v. Severino, 44 Phil. 343.
3. An agent cannot represent both himself and his principal in a transaction involving the shifting to another person of the agent's liability upon a debt due the principal. Aboitiz v. de Silva, 45 Phil. 883.
4. See Fossum v. Fernandez Hnos., 44 Phil. 713.

ART. 1710. An agency may be express or implied.

An express agency may be created by a public or private instrument or even orally.

The acceptance may also be express or implied, the latter being inferred from the acts of the agent.

1. See Arts. 1216 et seq., 1228, 1280, and notes under Art. 1709, Civil Code; Art. 249, Code of Commerce; Sec. 335 (No. 5), Code of Civil Procedure.
2. An agent, without express power, acted as such for nine years without objection from the principal. Held, there was implied agency. Implied agency distinguished from the voluntary management of the affairs of another (*gestion de negocios agenos*). De la Peña v. Hidalgo, 16 Phil. 450.
3. See also Gutierrez Hnos. v. Oria Hnos., 30 Phil. 520; Gutierrez Hnos. v. Orense, 28 Phil. 571.

4. Registration of agency contracts; see Acts 3318 and 3365.
5. Extrajudicial foreclosure of mortgage under power of sale; see Act 3135.
6. An agency to sell real estate or an interest therein must be evidenced by a writing signed by the principal. Rio y Olabarrieta et al. v. Yu Tec & Co., 49 Phil. 276.

ART. 1711. In the absence of an agreement to the contrary the agency is presumed to be gratuitous.

Nevertheless, if the agent's occupation is the performance of services of the kind to which the agency relates, the obligation of compensating him shall be presumed.

1. See Arts. 908 and 1250, Civil Code; Art. 277, Code of Commerce.
2. A broker who has failed to succeed in bringing the minds of buyer and seller to a complete agreement as to the terms of sale, is not entitled to a commission. Rocha v. Prats & Co., 43 Phil. 397.
3. A member of the board of directors of a corporation who renders special services to the entity under an agency created by resolution of the board, is not entitled to special compensation therefor in the absence of an express agreement to that effect. Rafferty v. Manila R. R. Co., 47 Phil. 83.

ART. 1712. Agency is general or special.

The former includes all the business of the principal.

The latter, one or more specific transactions.

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1. See notes under Art. 1713, Civil Code.
2. Article cited. Strong v. Gutierez Repide, 6 Phil. 680.
3. An agent authorized generally to sell merchandise is empowered to include in the contract of sale the stipulations customary in the trade in such merchandise. Robinson Fleming & Co., v. Cruz & Tan Chong Say, 49 Phil. 42.

ART. 1713. An agency created in general terms includes acts of administration only.

In order to compromise, alienate, mortgage, or to execute any other act of strict ownership, an express power is required.

The power to compromise does not give authority to submit the matter to arbitrators or friendly adjusters.

M. L., 2, 39.

1. See Arts. 317, 1219, 1259, 1548, 1697, 1712 and 1892, Civil Code.
2. To sue for the collection of debts is a mere act of administration, and does not require an express power. Germann & Co. v. Donaldson Sim & Co., 1 Phil. 63.
3. One who deals with an agent is chargeable with knowledge of the limitations upon the agent's powers. Strong v. Gutierrez Repide, 6 Phil. 685.
4. Sale made of the assets of insolvent corporation by a majority of the directors and stockholders, to the president, who was also a director and shareholder. His vote was not necessary to constitute a majority. Held, sale valid. Mead v. McCullough, 21 Phil. 95.
5. A general power was construed to include power to exercise acts of ownership (*de riguroso dominio*) because principal acquiesced in said acts of the agent for some time and received the benefits therefrom without protest. Liñan v. Puno, 31 Phil. 259.
6. A power authorizing agent to sell all of principal's property is sufficient to validate a sale of any one parcel. Jimenez v. Rabot, 38 Phil. 378.
7. Power of manager of a corporation to enter into contracts of employment on its behalf. Yu Chuck v. Kong Li Po, 46 Phil. 608.
8. See Bank of P. I. v. Coster, cited under Art. 1714.

ART. 1714. An agent cannot exceed the scope of his authority.

1. See Art. 1727, Civil Code.
2. See Ormachea v. Trillana, 13 Phil. 201.
3. See Keeler Electric Co. v. Rodriguez, 44 Phil. 19.
4. Persons dealing with an agent are chargeable with notice of the limitations in the power of attorney under which he is acting. Bank of P. I. v. de Coster, 47 Phil. 594.
5. If a married woman gives her husband a power of attorney to borrow money and to mortgage her property as security, no authority is conferred upon the husband as agent to execute a promissory note in the wife's name for the payment

of a pre-existing debt of his own, for which she was not previously liable or to mortgage her property to secure such debt. Bank of P. I. v. de Coster, 47 Phil. 594.

6. An agent empowered to collect deferred payments as they fall due has no authority to modify the terms of the contract or to release sureties. Villa v. Bosque et al. 49 Phil. 126.
7. Where an agent or representative in entering into a contract on behalf of the principal exceeds his authority, the contract is not an absolute nullity, but only voidable at the instance of the party who has been improperly represented. Zayco v. Serra, 49 Phil. 985.
8. A power of attorney by which the agent is authorized to sell any real property which "might belong" to the principal, authorizes sales of property acquired after the date of the execution of the power as well as of property belonging to the principal at that time. Catigbak v. Tai Hing Co., XXVII Off. Gaz. 3380.

ART. 1715. The scope of the authority shall not be deemed exceeded if the object of the agency is effected in a manner more advantageous to the principal than that specified by him.

ART. 1716. An emancipated minor may be an agent; but the principal shall have an action against him only in accordance with the provisions respecting the obligations of minors.

A married woman may accept an agency only by permission of her husband.

1. See Arts. 61, 314, 320, 1263 et seq., 1304, 1309 et seq., Civil Code; Art. 282, Code of Commerce.

ART. 1717. When an agent acts in his own name, the principal shall have no right of action against the persons with whom the agent has contracted, or such persons against the principal.

In such case, the agent is directly liable to the person with whom he has contracted, as if the transaction were his own. Cases involving things belonging to the principal are excepted.

The provisions of this article shall be understood to be without prejudice to actions between principal and agent.

1. See Art. 1608, Civil Code; Arts. 245 et seq., and 287, Code of Commerce.
2. When an agent contracts in his own name, the undisclosed principal cannot ordinarily sue or be sued upon the contract. Lim Tiu v. Ruiz, 15 Phil. 367.
3. The exception as to property belonging to the principal, applied in the case of Sy Juco v. Sy Juco, 40 Phil. 638.
4. An agent acting in his own name is directly liable to the person with whom he has contracted. The undisclosed principal cannot sue on such a contract. Smith, Bell & Co. v. Sotelo, 44 Phil. 874.
5. See Macias v. Warner, Barnes & Co., 43 Phil. 155; Wing Kee Comp. Co. v. "Monongahela," 44 Phil. 464; Arnold v. Willits & Patterson, 44 Phil. 634.
6. One who purchases merchandise from a person who is the agent of another, the existence of the agency being undisclosed to the buyer, is not subject to an action by the principal for the recovery of the merchandise so sold or for its value; the remedy of the undisclosed principal is limited to an action against the agent. Awad v. Filma, etc., Co. 49 Phil. 816.
7. A mortgage purporting to bind property of the conjugal partnership and also the paraphernal property of the wife, executed by her husband, under a power of attorney from her to secure an obligation of the conjugal partnership, must be signed with the name of the wife, and by her husband as agent; the signature of the husband alone, notwithstanding recitals in the deed which show that he is acting as the agent of the wife, is insufficient. As to the paraphernal property of the wife, the mortgage is void, but it is valid as to the property of the conjugal partnership. Philippine, etc., Co. v. Poizat, et al., 48 Phil. 536.
8. A contract in writing made by an agent must be signed with the name of the principal; if signed with the name of the agent alone the principal is not bound, regardless of recitals in the body of the instrument showing the fact of the agency, if the agent is also a party to the contract. *Contra,* when the agent is not a party to the contract. Philippine, etc., Co. v. Poizat et al., 48 Phil. 536.
9. Where a contract for the sale of land has been performed as between the parties thereto, no action can be maintained by

a third party against the vendor to compel the latter to convey additional land to the plaintiff, on the ground that the vendee under the contract was agent of the latter, it not appearing that the vendor had notice that the purchaser under the contract was acting in a representative capacity. Bustamente v. Rato, XXVII Off. Gaz. 4567.

CHAPTER II.

OBLIGATIONS OF THE AGENT.

ART. 1718. An agent, by his acceptance, is bound to fulfill the mandate and shall be liable for any damages caused to the principal through his failure to do so.

He must also finish any business already begun at the time of the death of the principal, should there be any danger in delaying it.

1. See Art. 1101, Civil Code; Art. 282, Code of Commerce.
2. In an action against a lawyer for damages for failing to perfect an appeal in a civil case, thereby allowing the decision to become final, it will be presumed that the decision was correct, and that therefore the failure to appeal caused no damage, in the absence of proof by plaintiff to the contrary. Heredia v. Salinas, 10 Phil. 157.
3. A selling agent cannot bind his principal by a contract of sale to himself. Barton v. Leyte Asphalt & M. O. Co., 46 Phil. 938.

ART. 1719. In accomplishing the object of the agency, the agent shall follow the instructions of the principal.

In default of such instructions he shall do all that which, according to the character of the business, would be done by a diligent father of a family.

1. See Arts. 1618, 1697 and notes under Arts. 1710 and 1714, Civil Code; Arts. 254 et seq., Code of Commerce.
2. Article applied. Possible exceptions to the rule mentioned. Strong v. Gutierrez Repide, 6 Phil. 685.
3. See Lopez v. El Hogar, 47 Phil. 249.

ART. 1720. Every agent is bound to give an account of

his transactions and to pay to the principal all that which he may have received by virtue of the agency, even though what has been so received was not owed to the principal.

1. See Arts. 1728 and 1729, Civil Code; Arts. 263, 276, Code of Commerce.
2. When two or more agents are employed the obligation created by this article is joint, not solidary. Martinez v. Ong Pong Co., 14 Phil. 726.
3. Article cited and applied. U. S. v. Kiene, 7 Phil. 736; Ojinaga v. Perez, 9 Phil. 194; U. S. v. Reyes, 36 Phil. 791.
4. Lawyers are bound promptly to account for money or property received by them on behalf of their clients and failure to do so constitutes professional misconduct. In re H. V. Bamberger, 49 Phil. 962.

ART. 1721. An agent may appoint a substitute if the principal has not forbidden him to do so; but he shall be liable for the acts of the substitute:

1. When the power to appoint such substitute was not granted him;

2. When such power was granted him, but without designating the substitute, and the person appointed was notoriously inept or insolvent.

Anything done by a substitute appointed against the prohibition of the principal shall be void.

1. See Arts. 261 et seq., 296, 1732, Code of Commerce.

ART. 1722. In the cases included in the two paragraphs of the next preceding article, the principal shall also have a right of action against the substitute.

ART. 1723. The liability of two or more agents, even though they should have been simultaneously appointed, shall not be solidary, unless it has been so expressed.

1. See notes under Art. 1720, Civil Code.

ART. 1724. An agent shall be liable for interest upon any sums he may have applied to his own use, from the day on

which he did so, and upon those which he still owes, after the expiration of the agency, from the time he is put in default.

1. See Arts. 263 et seq., Code of Commerce, and notes under Art. 1720, Civil Code.

ART. 1725. An agent who acts as such shall not be personally liable to the person with whom he contracted, unless he expressly assumes such liability, or exceeds the scope of his authority without giving such person sufficient notice of his powers.

[1732]

1. See Arts. 247, 277, 284 and 286, Code of Commerce.
2. The agent obligated himself personally besides acting for the principal. Held, both are liable. Tuason v. Orozco, 5 Phil. 596.
3. Article cited and construed. National Bank v. Welch, Fairchild & Co., 44 Phil. 780.
4. A contract made by the executor or administrator of the estate of a deceased person, without the authority of the court, imposes upon him a personal obligation even though in signing the contract he describes himself as administrator or executor with the intention of binding the estate. Pacific Commercial Co. v. Hernaez et al., 51 Phil 494.

ART. 1726. An agent is liable not only for fraud, but also for fault, which shall be judged with more or less severity, by the courts, according to whether the agency was gratuitous or otherwise.

1. If the agent has followed the instructions of his principal, and there is no evidence of fraud or negligence, he is exempt from liability although the object of the agency has not been accomplished. Gutierrez Hnos. v. Oria Hnos., 30 Phil. 491.

CHAPTER III.

OBLIGATIONS OF THE PRINCIPAL.

ART. 1727. The principal must fulfill all the obligations contracted by the agent within the scope of his authority.

The principal shall be liable as to matters with respect to which the agent has exceeded his authority only when he ratifies the same expressly or by implication.

1. See Arts. 1697, 1713, 1714 et seq., 1721 and 1725, Civil Code; Arts. 247, 253 to 285, Code of Commerce.
2. See notes under Arts. 1725 and 1726, Civil Code.
3. See also Gutierrez Hnos. v. Orense, 28 Phil. 571.
4. One who, relying upon the agent's representation as to his authority, makes payment to him, does so at his own risk. Keeler Electric Co. v. Rodriguez, 44 Phil. 19.
5. The principal is not bound to fill orders taken by his selling agent from his own sub-agent. Barton v. Leyte Asphalt & M. O. Co., 46 Phil. 938.
6. The principal cannot avoid responsibility for misrepresentations by his agent if he has accepted the benefit obtained by them. Gonzalez et al. v. Haberer, 47 Phil. 380.
7. A married woman who gives her husband a power of attorney to borrow money and mortgage her property as security therefor is bound by the obligations thereafter incurred by the husband in her name, regardless of the use made by him of the money so obtained. Bank of P. I. v. De Coster, 47 Phil. 594.
8. A married man was the principal member of a mercantile partnership. The firm was indebted to a bank for money loaned. The bank cancelled the firm's notes and accepted in lieu a note for the same sum and a mortgage on the wife's real estate signed by the husband as the agent of his wife under a power authorizing him, as her agent, to borrow money and transact business in general. Held, that the note and mortgage were void as to the wife, as not being within the scope of the authority of the husband as agent. Bank of P. I. v. De Coster, 49 Phil. 574.
9. A loan to a married woman, paid to her husband as her attorney-in-fact under a valid power, and a mortgage upon her property to secure the loan, executed by the husband pursuant to such power, are binding upon the wife, although the mortgage is signed in the name of the husband only, where he is not personally a party to the transaction, and the recitals of the mortgaged deed show the fact of agency. Orden de Dominicos v. De Coster, 50 Phil. 115.
10. Although a power of attorney not recorded in the registry of deeds is ineffectual with respect to sales of land registered

under the Torrens system as against any person who in good faith may have acquired a right thereto, it obligates the principal to respect and abide by acts lawfully done by his agent pursuant to such unregistered power. Catigbak v. Tai Hing Co., XXVII Off. Gaz. 3380.

ART. 1728. The principal must advance to the agent, if the latter should request it, the funds necessary for the execution of the agency.

Should the agent have advanced them the principal must reimburse him for the same, even if the transaction should not have been a success, provided the agent is not to blame therefor.

The reimbursement shall include interest on the amounts advanced, computed from the days on which the advance was made.

1. See Arts. 250 et seq., 278, Code of Commerce.
2. This article applies and not Art. 1711, when the agent sues for reimbursement of expenses. Fortis v. Gutierrez Hnos., 6 Phil. 100.

ART. 1729. The principal must also indemnify the agent for all damages he may incur in carrying out the agency without fault or imprudence on his part.

1. See Art. 298, Code of Commerce.
2. Article cited. Albaladejo y Cia. v. Phil. Ref. Co., 45 Phil. 556.

ART. 1730. The agent may retain the things which are the subject-matter of the agency in pledge until the principal pays the indemnity and reimbursement referred to in the two articles next preceding.

ART. 1731. If two or more persons appoint an agent for a transaction in which both or all are interested they shall be liable *in solidum* to the agent with respect to all matters connected with the agency.

CHAPTER IV.

MODES OF TERMINATING THE AGENCY.

ART. 1732. Agency is terminated:

1. By revocation;
2. By the withdrawal of the agent;
3. By the death, interdiction, bankruptcy, or insolvency of the principal or of the agent.

1. See Arts. 32, 181, 1709 and 1733 et seq., Civil Code; Arts. 280, 290, 874 et seq., Code of Commerce; Arts. 54 and 56, Penal Code.
2. To terminate the agency, an agent need not expressly say that he renounces the agency. Facts examined and found to constitute a sufficient resignation. De la Peña v. Hidalgo, 16 Phil. 465.
3. The principal has absolute power to terminate the agency at any time. Barretto v. Sta. Marina, 26 Phil. 440.
4. The filing of a complaint by an agent against his principal for the collection of a balance in his favor resulting from a liquidation of the agency accounts between them, and his rendering of a final account of his operations, are equivalent to an express renunciation of the agency and terminate the juridical relation between the parties. Valera v. Velasco, 51 Phil. 695.

ART. 1733. The principal may revoke the agent's power at will and compel him to return the instrument which evidences the agency.

1. See Art. 1256 and notes under Art. 1732, Civil Code; Art. 279, Code of Commerce.

ART. 1734. If the agency should have been granted to contract with any particular persons, its revocation shall not affect them unless they were given notice thereof.

ART. 1735. The appointment of a new agent for the same business works a revocation of the previous agency

from the day on which notice was given to the former agent, saving the provisions of the next preceding article.

1. See Garcia v. De Manzano, 39 Phil. 577.

ART. 1736. An agent may withdraw from the agency by giving notice to the principal. Should the latter suffer any damage through the withdrawal, the agent must indemnify him therefor, unless the agent's reason for his withdrawal should be the impossibility of continuing to act as such without serious detriment to himself.

1. See notes under Art. 1732, Civil Code.

ART. 1737. Even should the agent resign the agency for sufficient cause, he must continue to act as such until the principal is able to take the necessary measures to fill his place.

ART. 1738. Anything done by the agent before he was aware of the death of the principal, or of any other of the causes which terminate the agency, shall be valid and binding with respect to third persons who may have contracted with the agent in good faith.

ART. 1739. In case of the death of the agent, his heirs must inform the principal thereof, and meanwhile take such measures as the circumstances may require to protect the interests of the latter.

TITLE X.

LOANS.

GENERAL PROVISION.

ART. 1740. By the contract of loan, one of the parties delivers to the other, either some non-fungible thing, in order that the latter may use it during a certain period and return it to the former, in which case it is called *commodatum,* or money or any other fungible thing upon condition of returning an equal amount of the same kind and quality, in which case it is merely called a loan.

Commodatum is essentially gratuitous.

A simple loan may be gratuitous, or made under a stipulation to pay interest.

1. See Arts. 1276, 1768, Civil Code; Arts. 311 to 324, 719 to 736, Code of Commerce.
2. An agreement that the amount of the loan may be considered as the price of the thing given as security, if the loan is not paid when due, is valid. Alcantara v. Alinea, 8 Phil. 111.
3. *Commodatum* is essentially gratuitous. Mina v. Pascual, 25 Phil. 540.
4. See also Sunico v. Ramirez, 14 Phil. 500; De los Santos v. Jarra, 15 Phil. 151.
5. A "loan" means the delivery by one party and the receipt by the other party of a given sum of money, upon an agreement, express or implied, to repay the sum loaned, with or without interest. People v. Concepción, 44 Phil. 126.
6. Loan defined; see Tolentino et al. v. Gonzales, 50 Phil. 558.

CHAPTER I.

COMMODATUM.

SECTION I. *Nature of Commodatum.*

ART. 1741. The lender retains the ownership of the thing

loaned. The borrower acquires the use thereof, but not its fruits; if any compensation is to be paid by the person acquiring the use, the agreement ceases to be a *commodatum*.

1. See notes under Art. 1740, Civil Code.

ART. 1742. The rights and obligations which arise from *commodatum* pass to the heirs of both contracting parties, unless the loan has been made in consideration of reasons personal to the borrower, in which case his heirs shall not be entitled to continue using the thing loaned.

1. See notes under Art. 1740, Civil Code.

SECTION II. *Obligations of the Borrower.*

ART. 1743. The borrower is obliged to pay the ordinary expenses which are necessary for the use and preservation of the thing loaned.

ART. 1744. If the borrower puts the thing to a different use than that for which it was loaned, or keeps it in his possession for a longer time than that agreed upon, he shall be liable for its loss, even should such loss be due to a fortuitous event.

ART. 1745. If the thing loaned was delivered under appraisal and is lost, even if it be by reason of a fortuitous event, the borrower shall be liable for its value, in the absence of an agreement by which he is expressly exempted from liability.

ART. 1746. The borrower is not liable for the wear and tear suffered by the thing loaned by reason of its use only, and without his fault.

1. See Arts. 1104, 1740, Civil Code.

ART. 1747. The borrower cannot retain the thing loaned to offset anything the lender may owe him, even should it be for expenses.

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ART. 1748. All the borrowers to whom a thing is loaned collectively shall be liable *in solidum* for the same, in accordance with the provisions of this section.

SECTION III. *Obligations of the Lender.*

ART. 1749. The lender cannot demand the return of the thing loaned, until after the accomplishment of the purpose for which he loaned it. Nevertheless, if before this period the lender should be in urgent need of it, he may demand its restitution.

ART. 1750. If the duration of the *commodatum* should not have been agreed upon nor the use to which the thing loaned was to be applied, and the latter should not be determined by the customs of the country, the lender may demand its return at will.

In case of doubt the burden of proof rests upon the borrower.

1. See Arts. 6, 1113, 1128, 1740, Civil Code.

ART. 1751. The lender must pay any extraordinary expenses arising during the contract for the preservation of the thing loaned, provided that the borrower informs him thereof before making them, unless they should be so urgent that the answer to the notice cannot be waited for without risk.

ART. 1752. Any lender who, knowing the vices of the thing loaned, should not have informed the borrower thereof, shall be liable to him for any damages he may have suffered by reason thereof.

CHAPTER II.

SIMPLE LOAN.

ART. 1753. One who receives a loan of money or any other fungible thing acquires the ownership thereof and is bound to return to the creditor an equal amount of the same kind and quality.

1. See Arts. 337, 1166 et seq., 1740 and 1754 et seq., and notes under Art. 1740, Civil Code; Arts. 312 and 723, Code of Commerce.
2. Article cited and applied. Sunico v. Ramirez, 14 Phil. 500; Martinez v. Ramos, 28 Phil. 589.

ART. 1754. The obligations of persons who borrow money shall be governed by the provisions of Article 1170 of this code.

If that which is loaned is some other fungible thing, or a quantity of metal, not coined, the debtor owes a quantity equal to that received, and of the same kind and quality, even though there should have been a change in its value.

1. Article cited and applied. Olino v. Medina, 13 Phil. 384; De los Reyes v. Alojado, 16 Phil. 499.
2. See also Clemons v. Nolting, 42 Phil. 716.

ART. 1755. Interest shall be due only when it has been expressly stipulated.

1. See Arts. 314 et seq., 719, 726 and 736, Code of Commerce.
2. In the absence of contract as to interest, no interest can be collected until after judicial or extrajudicial demand, and only at the rate of 6 per cent per annum. Cia. Gral. v. Araza, 7 Phil. 455; Bautista v. Calixto, 7 Phil. 733; De Guzman v. Balarag, 11 Phil. 503; Doronilla v. Gonzaga, 14 Phil. 42; Jose v. Damian, 14 Phil. 104; Sunico v. Ramirez, 14 Phil. 500; Gutierrez Hnos. v. Fuentebella, 13 Phil. 74; Veloso v. Fontanosa, 13 Phil. 79; Bowler v. Alcazar, 13 Phil. 282; De la Peña v. Hidalgo, 16 Phil. 450.
3. Interest on interest. Nolan v. Majinay, 12 Phil. 559.
4. As to effect of resolution of contract upon conventional interest, see Po Pauco v. Sigüenza, 49 Phil. 404, cited under Art. 1124.
5. See Acts 2655, 2992 and 3291.

ART. 1756. A borrower who has paid interest without it being stipulated cannot recover it or charge it to the capital.

ART. 1757. Pawn shops shall also be subject to the regulations concerning them.

1. See Súnico v. Ramirez, 14 Phil. 513.

TITLE XI.

DEPOSITUM.

CHAPTER I.

DEPOSITUM IN GENERAL AND ITS DIFFERENT KINDS.

ART. 1758. A *depositum* is constituted from the time one person receives a thing belonging to another with the obligation of taking care of and returning it.

[1771, 1924] M. L., 192.

1. See Arts. 193, 303, 305 et seq., Code of Commerce.
2. The balance of an agent's account is in the nature of a deposit in his hands, and he cannot dispose of it without committing *estafa*. U. S. v. Igpuara, 27 Phil. 619.

ART. 1759. A *depositum* may be constituted judicially or extrajudicially.

CHAPTER II.

DEPOSITUM PROPERLY SPEAKING.

SECTION I. *Nature and Essence of the Contract of Depositum.*

ART. 1760. *Depositum* is a gratuitous contract in the absence of an agreement to the contrary.

1. See Art. 304, Code of Commerce.

ART. 1761. Personal property only can be the subject matter of a *depositum*.

1. See Arts. 335 et seq., 1758, Civil Code; Art. 303, Code of Commerce.

ART. 1762. An extrajudicial *depositum* is either necessary or voluntary.

SECTION II. *Voluntary Depositum.*

ART. 1763. A voluntary *depositum* is that in which the delivery is made at the will of the bailor. The *depositum* may be also made by two or more persons who believe themselves to be entitled to the thing bailed, by placing it in the hands of a third person, who is to deliver the thing to the person found to be entitled to it.

ART. 1764. If a person qualified to contract accepts a *depositum* made by another who is incapacitated, the former is subject to all the obligations of a bailee, and may be compelled to return it by the guardian, curator, or administrator of the person who made the *depositum,* or by the same person, should he recover or attain his capacity.

ART. 1765. If the *depositum* has been made by a person *sui juris* by the delivery of any thing to another who is incapacitated, the bailor shall have a right of action to recover the thing bailed only so long as it remains in the possession of the bailee, or to compel the latter to pay him the sum to the extent of which he may have profited by the thing or its price.

SECTION III. *Obligations of the Bailee.*

ART. 1766. The bailee is obliged to keep the thing, and, when required, to return it to the bailor or to his successors or assigns, or to the person who may have been designated in the contract. His liability, with respect to the keeping and loss of the thing, shall be governed by the provisions of Title I of this book.

1. See Arts. 1088 et seq., 1758, 1763 et seq., 1769, 1770 and 1775, Civil Code; Art. 306, Code of Commerce; Art. 535, Penal Code.
2. A deposit without a fixed period may be withdrawn at any time. Aboitiz v. Oquiñena, 39 Phil. 929.

ART. 1767. The bailee cannot make use of the thing bailed without the express permission of the bailor.

Otherwise he shall be liable in damages.

1. Money deposited with another, who was authorized to use it. Held, that this was not a deposit but a loan. Javellana v. Lim, 11 Phil. 141.

ART. 1768. When the bailee has permission to make use of the thing bailed, the contract loses the character of a *depositum* and becomes a loan or a *commodatum*.

Such permission shall not be presumed, and its existence must be proved.

1. See notes under Art. 1767, Civil Code.
2. Money was deposited with another who was allowed to use it and was to pay interest. Held, not a deposit, but a loan. Gavieres v. Tavera, 1 Phil. 71; Delgado v. Donnevie, 23 Phil. 312; *In re* Guardianship of Tamboco, 39 Phil. 939.
3. The owner of a rice mill who, in conformity with the custom prevailing in the rice trade, receives palay and converts it into rice, and sells the product for his own benefit, must account for the palay to the owner at the price prevailing at the time when demand for payment is made. The destruction of the mill with its contents by fire, after palay thus deposited has been milled and marketed, does not affect the liability of the miller. Baron v. David, 51 Phil. 1.

ART. 1769. When the thing bailed is delivered closed and sealed, the bailee must return it in the same condition, and shall be liable in damages if the seal or lock should have been broken by his fault.

Such bailee is presumed to be to blame unless the contrary is proven.

With respect to the value of the thing bailed, the statement of the bailor shall be accepted when the forcible opening is chargeable to the bailee, in the absence of proof to the contrary.

1. Live stock, subject of contract of bailment, were lost. Held, bailee liable, having failed to prove loss not attributable to his fault. Palacio v. Sudario, 7 Phil. 275.

ART. 1770. The thing bailed shall be returned with all its products and accretions.

Should the *depositum* consist of money, the provisions relating to agents, contained in Article 1724, shall be applicable to the bailee.

1. See Arts. 1095 et seq., 1724, 1764 et seq., Civil Code; Art. 306, Code of Commerce.

ART. 1771. The bailee cannot demand that the bailor prove that he is the owner of the thing bailed.

Nevertheless, should he discover that the thing has been stolen and who is its true owner, he must inform the latter of the *depositum*.

If the owner, notwithstanding this, does not claim the *depositum* within the term of one month, the bailee shall be free from any liability upon returning the thing bailed to the person from whom he received it.

ART. 1772. If there are two or more bailors, not solidary, and the thing is susceptible of division, each one can demand his part only.

When the bailors are solidary or the thing does not admit of division, the provisions of Articles 1141 and 1142 of this code shall govern.

ART. 1773. When the bailor loses his capacity to contract after having made the *depositum*, the thing bailed cannot be returned except to the persons who are entrusted with the administration of his property and rights.

1. See Mead v. McCullough, 21 Phil. 95.

ART. 1774. When, on making the *depositum*, a place was designated for the return of the thing bailed, the bailee must take the thing bailed to such place; but the expense incurred by the conveyance shall be charged to the bailor.

Should no place have been designated for the return, it shall be made at the place where the thing bailed may be, even should it not be the same place where the *depositum* was made, provided there was no malice on the part of the bailee.

ART. 1775. The thing bailed shall be returned to the bailor whenever he claims it, even though a specified term or time for such return may have been fixed in the contract.

This provision shall not be applicable when the thing bailed has been attached under legal process while in the possession of the bailee, or should the latter have been notified of the objection of a third person to the return or removal of the thing bailed.

1. See Art. 1766, Civil Code.

ART. 1776. A bailee who may have sufficient reasons for not keeping the thing bailed, may, even before the term designated, return it to the bailor, and if the latter refuses to accept it, he may by authority of the judge deposit it in court.

ART. 1777. A bailee who has lost the thing bailed through *force majeure* and received another in its place, shall be obliged to deliver the latter to the bailor.

1. See Art. 307, Code of Commerce.

ART. 1778. If the heir of a bailee should, in good faith, have sold the thing deposited, not knowing it was bailed, he shall only be obliged to return the price he may have received for it or to assign his right of action against the purchaser in case the price should not have been paid to him.

SECTION IV. *Obligations of the Bailor.*

ART. 1779. The bailor is obliged to reimburse the bailee for any expenses he may have incurred in the preservation of the thing bailed, and to indemnify him for any damages he may have suffered by reason of the *depositum*.

ART. 1780. The bailee may retain the thing bailed in pledge until the full payment of whatever may be due him by reason of the *depositum*.

SECTION V. *Necessary Depositum.*

ART. 1781. A *depositum* is deemed necessary:

1. When made in compliance with a legal obligation;

2. When it takes place on occasion of a calamity, such as fire, ruin, pillage, shipwreck, or other similar occurrences.

ART. 1782. A *depositum* included in the first paragraph of the next preceding article shall be governed by the provisions of the law under which it is made, or in default of such, by those governing voluntary *depositum.*

Those included in the second paragraph shall be governed by the rules of voluntary *depositum.*

1. See Arts. 1763 et seq., Civil Code; Arts. 533, 535 Penal Code.

ART. 1783. The *depositum* of their effects by travelers in inns or hostelries shall also be deemed a necessary one. The keepers of inns and hostelries shall be responsible therefor as such bailees, provided that they or their employees shall have been informed of the things brought into the house, and that the travelers, on their part, take the precautions recommended by the innkeepers or their substitutes with respect to such effects.

1. See Art. 1601, Civil Code.
2. See also Tan Chiong Lan v. Inchausti & Co., 22 Phil. 155; Freixas & Co. v. Pac. Mail S. S. Co., 42 Phil. 201.

ART. 1784. The responsibility referred to in the next preceding article shall include damages to the effects of travelers caused by servants or employees of the keepers of inns or hostelries as well as by strangers; but not those arising from robbery by armed force or which may be caused by any other occurrence of *force majeure.*

1. See Art. 1601, Civil Code; Art. 19, Penal Code.
2. See notes under Art. 1783, Civil Code.
3. See also Freixas & Co. v. Pac. Mail S. S. Co., 42 Phil. 201.

CHAPTER III.

SEQUESTRATION.

ART. 1785. A judicial deposit or sequestration takes place when the attachment or seizure of property in litigation is ordered.

1. See Secs. 173, 262, 424, Code of Civil Procedure.

ART. 1786. Personal as well as real property is subject to sequestration.

1. See notes under Art. 1785, Civil Code.

ART. 1787. The bailee of the property or things sequestrated cannot be released from his charge until the controversy which occasioned it is ended, unless the judge should so order by consent of all the persons interested, or for any other lawful cause.

1. See notes under Art. 1785, Civil Code.

ART. 1788. The bailee of property sequestrated is obliged to comply with respect thereto with all the obligations of a good father of a family.

1. See Art. 1776, Civil Code.
2. See notes under Art. 1785, Civil Code.

ART. 1789. Judicial sequestration shall be governed by the provisions of the Law of Civil Procedure in respect to all matters not provided for in this code.

1. See notes under Art. 1785, Civil Code.

TITLE XII.

ALEATORY CONTRACTS, OR THOSE DEPENDING ON CHANCE.

CHAPTER I.

GENERAL PROVISION.

ART. 1790. By an aleatory contract one of the parties binds himself, or both reciprocally bind themselves, to give or to do something as an equivalent for that which the other party is to give or do in case of the occurrence of an event which is uncertain or will happen at an indeterminate time.

[1257, par. 2]

CHAPTER II.

INSURANCE CONTRACTS.

ART. 1791. An insurance contract is one by which the insurer becomes liable for any fortuitous damage which may occur to the insured personal or real property, in consideration of a certain price, which may be unrestrictedly fixed by the parties.

1. See Art. 518, Civil Code; Arts. 380, 385 et seq., 416, 432, 438, Code of Commerce; see Acts Nos. 2427, 2430, 2648, 2867.
2. See also Enriquez v. Sun Life, 41 Phil. 269; De Lim v. Sun Life, 41 Phil. 263.
3. A false material statement, made by the insured with intent to defraud in the presentation of his claim, voids the insurance contract. Tuason v. N. China Insurance Co., et al., 47 Phil. 14.
4. A married woman has an insurable interest in the life of her husband. Gercio v. Sun Life Assurance Co., 48 Phil. 53.
5. Divorce does not divest the interest of the wife in an insurance policy on the life of her husband. Gercio v. Sun Life Assurance Co., 48 Phil. 53.

6. An insurance policy on the life of her husband payable to the wife as beneficiary is the separate property of the wife and beyond the control of the husband. Gercio v. Sun Life Assurance Co., 48 Phil. 53.
7. By its terms, a contract of life insurance required that the premium be paid by a certain time, failing which the policy would lapse. The insured failed to pay the premium when due, in reliance upon the promise of a solicitor of the insurance company to make payment for him. The solicitor failed to make the payment as promised. Held, that the company was not bound by the promise of its solicitor, as not within the scope of his agency, and that the policy lapsed. Glaraga v. Sun Life Assurance Co., 49 Phil. 738.
8. A false and material statement in a claim for loss under a policy of fire insurance, made with intent to deceive, avoids the policy. Tan It v. Sun Insurance Office, 51 Phil. 212; Uy Hū & Co. v. Prudential Assurance Co. Ltd., 51 Phil. 231.

ART. 1792. Two or more owners may mutually insure against fortuitous damages which may occur to their respective property. This contract is called mutual insurance and, when it has not been otherwise stipulated therein, it is understood that such damages shall be paid by all the contracting parties in proportion to the value of the property which each one has insured.

1. See notes under Art. 1791, Civil Code.

ART. 1793. An insurance contract must be reduced to writing in a public or private instrument signed by the contracting parties.

1. See Arts. 737, 831, Code of Commerce; Arts. 168, 219, Mortgage Law.
2. See notes under Art. 1791, Civil Code.

ART. 1794. Said instrument must specify:

1. The designation and situation of the things insured and their value;

2. The kind of risks against which indemnity is stipulated;

3. The day and hour on which the effects of the contract commence and end;

4. All the other conditions to which the contracting parties have agreed.

1. See Arts. 383, 738 et seq., Code of Commerce.
2. See notes under Art. 1791, Civil Code.

ART. 1795. The contract shall be inoperative in so far as the amount of the insurance exceeds the value of the thing insured, nor can more than one insurance be collected for the whole value of the same.

Should there be two or more insurance contracts upon the same thing each insurer shall be liable for the damage in proportion to the capital he may have insured, until, between them all, the full value of the thing insured has been paid.

1. See Arts. 397, 399 et seq., 747 et seq., Code of Commerce.
2. See notes under Art. 1791, Civil Code.

ART. 1796. Should a loss occur, the insured must give information thereof to the insurer and to all other persons concerned, within the stipulated time, or in default of such stipulation, within twenty-four hours from the time the insured had knowledge of the loss. Should he not do so, he shall have no action against them.

1. See Arts. 404, 765, Code of Commerce.
2. See notes under Art. 1791, Civil Code.

ART. 1797. The contract shall be void if at the time it was made the insured knew that the damage insured against had already occurred, or if the insurer knew that the property insured was already free from such risk.

1. See Arts. 381, 784 et seq., Code of Commerce.
2. See notes under Art. 1791, Civil Code.

CHAPTER III.

GAMBLING AND BETTING.

ART. 1798. The law does not permit any action to recover that which is won in a game of chance, luck, or hazard; but the person who loses cannot recover that which he may have voluntarily paid, unless there should have been fraud, or should he be a minor or incapacitated to manage his property.

1. See Arts. 199, 320, 1101, 1102, 1257, 1728, 1756, 1790, 1800 et seq., and notes under Art. 1801, Civil Code; Arts. 343 et seq., 579, Penal Code; Act 1757.
2. Payment of money won at gambling cannot be enforced by action. Palma v. Cañizares, 1 Phil. 602; Escalante v. Francisco, 2 Phil. 650; De la Rama v. Lacson, 3 Phil. 618; Lichauco v. Martinez, 6 Phil. 594; Azada v. Martinez, 15 Phil. 527.
3. To constitute a defense, it must be affirmatively proved that the game was a game of chance. Reyes v. Martinez, 5 Phil. 402; Sparrevohn v. Bachrach, 7 Phil. 194; De la Rama v. Robles, 8 Phil. 712; Rodriguez v. Martinez, 5 Phil. 67.
4. See also Vazquez v. Florence, 5 Phil. 183; Leung Ben v. O'Brien, 38 Phil. 182.
5. Essential elements of a lottery: (1) consideration; (2) prize; (3) chance. El Debate v. Topacio, 44 Phil. 278.

ART. 1799. The provisions of the next preceding article with respect to gambling are also applicable to betting.

Bets analogous to prohibited games are to be considered prohibited.

1. See Art. 785, Code of Commerce; Act No. 480.
2. See also notes under Art. 1801, Civil Code.

ART. 1800. Games contributing to the exercise of the body, such as those whose object is the acquisition of skill in the management of arms, foot, horse or vehicle races, ball games, and others of a similar character are not considered prohibited.

1. See notes under Art. 1801, Civil Code.

ART. 1801. A person who loses in a game or a bet which is not prohibited is civilly liable.

Nevertheless, when the sum wagered in the game or bet is excessive, the courts may either dismiss the complaint or reduce the obligation in so far as it is in excess of what a good father of a family would risk.

[1411, 1257, par. 2] Expressly repealed by Act 1757 Phil. 13.

1. See notes under Art. 1798, Civil Code; Act 1757, Secs. 8 and 9.
2. Betting in cockpits; see Act 480.
3. Lotteries prohibited; see Acts 1523 and 1757.

CHAPTER IV.

LIFE ANNUITIES.

ART. 1802. The aleatory contract of annuity binds the debtor to pay a pension or annual income to one or more specified persons for life in return for a principal in personal or real property, the ownership of which is at once transferred to the debtor, charged with the payment of the income.

1. See Arts. 334 et seq., and 1790, Civil Code; Arts. 416 and 418, Code of Commerce.
2. The acceptance by the company not having been proved to have been communicated to the applicant, no contract of annuity was perfected. Enriquez v. Sun Life, 41 Phil. 269.

ART. 1803. The annuity may be constituted on the life of the person who pays the capital, on that of a third person, or on the lives of several persons.

It may also be constituted in favor of the person or persons for whose lifetime it is granted, or in favor of another or other different persons.

1. See Arts. 416, 418 et seq., Code of Commerce.

ART. 1804. An annuity constituted on the life of a person deceased at the time of its execution, or who, at such

time, is suffering from disease which causes his death within twenty days following that date, is void.

ART. 1805. Default in the payment of pensions due does not authorize the recipient of the life annuity to demand the reimbursement of the principal, or to retake possession of the estate alienated; he shall only be entitled to bring suit for the recovery of the income in arrears and security for the payment of the future installments.

ART. 1806. The annuity corresponding to the year in which the person who enjoys it dies shall be paid in proportion to the number of days he may have lived; if it was to be paid in installments in advance, the total amount due for any term which began before his death shall be paid.

ART. 1807. Any person who gratuitously constitutes an annuity on his property, may provide at the time of the execution of the contract that such annuity shall not be subject to attachment for debts of the annuitant.

ART. 1808. An annuity cannot be demanded without proof of the existence of the person on whose life it was constituted.

TITLE XIII.

COMPROMISES AND ARBITRATIONS.

CHAPTER I.

COMPROMISES.

ART. 1809. Compromise is a contract by which each of the parties in interest, by giving, promising, or retaining something avoids the provocation of a suit or terminates one which has already been instituted.

1. See Arts. 274, 606, Civil Code.
2. A compromise agreement, like any other contract, may be set aside if vitiated by fraud, error, or violence. Hernandez v. Barcelon, 23 Phil. 599; Municipality of Joaquin v. Bishop of Jaro, 36 Phil. 580.
3. In order to effect a compromise there must be a definite proposition and an acceptance. McCarthy v. Barber S. S. Lines, 45 Phil. 488.
4. See Banaad v. Castañeda, 43 Phil. 163.
5. The effect of a final, mutual and complete settlement of all previous dealings between the parties is a bar to an action for damages alleged to have resulted and accrued from any transactions merged in the settlement. Asia Banking Corp. v. McCuene et al., 50 Phil. 694.

ART. 1810. A guardian cannot compromise with respect to the rights of a person who is subject to his guardianship, except in the manner prescribed in paragraph 12 of Article 269 and in Article 274 of this code.

The father or the mother, as the case may be, may compromise with respect to the property and rights of a child who is under his or her authority; but if the value of the thing involved in the compromise should exceed 2,000 pesetas, it shall be inoperative without judicial approval.

1. See Art. 164, Civil Code; Sec. 564, Code of Civil Procedure.

ART. 1811. Neither the husband nor the wife can compromise with respect to dowry property and rights, except in the cases and with the formalities established for alienating or encumbering them.

ART. 1812. Corporations which have juridical personality may make compromises only in the manner and with the requisites necessary for the alienation of their property.

1. See Arts. 35, 38, and notes under Art. 1809, Civil Code.

ART. 1813. Any civil action arising from a crime may be compromised, but the public action for the imposition of the legal penalty shall not be extinguished thereby.

1. See Arts. 1185 and 1809, Civil Code; Art. 1, Penal Code.
2. Under the Civil Code and under the Penal Code, an agreement between the offended party and the offender regarding civil liability can not affect the criminal liability. U. S. v. Guzman, 1 Phil. 138; U. S. v. Mendezona, 2 Phil. 353; U. S. v. Leaño, 6 Phil. 368; U. S. v. Bernardo, 19 Phil. 265; U. S. v. Heery, 25 Phil. 600; Hibberb v. Rohde, 32 Phil. 476.

ART. 1814. No compromise can be made with respect to the civil status of persons, or with regard to matrimonial matters, or future support.

1. See Arts. 131, 142, 151, Civil Code.

ART. 1815. A compromise shall include only matters specifically determined therein or which by necessary inference from its wording must be deemed included.

A general waiver of rights shall be understood as including only those relating to the dispute with respect to which the compromise has been made.

1. See notes under Art. 1809, Civil Code.
2. A compromise agreement must be strictly construed. Ferrer v. Ignacio, 39 Phil. 453; Vitug v. Coronel, 40 Phil. 690.

3. An agreement to arbitrate as a condition precedent to recourse to the courts is valid; but an agreement for a final determination of legal rights by arbitration is void as constituting an attempt, against public policy, to oust the courts of their jurisdiction. Puentebella v. Negros Coal Co., 50 Phil. 69.
4. See Herman v. Radio Corporation of the Philippines, 50 Phil. 490.

ART. 1816. A compromise shall have, with respect to the parties, the same authority as *res adjudicata;* but only a compromise made in court may be enforced by execution.

1. See notes under Art. 1809, Civil Code.
2. The compromise of any matter is binding, not because it is the payment of a valid claim, but because it is the settlement of a controversy. McCarthy v. Barber S. S. Lines, 45 Phil. 488.
3. Force and effect of an arbitral award. See Robinson, Fleming & Co. v. Cruz & Tan Chong Say, 49 Phil. 42.

ART. 1817. A compromise vitiated by error, deceit, violence, or forgery of documents, shall be subject to the provisions of Article 1265 of this code.

Nevertheless, neither of the parties can set up an error of fact against the other, if by reason of the compromise the latter has withdrawn from a suit already begun.

1. See Arts. 1265, 1266, and notes under Arts. 1809 and 1815, Civil Code.
2. Where the compromise is made and carried out in good faith, the fact that there was a mistake of law or fact is not sufficient reason for setting it aside. McCarthy v. Barber S. S. Lines, 45 Phil. 488.

ART. 1818. The discovery of new documents shall not be a cause for the annulment or rescission of a compromise, if there has been no bad faith.

ART. 1819. If after final judgment a party to a suit should compromise the same without knowing that final judgment has been rendered, such party may have the compromise set aside.

Ignorance of the existence of a judgment which has not become final, is not cause for attacking the compromise.

1. See Art. 1809, Civil Code.

CHAPTER II.

ARBITRATION.

ART. 1820. Persons capable of making a compromise may also submit their contentions to a third person for decision.

1. See Arts. 1263, 1810 et seq., Civil Code; Secs. 135 to 140, Code of Civil Procedure.
2. The findings of fact, but not the findings of law, made by the arbiter in his report, when approved by the judge, have the force of a decision. Sabayen v. Hernaez, 1 Phil. 587; Tan Dianseng v. Echauz, 5 Phil. 516.
3. A provision in a contract submitting all contentions exclusively to arbitration is invalid. Wahl v. Donaldson etc. Co., 2 Phil. 301; Cordoba v. Conde, 2 Phil. 445.
4. But parties may validly stipulate that the determination by arbitration of the amount due shall be a condition precedent to the commencement of an action. Chang v. Royal Exchange etc. Corp., 8 Phil. 399.
5. See also Allen v. Province of Tayabas, 38 Phil. 356; Chan Linte v. Law Union etc. Co., 42 Phil. 553; Cassels v. Reid, 9 Phil. 445.
6. In an action upon the award of arbitrators plaintiff must allege and prove the arbitration agreement, notice to defendant of plaintiff's election to arbitrate, proceedings had in accordance with the agreement, and an award within the scope of the arbitration. The award is binding upon the parties and their privies, and unless set aside upon proof of fraud or of palpable mistake of fact, operates to merge and extinguish all claims embraced in the submission. Robinson Fleming & Co. v. Cruz & Tan Chong Say, 49 Phil. 42.
7. The contracting parties may covenant to submit to arbitration any controversy which may arise concerning the contract; but such a covenant does not deprive the courts of jurisdiction to take cognizance of a cause arising therefrom, even before the difference has been submitted to arbitration, un-

less it has been expressly stipulated, or is necessarily inferred from the text of the contract, that before any action is instituted, the case must be submitted to arbitration as a condition precedent to bringing the action. Vega v. San Carlos Milling Co. Ltd., 51 Phil. 908.

ART. 1821. The provisions of the next preceding chapter with respect to compromises shall also be applicable to arbitrations.

With regard to the form of procedure in arbitration and to the extent and effects thereof, the provisions of the Law of Civil Procedure shall be observed.

1. See notes under Art. 1820, Civil Code.

TITLE XIV.

GUARANTY.

Higgins v. Higgins, 18 Off. Gaz., 2757.

CHAPTER I.

NATURE AND EXTENT OF GUARANTY.

ART. 1822. By guaranty one person binds himself to pay or perform for a third person in case the latter should fail to do so.

If the guarantor binds himself *in solidum* with the principal debtor, the provisions of Section fourth, Chapter third, Title first, of this book shall be applicable.

1. See Arts. 61, 1144 et seq., Civil Code; Art. 439, Code of Commerce.
2. Sureties on an appeal bond are not entitled to demand that the property of the judgment debtor be first exhausted before their own is levied upon. Molina v. De la Riva, 7 Phil. 345.
3. If the bond is joint and several, the bondsmen are primarily liable with the principals. Chinese Ch. of Com. v. Pua Te Ching, 16 Phil. 406; Jaucian v. Querol, 38 Phil. 707.
4. Suretyship and guaranty distinguished. Castellvi v. Sellner, 41 Phil. 142.
5. The general rules governing the requisites and the validity of contracts apply to contracts of indemnity. Asiatic Petroleum Co. v. De Pio, 46 Phil. 170.
6. Suretyship and guaranty distinguished. Maschetti v. Hospicio de San Jose, 43 Phil. 297.
7. See Ganaway v. Fidelity & Surety Co., 45 Phil. 406.
8. Necessity of acceptance by creditor; see National Bank v. Garcia, 47 Phil. 662, cited under Art. 1262.
9. One who executes a bond as principal is bound to the surety as such although he is described in the bond as the agent of another, who is also a party to the bond, and is in fact such an agent. Hing Siong v. Gui Chiong, 48 Phil. 756.

10. Where in a bond the debtor and surety have bound themselves solidarily, but limiting the liability of the surety to an amount less than that due from the principal debtor, the obligation is more onerous as to the amount not secured. Hongkong & Shanghai Banking Corp. v. Aldanese et al., 48 Phil. 990.
11. While the contract of a suretyship is ordinarily deemed to be prospective in operation it may apply to past obligations of the principal debtor if it appears that such was the intention of the parties. Bank of P. I. v. Foerster, 49 Phil. 843.
12. A bank granted to a customer a credit in account current in a maximum amount. Re-payment of the advances was guaranteed by a surety. Thereafter, without the consent of the surety, the bank increased the credit available to its customer. *Held,* that this completely released the surety. National Bank v. Veraguth, 50 Phil. 253.
13. Liability of surety on bond of executor or administrator; see Monteramos v. Paredes, XXVII Off. Gaz. 1463.

ART. 1823. Guaranty may be conventional, legal, or judicial, gratuitous, or for a valuable consideration.

It may also be constituted, not only in favor of the principal debtor, but in favor of the other guarantor, whether the latter consents to or is unaware of it, and even against his opposition.

1. See Arts. 441 et seq., Code of Commerce.

ART. 1824. Guaranty cannot exist without a valid obligation.

Nevertheless, an obligation subject to annulment by virtue of a defense purely personal to the obligor, such as that of minority, may be secured by guaranty.

From the provisions of the next preceding paragraph is excepted the case of a loan made to an unemancipated minor.

ART. 1825. Guaranty may also be contracted as a security for future debts of unknown amount, but no action can be brought against the guarantor until the debt is liquidated.

1. See Smith, Bell & Co. v. National Bank, 42 Phil. 736.
2. See Asiatic Petroleum Co. v. De Pio, 46 Phil. 170.

ART. 1826. The obligation of the guarantor may be less but not greater than that of the principal, either as to amount or as to the burdensome character of the conditions.

Should he have bound himself for more, his obligation shall be reduced to the limits of that of the principal debtor.

1. Article cited and applied. Poblete v. Lo Singco, 44 Phil. 369.
2. One who mortgages his property to secure the debt of another without expressly assuming personal liability for such debt cannot be compelled to pay the deficiency remaining due after the mortgage is foreclosed. Philippine Trust Co. v. Echaus, XXVII Off. Gaz. 1441.

ART. 1827. Guaranty shall not be presumed; it must be express and cannot be extended beyond its specified limits.

If it be simple or indefinite, it shall include not only the principal obligation but everything accessory thereto, including the costs of suit, it being understood, with respect to the latter, that the guarantor shall be liable only for those incurred after demand for payment has been made on him.

1. See Arts. 1832, 1834 and 1851, Civil Code; Art. 440, Code of Commerce.
2. A contract of guaranty cannot be presumed, and the liability of the guarantor cannot be extended by construction beyond the literal meaning of the terms employed. Alvaran v. Marquez, 11 Phil. 263; La Insular v. Machuca, 39 Phil. 567.
3. A bond to guarantee that a certain person will render a final accounting, does not include the obligation of that person to account for the funds in his hands. Uy Aloc v. Cho Jan Ling, 27 Phil. 427.
4. A bond by a contractor to a municipality, does not extend *pour autri* to guarantee the payment of materials furnished by a third person. Uy Tam v. Leonard, 30 Phil. 471.
5. Failure to produce a firearm for inspection to a policeman does not constitute a violation of the duty to "deliver it to the Government of the Philippine Islands upon demand." Government of the P. I. v. Herrero, 38 Phil. 410.

6. A contract of suretyship is not retrospective and no liability attaches to the surety for defaults occurring before the contract is entered into, unless an intent to assume such liability is shown. El Vencedor v. Canlas, 44 Phil. 699; Asiatic Petroleum Co. v. De Pio, 46 Phil. 170.
7. A contract of indemnity will be strictly construed for the purpose of confining the undertaking to its precise terms. Asiatic Petroleum Co. v. De Pio, 46 Phil. 170.
8. The obligation of a surety must be express and cannot be extended by implication beyond its specified limits. Municipality of Lemery v. Mendoza et al., 48 Phil. 415.
9. The acceptance of a surety agreement by the creditor may be presumed from the extension of credit to the principal in accordance with its terms. National Bank v. Escueta et al., 50 Phil. 991.
10. Rule requiring a strict interpretation of the contract of suretyship considered and applied. Standard Oil Co. v. Cho Siong, XXVII Off. Gaz. 3664.

ART. 1828. A party who is bound to furnish a guarantor must present a person having capacity to bind himself, and with sufficient property to answer for the obligation which he guarantees. The guarantor shall be understood to be subject to the jurisdiction of the judge of the place where the obligation is to be performed.

1. See Arts. 1263, 1829, Civil Code; Secs. 166, 177 and 377, Code of Civil Procedure.

ART. 1829. If the guarantor should become insolvent the creditor may demand the substitution of another with all the qualifications required by the next preceding article. Cases in which the creditor has required and stipulated that a specified person should be guarantor are excepted.

CHAPTER II.

EFFECTS OF GUARANTY.

SECTION I. *Effects of Guaranty between Guarantor and Creditor.*

ART. 1830. The guarantor cannot be compelled to pay

the creditor until all the property of the debtor has first been exhausted.

1. See notes under Arts. 1822 and 1831, Civil Code.
2. Article cited and applied. Seton Donna v. Inouye, 40 Phil. 728.
3. See Hospicio de San Jose v. Fidelity & Surety Co., 43 Phil. 297.
4. Defendant guaranteed the debt of a civil partnership composed of two members. Upon being sued, he asserted the right of prior exhaustion of the principal's property. One of the defendants died and the case was dismissed as to him. Judgment was rendered against the remaining defendant for one half of the debt, which was satisfied by him. The creditor, after seeking unsuccessfully to recover the debt from the estate of the deceased partner, instituted a new action against the guarantor. Held, that the action will lie, the guaranteed obligations being separable. Manila R. R. Co. v. Salmon, 48 Phil. 132.

ART. 1831. It shall not be necessary to exhaust the debtor's property:

1. If the guarantor has expressly renounced it;
2. If he has bound himself *in solidum* with the debtor;
3. In case of the bankruptcy of the debtor;
4. When the debtor cannot be sued within the Kingdom.

1. See notes under Arts. 1822 and 1830, Civil Code.
2. When the obligations of the surety and the principal are joint and several (*solidary*) the obligee is not bound to exhaust the property of the principal before having recourse to that of the surety. Juacian v. Querol, 38 Phil. 707.
3. The sureties on a supersedeas bond are jointly and severally liable with the principal debtor. Almarza v. Salas, 47 Phil. 724.
4. Paragraph 3 does not include mere insolvency. Cacho v. Valles, 45 Phil. 107.
5. See Machetti v. Hospicio de San Jose, 43 Phil. 297.

ART. 1832. In order that the guarantor may avail himself of the benefit of the exhaustion of the principal's property he must demand it of the creditor as soon as the latter makes demand on him for payment, and point out to him

saleable property of the debtor in Spanish territory sufficient in amount to cover the debt.

1. See notes under Arts. 1822 and 1830, Civil Code.
2. The properties pointed out by the sureties as belonging to the principal debtor were encumbered and in the possession of third persons. Held, no right of levy or discussion could be claimed. Arroyo v. Hilario Jungsay, 34 Phil. 589.

ART. 1833. After the guarantor has complied with all the conditions of the preceding article, if the creditor neglects to levy upon the property of the principal so designated he shall be liable, to the extent of the value of such property, for the insolvency of the debtor arising from such negligence.

1. See Arts. 1104, 1193, Civil Code.

ART. 1834. The creditor may sue the guarantor jointly with the principal debtor, but shall always be required to have the property of the principal first exhausted, even if judgment is rendered against both of them.

1. See notes under Art. 1832, Civil Code.

ART. 1835. A compromise made by the guarantor with the creditor shall have no effect with respect to the principal debtor.

Neither shall a compromise by the principal against the will of the guarantor be of effect as against the latter.

1. See Art. 1193, Civil Code.

ART. 1836. The guarantor of a guarantor shall enjoy the benefit of an exhaustion of property with regard to such guarantor as well as to the principal debtor.

ART. 1837. Should there be several guarantors of one debtor and for the same debt, the liability therefor shall be divided among them all. The creditor can claim from each guarantor only his proportional part unless liability *in solidum* has been expressly stipulated.

The right to the benefit of division against the co-guarantors for their respective shares ceases in the same cases and for the same reason as that to an exhaustion of property against the principal debtor.

1. Article cited and applied. Cacho v. Valles, 45 Phil. 107.

SECTION II. *Effects of Guaranty as between the Debtor and the Guarantor.*

ART. 1838. A guarantor who pays for the debtor shall be indemnified by the latter.

The indemnity shall consist of:

1. The total amount of the debt;
2. The legal interest on the same from the day on which the payment was made known to the debtor, even if it did not produce interest for the creditor;
3. Any expenses incurred by the guarantor after the latter has informed the debtor that payment has been demanded of him;
4. Damages, if any have been caused.

The provisions of this article shall be applicable even should the guaranty have been undertaken without the knowledge of the debtor.

1. See Arts. 1106 et seq., 1168, 1193, 1823, and notes under Art. 1839, Civil Code.
2. Article cited. Saenz v. Yap Chuan, 16 Phil. 76; Kunzle & Streiff v. Tan Sunco, 16 Phil. 670.
3. As a necessary part of his damages, an indemnitee may also recover from his indemnitor interest and costs. Tagawa v. Aldanese, 43 Phil. 852.
4. See Perez v. Barcia, XXVII Off. Gaz. 239.

ART. 1839. By virtue of such payment the guarantor is subrogated to all the rights which the creditor had against the debtor.

Should the guarantor have compromised with the creditor, he cannot demand of the debtor more than the amount actually paid.

1. See notes under Arts. 1822 and 1838, Civil Code.

2. The right of subrogation is absolute even against the objection of the principal. Somes v. Molina, 9 Phil. 653.
3. See Manila Engineering Co. v. Cranston, 45 Phil. 128.

ART. 1840. If the guarantor pays without informing the debtor, the latter may use against him all the defenses which he might have set up against the creditor at the time the payment was made.

ART. 1841. If the debt was not immediately demandable and the guarantor paid it before it was due, he cannot require the debtor to reimburse him until the period has expired.

1. See Arts. 1125, 1126, Civil Code.

ART. 1842. If the guarantor pays the debt without notifying the debtor, and the latter, not having knowledge of the payment, also pays it, the former shall have no remedy against the debtor, but only against the creditor.

ART. 1843. The guarantor, even before paying, may proceed against the principal debtor:

1. When he is sued for payment;
2. In case of bankruptcy or insolvency;
3. When the debtor has undertaken to relieve him from the guaranty within a specified term, and this term has expired;
4. When the debt has become demandable because of the expiration of the term within which it should have been paid;
5. At the end of ten years, when the principal obligation is not to mature at any fixed time, unless it be of such a nature that it cannot be satisfied until after the expiration of a period greater than ten years.

In all these cases the guarantor's right of action is to obtain his release from the guaranty, or security to protect him against any proceedings on the part of the creditor and against danger of insolvency of the debtor.

1. See Art. 1852, Civil Code; Arts. 874 et seq., 883, Code of Commerce.
2. See notes under Arts. 1838 and 1839, Civil Code.
3. The creditor delayed the collection of the debt, notwithstanding it was overdue. Under par. 4 of this article, the guarantor may take action against the debtor to protect himself against the latter's insolvency. Banco Español v. Donaldson etc. Co., 5 Phil. 418.
4. See also Kuenzle & Streiff v. Tan Sunco, 16 Phil. 670.
5. Article cited and applied. Tuason v. Machuca, 46 Phil. 561.
6. Default on the part of the principal does not authorize the surety to obtain a judgment against him, except for the limited purpose expressly authorized by the last paragraph of this article. Perez v. Barcia, XXVII Off. Gaz. 239.

SECTION III. *Effects of Guaranty as between the Co-Guarantors.*

ART. 1844. When there are two or more guarantors for the same debtor and for the same debt, the one who has paid it may demand of each of the others the part for which he is proportionately liable.

If any one of them should be insolvent, his part shall be paid by all in the same proportion.

In order that the provisions of this article may be applicable, the payment must have been made by virtue of judicial proceedings or after the principal debtor has become insolvent or bankrupt.

1. See Arts. 874–878, Code of Commerce.
2. See notes under Art. 1838, Civil Code.

ART. 1845. In cases falling under the next preceding article, the co-guarantors may set up against the one who paid the same defenses which would have been available to the principal debtor against the creditor, except such as are purely personal to the debtor.

ART. 1846. A sub-guarantor, in case of the insolvency of the guarantor for whom he bound himself, is liable to the co-guarantors upon the same terms as was the guarantor.

CHAPTER III.

EXTINGUISHMENT OF GUARANTY.

ART. 1847. The obligation of the guarantor shall expire at the same time as that of the debtor, and for the same causes as all other obligations.

1. Article cited and applied. Banco Español v. Donaldson etc. Co., 5 Phil. 418; Lack v. Alonso, 14 Phil. 630.
2. The extension of the agency to various other places not mentioned in the original contract relieves the agent's surety from liability for the agent's indebtedness under the changed contract. Asiatic Petroleum Co. v. Hizon, 45 Phil. 532.
3. See Bank of P. I. v. Gooch, 45 Phil. 514.

ART. 1848. A merger of the rights of the debtor and of the guarantor when one of them inherits from the other shall not extinguish the obligation of the sub-guarantor.

1. See Art. 1193, Civil Code.

ART. 1849. If the creditor voluntarily accepts real estate or other property in payment of the debt, even should he afterward lose it by eviction, the guarantor shall be released.

ART. 1850. The release of one of the guarantors by the creditor without the consent of the others, shall benefit all the others to the extent of the obligation of the guarantor to whom it has been granted.

ART. 1851. An extension granted to the debtor by the creditor, without the consent of the guarantor, extinguishes the latter's liability.

1. Mere delay in suing for the collection of a debt does not release the surety. De la Rama v. Benedicto, 5 Phil. 512; Banco Español v. Donaldson etc. Co., 5 Phil. 418; Manzano v. Tan Sunco, 13 Phil. 183; Hongkong & Sh. Bank v. Aldecoa & Co., 30 Phil. 255.
2. See Villa v. Bosque, 49 Phil. 126, cited under Art. 1143.

3. See National Bank v. Veraguth, 50 Phil. 253, cited under Art. 1822.
4. The guarantor of the obligations of a building contractor is not discharged by an extension of the time for the completion of the work, although made without his consent. Hospicio de San Jose v. Fidelity etc., Co. XXVII Off. Gaz. 4322.

ART. 1852. The guarantors, even when they are bound *in solidum*, shall be released from their obligation whenever by reason of any act of the creditor they cannot be subrogated to the rights, mortgages, and privileges held by the latter.

1. See Molina v. De la Riva, 8 Phil. 578.

ART. 1853. The guarantor may set up against the creditor all the defenses available to the principal debtor and which are inherent in the debt; but not those which are purely personal to the debtor.

1. See notes under Arts. 1822 and 1851, Civil Code.

CHAPTER IV.

LEGAL AND JUDICIAL SURETYSHIP.

ART. 1854. Sureties in an undertaking or bond required by provision of law or by a judicial decree must possess the qualifications prescribed in Article 1828.

1. See General Order No. 58; Secs. 67 et seq., 76, 88, 144, 150, Code of Civil Procedure; Act No. 536.

ART. 1855. A person required to give security in any case falling under the terms of the next preceding article who is unable to furnish sureties may, in lieu thereof, give a mortgage or pledge if found sufficient to cover his obligation.

ART. 1856. The surety on a bond given in a judicial pro-

ceeding cannot demand that the property of the principal debtor be first exhausted.

Sub-sureties on such bonds shall not be entitled to demand the prior exhaustion of the property of the principal debtor or of the surety.

1. See notes under Art. 1822, Civil Code.

TITLE XV.

CONTRACTS OF PLEDGE, MORTGAGE, AND ANTICHRESIS.

CHAPTER I.

PROVISIONS COMMON TO PLEDGE AND MORTGAGE.

ART. 1857. The following are essential requisites of the contracts of pledge and of mortgage:

1. That they be constituted to secure the performance of a principal obligation;

2. That the thing pledged or mortgaged be owned by the person who pledges or mortgages it;

3. That the persons who constitute the pledge or mortgage have the free disposition of their property, or should they not have it, that they be legally authorized for the purpose.

Third persons, strangers to the principal obligation, may secure the latter by pledging or mortgaging their own property.

1. See Arts. 126, 146, Mortgage Law.
2. Requisites of a mortgage or pledge. U. S. v. Mendezona, 1 Phil. 696; Banco Español Fil. v. Peterson, 7 Phil. 409; Heinzen & Co. v. Peterson, 10 Phil. 339; Arenas v. Raymundo, 19 Phil. 46; Ocejo, Perez & Co. v. Int. Bank, 37 Phil. 640.
3. Difference between sale with *"pacto de retro"* and mortgage. Basilio v. Encarnacion, 5 Phil. 360; Mortera v. Martinez, 14 Phil. 541; Perez v. Cortes, 15 Phil. 211; Tuason v. Goduco, 23 Phil. 342.
4. See also Varela v. Finnick, 9 Phil. 482; Borcelis v. Golingco, 27 Phil. 560; Mahoney v. Tuason, 39 Phil. 952.
5. The pledgor has no right to pay the loan before the expiration of its term without the consent of the pledgee unless the term was established for the benefit of the debtor. (Art. 1127). Sarmiento v. Javellana, 43 Phil. 880.
6. See Asia Banking Corp. v. Herridge, 45 Phil. 580.

7. A chattel mortgage, although in form a conditional sale, is, like a pledge, security for the performance of the principal obligation; and if upon a foreclosure, the mortgage chattels do not produce a sum sufficient to discharge the debt, an action will lie against the mortgagor for the deficiency. Bank of P. I. v. Outanga Lumber Co., 47 Phil. 20; Manila T. & S. Co. v. Tamaraw Plantation Co., 47 Phil. 513.
8. A corporation mortgaged its real property to its president, to secure him against loss upon a contract of suretyship. Subsequently, the president, on behalf of the corporation, executed a first mortgage to one of its creditors. This mortgage could not be recorded because of the prior inscription of the mortgage to the president. Held, that the president's personal mortgage must be cancelled to permit registration as a superior lien of the mortgage executed by him on behalf of the corporation. Asia Banking Corp. v. Walter E. Olsen & Co., 48 Phil. 529.
9. See Ledesma v. Del Rosario, 49 Phil. 35, cited under Art. 1528.
10. A mortgage upon real estate to secure advances to be made from time to time, although no definite maximum sum is stated, is valid if it clearly appears that such was the intention of the parties. Lim Julian v. Lutero, 49 Phil. 703.
11. A mortgage executed by a corporation under receivership to a creditor while the corporation was in the hands of a receiver, but not definitely perfected until after the lifting of the receivership, pursuant to implied promises that the creditor would continue to operate the corporation, at a time when the creditor was a dominating influence in the affairs of the corporation and the hands of the other creditors were tied, cannot be considered the free act of the corporation. National Bank v. Philippine Vegetable Oil Co., 49 Phil. 857.
12. A second lien holder is entitled to redeem land from a first mortgage by payment of the mortgage debt. Govt. of the P. I. v. Serna, 50 Phil. 624.
13. A mortgage upon property of a public utility given without the approval of the Public Utility Commission is void; but it may be validated by the subsequent approval of the Commissioner provided that the mortgage has otherwise been executed in accordance with law. Zamboanga Transportation Co. v. Public Utility Commission, 50 Phil. 237.
14. An heir of a deceased person by whom real property was mortgaged to the National Bank may redeem it at any time within one year after foreclosure. De Castro v. Olondriz, 50 Phil. 725.

15. The express authorization by the mortgagee to the mortgagor to put another mortgage on the property to secure a debt to a third person does not affect the lien of the first mortgage. Santos v. Macapinlac, 51 Phil. 224.
16. An unauthorized chattel mortgage by a public utility may be validated by its approval *nunc pro tunc* by the Public Utility Commissioner. Zamboanga Transportation Co. v. Bachrach Motor Co., XXVII Off. Gaz. 2747.

ART. 1858. It is also of the essence of these contracts that when the principal obligation matures, the things of which the pledge or mortgage consists may be alienated to pay the creditor.

1. See Art. 1872, Civil Code; Art. 131, Mortgage Law.
2. On foreclosure at public sale the property must be adjudicated to the highest bidder, irrespective of the price agreed upon in the mortgage contract. Bank of the P. I. v. Yulo, 31 Phil. 476.
3. When mortgaged real estate is sold for the payment of taxes without notice to the mortgagee, the buyer takes the property subject to the lien of the mortgage. Lopez v. Director of Lands, 47 Phil. 23.
4. A stipulation in a mortgage of the real property authorizing the mortgagee upon default of the mortgagor to sell the mortgaged property at public auction, without judicial proceedings and authorizing the mortgagee to become a bidder at such sale is valid. Lopez et al. v. El Hogar Filipino, 47 Phil. 249.
5. The owner of a senior chattel mortgage does not waive the priority of his lien by recovering judgment on the mortgage debt and causing an execution to be levied on the mortgaged property; nor is the case altered by the circumstance that upon beginning his action he caused an attachment to be issued and levied upon the mortgaged property. Tizon v. Valdez et al., 48 Phil. 910.
6. Extrajudicial foreclosure of mortgage under power of sale; see Act 3135.
7. Alleged inadequacy of the price obtained on foreclosure sale held not in itself sufficient to require a reversal of the order of the lower court approving the foreclosure sale. Bank of P. I. v. Green, XXVII Off. Gaz. 3473.

ART. 1859. The creditor may not appropriate to himself the things given in pledge or mortgage, or dispose of them.

1. See notes under Art. 1858, Civil Code.
2. The mortgagee cannot appropriate to himself the property mortgaged upon the maturity of the obligation. Foreclosure proceedings must be taken. Perez v. Cortes, 15 Phil. 211; Ranjo v. Salmon, 15 Phil. 436; Tuazon v. Goduco, 23 Phil. 342; Mahoney v. Tuazon, 39 Phil. 952; Alcantara v. Alinea, 8 Phil. 111.
3. Article cited and construed. Hogar Filipino v. Paredes, 45 Phil. 178.
4. While the law forbids the mortgagee, upon breach of the principal obligation, to appropriate the property mortgaged or pledged, an agreement by the mortgagor that in the event of his failure to pay the debt when due, he will convey the mortgaged property to the creditor in payment is valid and enforceable. Dalay v. Aquiatin et al., 47 Phil. 951.

ART. 1860. The pledge or mortgage shall be indivisible, even if the debt should be divided among the successors in interest of the debtor or of the creditor.

Therefore, the heir of a debtor who has paid a part of the debt cannot demand that the pledge or mortgage be proportionately extinguished before the debt has been paid in full.

Neither can the heir of a creditor, who has received his part of the debt, return the pledge or cancel the mortgage to the prejudice of the other heirs who have not been paid.

From these provisions are excepted cases in which several things are given in mortgage or pledge and each of them secures only a specified part of the credit.

The debtor in such case shall be entitled to have the pledge or mortgage extinguished from time to time as he pays the part of the debt for which each thing is specially liable.

1. See Arts. 1831 and 1876, Civil Code; Art. 122, Mortgage Law.

ART. 1861. Obligations of every kind, whether pure or subject to suspensive or resolutory conditions may be secured by pledge or mortgage.

1. See Art. 142, Mortgage Law.

ART. 1862. A promise to constitute a pledge or mortgage gives rise only to a personal action between the contracting parties, without prejudice to the criminal liability which is incurred by a person who defrauds another by offering in pledge or mortgage as unincumbered things which he knew were incumbered, or by pretending to be the owner of things which do not belong to him.

1. See Art. 1451, Civil Code; Art. 537, Penal Code.
2. Article cited and applied. Mitsui Bussan Kaisha v. Hong Kong Bank, 36 Phil. 27.
3. In an action to compel execution of a mortgage to secure a matured obligation, the court may give judgment for the debt and declare it to be a lien on the property which should have been mortgaged. Laplana v. Garchitorena, 48 Phil. 163.

CHAPTER II.

PLEDGE.

ART. 1863. In addition to the requisites mentioned in Article 1857, it shall be necessary, in order to constitute the contract of pledge, that the pledge be placed in the possession of the creditor or of a third person appointed by common consent.

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1. See Arts. 430, 438, 1911, 1157, 1926, and notes under Art. 1857, Civil Code; Arts. 321 et seq., Code of Commerce.
2. Actual transfer of possession is essential to the creation of a pledge. U. S. v. Terrell, 2 Phil. 222; McMicking v. Martinez, 15 Phil. 204; Williams v. McMicking, 17 Phil. 408; San Vicente v. Reyes, 19 Phil. 524.
3. Facts examined and held to constitute sufficient delivery. Banco Español v. Peterson, 7 Phil. 409; Heinzen & Co. v. Peterson, 10 Phil. 339.
4. Under Act 1508, mere registration of the chattel mortgage without delivery is sufficient. Meyers v. Thein, 15 Phil. 303.
5. See also Phil. Trust Co. v. National Bank, 42 Phil. 424.
6. A valid pledge requires actual delivery of the pledged property, and mere symbolic delivery is not sufficient. Betita v. Ganzon, 49 Phil. 87.

7. A pledge of personal property, although evidenced by a written agreement, is invalid as to third persons, unless actual physical possession of the property is taken and held by the creditor; and such an agreement, without possession, is equally invalid as a chattel mortgage, unless it is duly recorded in the manner prescribed by the Chattel Mortgage Law. Pacific Commercial Co. v. National Bank, 49 Phil. 236.

ART. 1864. Any personal property which may be an object of commerce may be given as a pledge, provided it be susceptible of possession.

ART. 1865. No pledge shall be effective as against a third person unless the certainty of its date is established by a public instrument.

1. See notes under Art. 1863, Civil Code.
2. If a pledge is not evidenced by public instrument, the rights of third persons are not affected, notwithstanding delivery to the creditor of the thing pledged. Ocejo, Perez & Co. v. International Bank, 37 Phil. 631; Tec Bi & Co. v. Chartered Bank, 41 Phil. 596.
3. See also Mahoney v. Tuason, 39 Phil. 952.
4. An assignee is a "third person" within the meaning of this article. Te Pate v. Ingersoll, 43 Phil. 394.
5. See Asia Banking Corp. v. Herridge, 45 Phil. 580.

ART. 1866. The contract of pledge entitles the creditor to retain the thing pledged in his possession or in that of the third person to whom it may have been delivered, until his credit is paid.

If, while the pledge is in the possession of the creditor, the debtor should become indebted to him in another amount, demandable before the first debt has been paid, the creditor may continue to hold the pledge until both credits are paid him, even should it not have been stipulated that the pledge should be security for the second debt.

1. See Arts. 1730, 1922 and notes under Art. 1863, Civil Code.
2. Article cited and applied. San Vicente v. Reyes, 19 Phil. 524.

ART. 1867. The creditor must take care of the thing giv-

en in pledge with the diligence of a good father of a family; he shall be entitled to recover any expenses incurred for its preservation and shall be liable for its loss or deterioration, in accordance with the provisions of this code.

ART. 1868. If the pledge produces interest, the creditor shall set off that collected by him against that which may be due him, and if none is due him, or to the extent that it exceeds that legally due, he shall credit it to the principal.

ART. 1869. As long as the thing given in pledge is not taken under the power of eminent domain, the debtor continues to be the owner thereof.

Nevertheless, the creditor may enforce by action the rights of the owner of the thing pledged for the purpose of recovering it from or defending it against third persons.

1. See Art. 321, Code of Commerce.
2. See notes under Art. 1863, Civil Code.

ART. 1870. The creditor cannot make use of the thing given in pledge without the authorization of the owner, and should he do so, or misuse it in any other manner, the latter may demand that it be placed in deposit.

ART. 1871. The debtor cannot demand the restitution of the thing pledged, against the will of the creditor, until he has paid the debt and the accrued interest and reimbursed the creditor's expenditures, when the latter is entitled to recover them.

1. See Arts. 320, 324, Code of Commerce.

ART. 1872. If the debt is not paid when due the creditor may proceed, before a notary, to sell the pledge. The sale must be made at public auction, and after notice to the debtor and to the owner of the pledge, if other than the debtor.

If the pledge should not be sold at the first auction a second one, with the same formalities, may be held; and should

no result be attained the creditor may become the owner of the pledge. In such case he shall be obliged to give an acquittance for the full amount of his credit.

If the pledge should consist of securities quoted on exchange, they shall be sold in the manner prescribed in the Code of Commerce.

1. See Art. 1384, and notes under Arts. 1859 and 1869, Civil Code; Art. 323, Code of Commerce.
2. Article cited and applied. Hogar Filipino v. Paredes, 45 Phil. 178.

ART. 1873. *Montes de Piedad* and other public institutions which regularly loan money on pledges, shall be governed by the special laws and regulations relating thereto, and subsidiarily by the provisions of this title.

1. See Arts. 464 and 1109, Civil Code.
2. See Casal v. Moreta, 7 Phil. 169.

CHAPTER III.

MORTGAGE.

ART. 1874. The following property only can be the subject-matter of a mortgage contract:

1. Real property;
2. Rights *in rem*, alienable in accordance with law, imposed upon real property.

1. See Arts. 106 et seq., Mortgage Law.
2. See notes under Art. 1875, Civil Code.
3. As to power of husband to mortgage wife's interest in community property, after a divorce has been granted her, see Aenlle v. Rheims, XXVII Off. Gaz. 867.

ART. 1875. In addition to the requisites mentioned in Article 1857, it shall be indispensable, in order that a mortgage may be validly constituted, that the instrument by which it is created be recorded in the Registry of Deeds.

The persons in whose favor the law creates a mortgage

shall have no right other than to demand the execution and registration of the instrument by which the mortgage is to be evidenced; this without prejudice to the provisions of the Mortgage Law in favor of the State, provinces, and towns for the amount of the last year's taxes and in favor of insurers for the premium of the insurance.

1. See Arts. 2 et seq., 12, 23 et seq., 126, 158 et seq., 217 et seq., Mortgage Law.
2. See notes under Arts. 1857 and 1859, Civil Code.
3. Inscription in the registry is an essential requisite of a mortgage. Olivares v. Hoskyn, 2 Phil. 689; Suzara v. Martinez, 17 Phil. 254; Lozano v. Tan Suico, 23 Phil. 16; Borcelis v. Golingco, 27 Phil. 560; Legarda v. Saleeby, 31 Phil. 590.
4. Other requisites. Jumeno v. Lizares, 17 Phil. 112; Gamboa v. Ronzalez, 17 Phil. 381; Tobias v. Enrico, 22 Phil. 394.
5. The invalidity of a mortgage does not affect the principal obligation. Cia. Gral. v. Jeanjaquet, 12 Phil. 195.
6. Registration is essential to the creation of a mortgage on real estate. Lim Julian v. Lutero, 49 Phil. 703.
7. Registration of mortgages and deeds of trust executed by public service corporations; see Act 2243.

ART. 1876. A mortgage directly and immediately subjects the property on which it is imposed, whoever its possessor may be, to the fulfillment of the obligation for the security of which it was created.

1. See Arts. 105, 110 et seq., Mortgage Law.
2. Article cited and applied. Tuason v. Orozco, 5 Phil. 596; Lack v. Alonso, 14 Phil. 630.
3. Article cited and applied. McCullough v. Veloso, 46 Phil. 1.
4. The owner of a senior chattel mortgage does not waive the priority of his lien by recovering judgment on the mortgage debt and causing an execution to be levied on the mortgaged property. Nor is the case altered by the circumstance that upon beginning his civil action he causes an attachment to be issued and levied on such property. Tizon v. Valdez, 48 Phil. 910.
5. As to relative rights of unpaid vendors of personal property incorporated into realty and a mortgagee, see Unson v. Urquijo et al., 50 Phil. 160, cited under Art. 1922.

6. A mortgagee of registered land for value and in good faith, cannot be deprived of his rights by the re-opening of the decree of registration. Angelo v. Director of Lands, 49 Phil. 838.
7. A second mortgagee acquires only a mortgage upon the equity of redemption held by the mortgagor. If not made a party to the foreclosure of the first mortgage the second mortgagee retains his right of redemption. Sun Life etc., Co. v. Diaz, XXVII Off. Gaz. 345.

ART. 1877. A mortgage includes all natural accessions, improvements, growing fruits, and rents not collected when the obligation falls due, and the amount of any indemnities paid or due the owner by the insurers of the mortgaged property or by virtue of the exercise of the power of eminent domain, with the declarations, amplifications, and limitations established by law, whether the estate continues in the possession of the person who mortgaged it or whether it passes into the hands of a third person.

1. See Arts. 110, 111, 112, Mortgage Law.
2. The mortgage of realty includes all machinery which, subsequent to the creation of the mortgage, is permanently installed upon the mortgaged premises. Bischoff v. Pomar, 12 Phil. 690.
3. Land with building, mortgaged. Later the building was torn down, and another placed in its stead. Held, mortgage attached to the new building. Phil. Sugar v. Camps, 36 Phil. 85.
4. See also Cea v. Villanueva, 18 Phil. 538.
5. Article cited and construed. Serra v. National Bank, 45 Phil. 907.

ART. 1878. A credit secured by mortgage may be alienated or assigned to a third person, in whole or in part, with the formalities required by law.

1. See Art. 152, Mortgage Law; Act No. 496, Sec. 127.
2. The assignment of a mortgage is valid although not registered. Lopez v. Alvarez, 9 Phil. 28.

ART. 1879. The creditor may demand from any third

person in possession of the mortgaged property the payment of the part of the credit secured by such property, in the manner and form established by law.

1. See Arts. 27, 120, 125 et seq., 132, Mortgage Law.
2. Article cited and applied. McCullough v. Veloso, 46 Phil. 1.

ART. 1880. The form, extent, and effect of mortgages, as well as all matters relating to their creation, modification, and extinction, and all other matters which have not been included in this chapter, shall be subject to the provisions of the Mortgage Law, which continues in force.

1. See Arts. 128 et seq., Mortgage Law; Sec. 127, Act No. 496; Secs. 254 to 261, Code of Civil Procedure.
2. A recorded mortgage, taken in good faith, upon registered land held under a title which for reasons not disclosed by the register is subject to defeasance at the instance of the mortgagor's vendor is valid as against the latter. Martinez de Gomez v. Jugo et al., 48 Phil. 118.
3. Land mortgaged to the Philippine National Bank is subject to redemption at any time within one year from the date of the confirmation by the court of the foreclosure sale. Gonzalez v. National Bank, 48 Phil. 824.

CHAPTER IV.

ANTICHRESIS.

ART. 1881. By antichresis the creditor acquires the right to receive the fruits of real property belonging to his debtor, subject to the obligation of applying them to the payment of the interest, if any, and afterwards to the principal of his credit.

1. *Pacto Comisorio.* Alcantara v. Alinea, 8 Phil. 111.
2. Distinction between mortgage and antichresis. Davis v. Neyra, 24 Phil. 417; De la Vega v. Ballilos, 34 Phil. 683; Barretto v. Barretto, 37 Phil. 234; Aldea v. Fuentes, 24 Phil. 303.
3. Contract held one of antichresis. Distor v. Dorado, 46 Phil. 162.

4. While under the contract of antichresis, nonpayment of the debt does not vest the ownership of the mortgaged property in the creditor, nevertheless the debtor cannot recover the usufruct without first paying what he owes his creditor. Macapinlac v. Gutierrez, 43 Phil. 770.
5. The rights and duties of the creditor, under a contract of antichresis, are similar to those of the mortgagee in possession under the equity jurisdiction of England and America. Diaz et al. v. De Mendezona, 48 Phil. 666.
6. The distinguishing peculiarity of the contract of antichresis is that the creditor acquires the right to receive the fruits of the property of his debtor, subject to the obligation of applying them to the payment of interest, if any, and thereafter to the principal of his credit. Alojado v. Lim Siongco et al., 51 Phil. 339.

ART. 1882. The creditor is obliged to pay the taxes and charges which burden the estate, in the absence of an agreement to the contrary.

He shall also be obliged to pay any expenses necessary for its preservation and repair.

Any sums he may expend for such purposes shall be chargeable against the fruits.

1. See Art. 356 and notes under Art. 1881, Civil Code.

ART. 1883. The debtor cannot recover the enjoyment of the property without first paying in full what he owes to his creditor.

But the latter, in order to free himself from the obligations imposed upon him by the next preceding article, may at any time compel the debtor to re-enter upon the enjoyment of the estate, in the absence of an agreement to the contrary.

1. See notes under Art. 1881, Civil Code.
2. Reimbursable expenditures by creditor; see Magdagñal v. Lichauco, 51 Phil. 894.

ART. 1884. The nonpayment of the debt within the term agreed upon does not vest the ownership of the property in the creditor. Any stipulation to the contrary shall be void.

But in such case the creditor may demand, in the manner prescribed by the Law of Civil Procedure, the payment of the debt or the sale of the realty.

1. See Arts. 334, 1275, 1859, and notes under Art. 1001, Civil Code.

ART. 1885. The contracting parties may stipulate that the interest of the debt be set off against the fruits of the estate given in antichresis.

1. See Art. 1868, Civil Code.
2. Article cited and applied. De la Vega v. Ballilos, 34 Phil. 683.

ART. 1886. The last paragraph of Article 1857, the second paragraph of Article 1866, and Articles 1860 and 1861 are applicable to this contract.

1. See Art. 1868, Civil Code.
2. Article cited and applied. De la Vega v. Ballilos, 34 Phil. 683.

TITLE XVI.

OBLIGATIONS INCURRED WITHOUT AGREEMENT.

CHAPTER I.

QUASI CONTRACTS.

ART. 1887. Quasi contracts are licit and purely voluntary acts which create an obligation on the part of the actor in favor of a third person, and, at times, a reciprocal obligation between the parties concerned.

[1089]

1. Improvements for sanitary purposes were made by plaintiff in defendant's building at the request of defendant's father, with defendant's knowledge and tacit consent. Held, there was an implied contract to pay. Smith v. Lopez, 5 Phil. 78.
2. See also Leung Ben v. O'Brien, 38 Phil. 182, for discussion of distinction between implied contracts and quasi-contracts.

SECTION 1. *Management of Another's Business.*

ART. 1888. Any person who voluntarily assumes the agency or the management of the affairs of another, without his authorization, shall continue to attend to the same until the completion of the undertaking and its incidents, or call upon the interested person to relieve him of it, should the latter be in a condition to do so.

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1. See notes under Art. 1887, Civil Code.
2. The owners were minors at the time their right to repurchase certain property was about to expire. A third person intervened and repurchased the property for the minors. Held, that the case comes under this article. Sison v. Balgos, 34 Phil. 885.
3. See also Gutierrez Hnos. v. Orense, 28 Phil. 571.

ART. 1889. A *negotiorum gestor* must carry out his undertaking with all the diligence of a good father of a family

and shall be liable for any damages, which through his fault or negligence may be caused to the owner of the property or business whose management he assumes.

Nevertheless, the courts may reduce the amount of the indemnity, according to the circumstances of the case.

1. See Manila Railroad Co. v. Cia. Transatlantica, 38 Phil. 875.

ART. 1890. If the *negotiorum gestor* should delegate any or all of his duties to another person, he shall answer for the acts of the delegate, without prejudice to the direct liability of the latter to the owner of the business.

The liability of the *negotiorum gestores,* should there be two or more, shall be solidary.

ART. 1891. The *negotiorum gestor* shall be liable for fortuitous events should he undertake risky transactions which the owner was not in the habit of undertaking, or should he have relegated the interests of the latter in favor of his own.

ART. 1892. The ratification of the management by the owner of the business produces the effects of an express agency.

1. See Arts. 1259, 1310 et seq., and notes under Arts. 1887 and 1888, Civil Code.
2. At first L. acted for M. as agent in the sale of M's land without authority from M. Later, M. ratified L's acts. Held, that L. became liable to account for all the money obtained by him in the sale of M's land, and his failure to do so made him guilty of *estafa.* U. S. v. Lim, 36 Phil. 682.

ART. 1893. The owner of property or of a business who avails himself of the advantages of the administration of another, even if he has not expressly ratified it, shall be liable for the obligations contracted for his benefit, and shall indemnify the *gestor* for any necessary and useful expenses which he may have incurred and for any damage he may have suffered in the discharge of his duties.

The same obligation shall rest upon such owner when the management of his affairs has been assumed to avoid any imminent or manifest damage thereto, even though no benefit results therefrom.

1. See notes under Arts. 1887 and 1888, Civil Code.

ART. 1894. When, without the knowledge of the person who is bound to give support to a dependent, a stranger supplies it, the latter shall be entitled to recover the same from the former, unless it appears that he gave it out of charity, and without the expectation of recovering it.

Funeral expenses, in proportion to the circumstances of the deceased and to the customs of the locality, must be paid by those who would have been obliged to support the deceased during his lifetime even though he should have left no property.

1. See Arts. 144, 840, 902, 903, Civil Code.
2. One who advances money for living expenses to a married woman who is receiving from her husband an allowance reasonably proportionate to his means, cannot recover from the husband the money so supplied. Ramirez et al. v. Redfern, 49 Phil. 849.

SECTION II. *Payments Received though Not Owing.*

ART. 1895. If a thing is received when there was no right to claim it and which, through an error, has been unduly delivered, an obligation to restore the same arises.

1. See Arts. 1085, 1126, 1158, 1266, 1756, 1798 and 1842, Civil Code.
2. See Oquiñena v. Muertegui, 32 Phil. 261.
3. See National Bank v. Welch, Fairchild & Co., 44 Phil. 780.

ART. 1896. Any person who accepts a payment not due, should he have acted in bad faith, must pay interest thereon at the legal rate if the payment be of money, or restore the fruits collected or which might have been collected, if the thing received produces any.

He shall furthermore be liable for any damage the thing may have suffered from any cause whatsoever and for any

damages caused to the person who delivered it, until he recovers it. He shall not be liable for fortuitous events which would have affected the thing in the same manner had it remained in the possession of the person who delivered it.

ART. 1897. Any person who, in good faith, should have accepted a payment of a certain and determinate thing not due, shall only be liable for the impairment or loss of the latter and its accessories, in so far as he may have enriched himself by it. Should he have alienated it he shall return the price or assign the action to recover it.

1. See Arts. 433, 451, 457, 1227, Civil Code.

ART. 1898. With respect to the payment for improvements and expenses made or incurred by the person who unduly received the thing, the provisions of Title V of Book second shall govern.

1. See Art. 452, Civil Code.

ART. 1899. Any person who, believing in good faith that the payment was made on account of a lawful and existing credit, should have destroyed the evidence thereof or allowed the action to prescribe, or abandoned the pledges or cancelled the guaranties of his right, shall not be required to make restitution. The person who has unduly made the payment may proceed only against the true debtor or the sureties with respect to whom the action may still be enforcible.

1. See Arts. 433, 1842, Civil Code.

ART. 1900. The proof of payment is incumbent upon the person who claims to have made the same. The burden of proving that the payment was made by mistake shall also rest upon him, unless the defendant denies having received the thing claimed from him. In such case, if the plaintiff should have proven the delivery, he shall be relieved from any further proof. This shall not limit the right of the

defendant to prove that what he is supposed to have received was really due him.

1. See Sec. 297, Code of Civil Procedure.
2. See Pelaez v. Abreu, 26 Phil. 416.

ART. 1901. It shall be presumed that there was an error in the payment when a thing which was never owed or which was already paid for has been delivered, but the person from whom restitution is demanded may prove that the delivery was made through liberality or for any other sufficient cause.

CHAPTER II.

OBLIGATIONS WHICH ARISE FROM FAULT OR NEGLIGENCE.

ART. 1902. Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done.

1. See Arts. 391, 590, 910, 1089, 1101, 1103, 1104, 1106, 1718 and 1968, Civil Code; Arts. 19, 20 et seq., Penal Code.
2. See notes under Arts. 1101 et seq., and 1305 et seq., Civil Code.
3. No damages for mental suffering. Marcelo v. Velasco, 11 Phil. 287.
4. Contributory negligence. Taylor v. Manila E. R. & L. Co., 16 Phil. 8.
5. Damages may be recovered although the tortfeasor may be ignorant of the identity of the person by whom the injury is suffered. Gilchrist v. Cuddy, 29 Phil. 542.
6. Responsibility of automobile owners for the negligence of their chauffeurs. Chapman v. Underwood, 27 Phil. 374; Yamada v. Manila Railroad Co., 33 Phil. 8; Bahia v. Litonjua, 30 Phil. 624.
7. Under Act 1874 (Employer's Liability) it is a defense to show that the accident could not have been foreseen or prevented, or that plaintiff was guilty of contributory negligence. Cerezo v. Atlantic Gulf, 33 Phil. 425; Tamayo v. Gsell, 35 Phil. 953.
8. The Philippine Government may be liable in damages when acting through a special agent. Merrit v. Gov't of the P. I., 34 Phil. 311.

9. What constitutes negligence and the doctrine of proximate cause. Taylor v. Manila Electric, 16 Phil. 8; Picart v. Smith, 37 Phil. 809; Daywlat v. Augustinian Corporation, 39 Phil. 587.

10. It is no defense to the contractual liability of public carriers to show that they exercised good care in the selection of their personnel. Cangco v. Manila Railroad Co., 38 Phil. 768; Manila Railroad v. Cia. Trasatlantica, 38 Phil. 875; De Guia v. Manila Electric, 40 Phil. 706.

11. Damages for death by wrongful act. Manzanares v. Moreta, 38 Phil. 821.

12. See also Donaldson etc. Co. v. Smith, Bell & Co., 2 Phil. 766; Johnson v. David, 5 Phil. 663; Rakes v. Atlantic Gulf, etc. Co., 7 Phil. 359; Uy Piaoco v. Osmeña, 9 Phil. 299; Almeida v. Abaroa, 8 Phil. 178; Samson v. Dionisio, 11 Phil. 538; Martinez v. Van Buskirk, 18 Phil. 79; Manuel Novo & Co. v. Ainsworth, 26 Phil. 380; Carlos v. Manila E. R. & L. Co., 34 Phil. 55; Goldstein v. Roces, 34 Phil. 562; Bautista v. Angeles, 34 Phil. 579.

13. For discussion of distinction between negligence as the source of an obligation, and negligence in the performance of a contractual obligation, see Cangco v. Manila R. R. Co., 38 Phil. 768; Manila R. R. Co. v. Cia. Trasatlantica, 38 Phil. 875.

14. This article is not applicable where the fault or negligence is punishable by law (Arts. 1092, 1093). Francisco v. Onrubia, 46 Phil. 327.

15. The owner of a vessel partially burned by negligence of defendant is entitled to recover for profits not earned because of loss of time while repairs were in progress. Yu Biao Sontua v. Ossorio, 43 Phil. 511.

16. Damages caused by negligence recoverable under this article include damages for the actual loss sustained and for the profits not realized. Borromeo v. Manila Electric R. & L. Co., 44 Phil. 165.

17. Damages allowed where plaintiff was wrongfully arrested in a civil action founded upon contract, confined in prison and forced to employ counsel. Ganaway v. Fidelity & Surety Co., 45 Phil. 406.

18. See Gilmer v. Hilliard, 43 Phil. 180; Garcia v. Escudero, 43 Phil. 437; Sing Juco v. Sunyantong, 43 Phil. 589; Rallos v. Philippine Railway Co., 45 Phil. 99; Agdoro v. Philippine Mining Ind. Co., 45 Phil. 816.

19. While it is true that a civil action may be maintained by an employer to recover money misappropriated by his employee without the prior institution of a criminal proceeding, nevertheless if a criminal prosecution based upon the same misappropriation is in fact instituted against the employee and he is acquitted, such acquittal operates as a bar to any subsequent civil action. Wise & Co. v. Larion, 45 Phil. 314.
20. The owner of land who, without negligence on his part, is deprived of his title thereto by its registration under the Torrens system as the property of another may recover from the registrant the damages thereby caused, if the registrant has been guilty of actual or constructive fraud. Estrellado et al. v. Martinez, 48 Phil. 256.
21. Where a person takes a certificate of title in his own name to land belonging to another and the circumstances are such that he must be presumed to have had full knowledge of the rights of the true owner, he is guilty of fraud and may be compelled to convey the land to the defrauded party or to pay damages. Govt. of P. I. v. Court of First Instance of Nueva Ecija et al., 49 Phil. 433.
22. Duty to minimize damage; see Puentebella v. Negros Coal Co. 50 Phil. 70, cited under Art. 1107.
23. If in a contest concerning the award of a lease of public land, the execution of the lease is delayed by litigation caused principally by the successful bidder's failure to observe the regulations governing bids, such bidder cannot recover damages from the persons who in good faith resisted his effort to obtain the lease. Panlilio v. David et al., 50 Phil. 105.
24. When an agent or employee, in the course of the performance of his duties as such commits an act punishable as a crime or misdemeanor, the subsidiary liability of the master or employee is to be determined by the rules established by the Penal Code. Manila v. Manila Electric Co. XXVII Off. Gaz. 4092.
25. The relation between a street car company and its passengers is contractual, and it is therefore liable for injuries to them caused by negligence of its employees, regardless of the exercise of care in its selection and supervision of them. Prado v. Manila Electric Co., XXVII Off. Gaz. 4176.

ART. 1903. The obligation imposed by the next preceding article is enforcible, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

The father, and, in case of his death or incapacity, the mother, are liable for any damages caused by the minor children who live with them.

Guardians are liable for damages done by minors or incapacitated persons subject to their authority and living with them.

Owners or directors of an establishment or business are equally liable for any damages caused by their employees while engaged in the branch of the service in which employed, or on occasion of the performance of their duties.

The State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable.

Finally, teachers or directors of arts and trades are liable for any damages caused by their pupils or apprentices while they are under their custody.

The liability imposed by this article shall cease in case the persons mentioned therein prove that they exercised all the diligence of a good father of a family to prevent the damage.

1. See Art. 1718 and notes under Art. 1902, Civil Code; Arts. 18 to 20, Penal Code; Act No. 597, Sec. 17; Act No. 1874; Sec. 1110, Adm. Code of 1917.
2. See also Cea v. Villanueva, 18 Phil. 538; Chaves v. Manila Electric, 31 Phil. 47; and cases cited under Art. 1902.
3. In a collision caused exclusively by the carelessness of the navigating officers of one of the vessels, both the owner and the operating company directly in charge of the offending vessel are jointly and severally liable for the damage done. Verzosa v. Lim, 45 Phil. 416.
4. Liability arising from contractual obligations is governed by Arts. 1101–1107 and not by Article 1903. Lasam v. Smith, 45 Phil. 657.
5. Under sections 1316 and 1408 of the Administrative Code, the Collector of Customs is officially liable for a misdelivery of merchandise delivered by a subordinate employee without requiring the surrender of a bill of lading or the execution

of a bond, even though such delivery was made without the knowledge, consent or approval of the Collector. Lung Chea Kung Kee & Co. v. Aldanese, 45 Phil. 784.

6. The government is not liable in damages for the negligent acts of its regular employees or officers in the performance of their ordinary functions. Merritt v. Government, 34 Phil. 311; Lung Chea v. Wright, 45 Phil. 44.
7. See Maxion v. Manila R. R. Co., 44 Phil. 597.
8. The ship owner is liable for the negligent acts committed by his agents in charge of the vessel. Yu Biao Sontua v. Ossorio, 43 Phil. 511.

ART. 1904. Any person who pays for damage caused by his employees may recover from the latter what he may have paid.

ART. 1905. The possessor of an animal, or the one who uses the same, is liable for any damages it may cause, even if such animal should escape from him or stray away.

This liability shall cease only in case the damage should arise from *force majeure* or from the fault of the person who may have suffered it.

1. See Arts. 430, 465 and 1902, Civil Code; Art. 584, Penal Code.

ART. 1906. The owner of a game preserve shall be liable for the damage caused by the game to the neighboring estates, should he not have done what may have been necessary to prevent the increase of the same or should he have hindered the owners of such neighboring estates from hunting the game.

1. See notes under Art. 1905, Civil Code.

ART. 1907. The owner of a building is liable for any damages which may result from the collapse of the whole or any part thereof, if it should be due to the lack of the necessary repairs.

1. See Arts. 389–391, Civil Code; Art. 586, Penal Code.
2. See notes under Art. 1905, Civil Code.

ART. 1908. The owners shall also be liable for any damages caused:

1. By the explosion of machines which have not been cared for with due diligence, or by the combustion of explosive substances which have not been kept in a safe and proper place;

2. By excessive smoke, which may be noxious to persons or properties;

3. By the fall of trees, located in places of transit, when not caused by *force majeure;*

4. By the emanations of sewers or deposits of noxious matters, when constructed without the precautions appropriate to the place where they are located.

1. See Arts. 390 et seq., 590, 1902, and notes under Art. 1905, Civil Code; Art. 580, Penal Code.
2. See note No. 9 under Art. 1902, Civil Code.
3. See also Ollendorf v. Abrahamson, 38 Phil. 595.

ART. 1909. Should the damage referred to in the two articles next preceding arise from defects in construction, the third person who suffers it may recover from the architect or from the builder, if the latter be at fault, within the legal period.

1. See Art. 1591, Civil Code.

ART. 1910. The head of a family dwelling in a house, or in a part of the same, shall be liable for any damages caused by the things which may be thrown or which may fall therefrom.

TITLE XVII.

CONCURRENCE AND PREFERENCE OF CREDITS.

CHAPTER I.

GENERAL PROVISIONS.

ART. 1911. A debtor is liable for the fulfillment of his obligations with all his present and future property.

1. See Arts. 1001, 1034, 1082, 1111, 1394, 1418, 1438, 1869, 1914, 1920 and 1937, Civil Code; Art. 174 Code of Commerce; Sec. 452, Code of Civil Procedure.
2. Money in the office of the clerk of court is in *custodia legis* and cannot be attached. Springer v. Odlin, 3 Phil. 344.
3. As to debts of municipal corporation, see Tan Toco v. Lloilo, 49 Phil. 52, cited under Art. 344.
4. Land acquired under the homestead provisions of the Public Land Act is not subject to seizure under execution for the satisfaction of any debt contracted prior to the expiration of the term of five years from the date of the issuance of the patent. Beach v. Pacific Commercial Co. et al. 49 Phil. 365.
5. Property exempt from execution; Sec. 452, Act 190.

ART. 1912. A debtor may, by petition filed in court, request his creditors to grant him a reduction in the amount and an extension of the time for the payment of his debts, or either of the two things, but the exercise of this right shall not be legally effective, except in the cases and in the manner prescribed by the Law of Civil Procedure.

1. See Arts. 1175 and 1913, Civil Code; Arts. 870 et seq., Code of Commerce; Secs. 523 and 524, Code of Civil Procedure, Act No. 1956.
2. Arts. 1912 to 1920 have been repealed. See Act 1956 (Insolvency Law).

ART. 1913. Any debtor whose liabilities are greater than his assets and who has failed to meet his current obliga-

tions, must petition the competent court to be declared an insolvent, as soon as he becomes aware of his situation.

1. See Art. 529, Penal Code.
2. See notes under Art. 1912, Civil Code.

ART. 1914. The declaration of insolvency disqualifies the insolvent to manage his own property or any other of which the management by law pertains to him.

He shall be reinstated in his rights, upon the termination of the insolvency proceedings, unless it appears that the cause of the insolvency was such as to deprive him of this privilege.

1. See Art. 878, Code of Commerce.
2. See notes under Art. 1912, Civil Code.

ART. 1915. The declaration of insolvency shall mature all debts of the bankrupt.

Should they be paid before the time fixed in the obligation they shall be discounted at the legal rate of interest.

1. See Arts. 1126, 1129, 1756, Civil Code; Arts. 879 et seq., Code of Commerce.
2. See notes under Art. 1912, Civil Code.
3. See Jacinto v. De Leon, 51 Phil. 992, cited under Art. 1924.

ART. 1916. From the date of the declaration of insolvency, all the debts of the insolvent shall cease to bear interest, with the exception of credits secured by mortgage or pledge to the extent of their respective securities.

If, after the principal of the debts has been paid, a balance should remain, interest shall be paid, reduced to the legal rate, unless that stipulated is less.

1. See notes under Art. 1912, Civil Code.

ART. 1917. Any agreements which with the approval of the court may be entered into between the debtor and his

creditors with respect to a reduction of the debts or an extension of the time for their payment, or in the course of insolvency proceedings, shall, if made with the formalities prescribed by law, be binding upon all the parties thereto and upon those who having been summoned and notified in due form have not objected thereto within the time limited.

From this rule shall be excepted creditors who, being entitled to refrain from taking part in the proceedings, have availed themselves of this right. The creditors mentioned in Articles 1922, 1923, and 1924 are entitled to so refrain.

1. See Arts. 872, 898 et seq., Code of Commerce.
2. See notes under Art. 1912, Civil Code.

ART. 1918. If the agreement of reduction and extension is made with creditors of the same class, the lawful resolution of the majority shall be binding on all, without prejudice to the respective preference of their credits.

1. See notes under Art. 1912, Civil Code.

ART. 1919. Upon performance by the debtor of his agreement, his obligations shall be extinguished upon the terms stipulated therein; but, should he fail, wholly or in part, to comply with the agreement, the rights of the creditors shall revive for the amounts of their original credits, less anything paid on account thereof, and either of them may petition for a declaration of insolvency or the continuation of the proceedings as the case may be.

1. See Arts. 905 et seq., Code of Commerce.
2. See notes under Art. 1912, Civil Code.

ART. 1920. Should there be no express stipulation to the contrary between the debtor and the creditors, the latter shall retain their right, after the termination of the insolvency proceedings, to subject any property which the debtor may subsequently acquire to the payment of the unpaid portion of their claims.

1. See notes under Art. 1912, Civil Code.

CHAPTER II.

CLASSIFICATION OF CREDITS.

ART. 1921. Credits shall be classified for their graduation and payment in the order and manner specified in this chapter.

1. See notes under Arts. 1912, 1922, 1923 to 1929, Civil Code.
2. Chattels pledged and in the possession of pledgee. Held, attachment subsequently made has no preference over the pledge. Banco Español v. Peterson, 7 Phil. 409; Heinzen & Co. v. Peterson, 10 Phil. 339; McMicking v. Tremoya, 14 Phil. 252.
3. Preferences being an exception to the general rule, the statute creating them must be strictly construed. Roman v. Herridge, 47 Phil. 98.

ART. 1922. With respect to determinate personal property of the debtor, the following are preferred:

1. Credits for the construction, repair, preservation, or purchase price of personal property in the possession of the debtor, to the extent of the value of the same;

2. Credits secured by a pledge in the possession of the creditor, with respect to the thing pledged and to the extent of its value;

3. Credits guaranteed by the deposit of goods or securities in a public or commercial establishment, with respect to the security and to the extent of the value of the same;

4. Credits for the transportation of goods and expenditures for the carriage and preservation thereof, with respect to such goods, until their delivery, and for thirty days thereafter;

5. Credits for board and lodging with respect to any personal property of the debtor in the inn;

6. Credits for seed and expenses of cultivation and harvesting, advanced to the debtor, with respect to the fruits of the crops which they were used to produce;

7. Credits for one year's rent with respect to the personal

property of the lessee on the estate leased and the fruits produced by such estate.

If the personal property, with respect to which the preference is allowed, has been removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed.

1. See Art. 1926 and notes under Arts. 1921 to 1929, Civil Code; Secs. 708, 735 and 424, Code of Civil Procedure.
2. There was no provision of law forbidding the preference of one creditor over another by an insolvent debtor in the payment of debts before the passage of the Insolvency Law. Peña v. Mitchell, 9 Phil. 587.
3. Chattel pledged and delivered prior to levy of execution. Held, pledgee has priority. Macke v. Rubert, 11 Phil. 480.
4. Goods sold and not paid for. Preference may be claimed by the vendee if the identity of the goods is established. Rubert & Guamis v. Luengo & Martinez, 8 Phil. 554; International Bank v. Corrales, 14 Phil. 360; McMicking v. Nubla Co. Piaco, 24 Phil. 439; Calvo v. Co Cang & Co., 36 Phil. 954.
5. The right secured under par. 7 of this article takes preference over an ordinary judgment of prior date. McMicking v. Kimura, 12 Phil. 98; McMicking v. Padern, 36 Phil. 987.
6. This article refers only to personal property. Hongkong & Sh. Bank v. Aldecoa & Co., 30 Phil. 255.
7. "Lien" under the Civil Code discussed. Viegelmann & Co. v. Perez, 37 Phil. 678; Tec Bi & Co. v. Chartered Bank, 41 Phil. 596; Javellana v. Mirasol, 40 Phil. 773.
8. See also McMicking v. Tremoya, 14 Phil. 252; Walker v. McMicking, 14 Phil. 668; Williams v. McMicking, 17 Phil. 408; Alzua v. Johnson, 21 Phil. 308; Go Kiam Co v. Lim Tuico, 37 Phil. 283.
9. Section 8 of the Insolvency Law has not repealed by implication the rule of the Civil Code by which preference is given to a credit for the unpaid purchase price of goods while the same or the proceeds thereof are still in the hands of the vendee or of an assignee in insolvency. Hunter Kerr & Co. v. Murray, 48 Phil. 499.
10. The unpaid vendor of personal property which the buyer converts into real property by incorporation, does not thereby lose his preference with respect to the purchase price, while the property remains in the possession of the debtor, pro-

vided the thing sold retains its independent form, substance, and identity; and the privilege is not affected by the sale of the debtor's real property, including the incorporated personal property, by his assignee in insolvency, for a lump sum. The preference of the unpaid vendor is superior to the lien of a mortgagee of an attaching creditor of the vendee. Unson v. Urquijo et al., 50 Phil. 160.

11. The existence of a lien on property does not of necessity imply a right of retention on the part of the lien holder. Graño v. Paredes, 50 Phil. 61.

12. The vendor's preference for the selling price of personal property sold includes the whole of the same, and to the extent of its value, whether said price has been partially paid or not, as long as said personalty remains in the possession of the vendee. Unson v. Urquijo et al., 51 Phil. 329.

13. The lien and right of possession of a repair man to secure repair charges is superior to the lien of a prior recorded chattel mortgage; but the existence of the repair man's lien depends upon continuous actual possession. Pacific Commercial Co. v. Webb et al., 51 Phil. 745.

ART. 1923. With respect to determinate real property and real rights of the debtor, the following are preferred:

1. Credits in favor of the State, with respect to the property of taxpayers for the last annual assessments, due and unpaid, of the taxes to which the same is subject;

2. The credits of insurers, with respect to the property insured, for the insurance premium for two years, and should the insurance be mutual, for the last two assessments levied;

3. Mortgage and refection credits entered and recorded in the Registry of Deeds, with respect to the property mortgaged, or which has been the subject-matter of the refection;

4. Credits of which a cautionary notice has been entered in the Registry of Deeds by virtue of a judicial mandate, or by reason of attachments, sequestrations, or executions of judgments with respect to the property affected by the notice and only with respect to subsequent credits;

5. Refection credits, not entered or recorded, with respect

to the real estate upon which the refection was made, and only with respect to other credits different from those mentioned in the four next preceding paragraphs.

Refection.—In Civil Law. Reparation; re-establishment of a building—Bouvier.

1. See Arts. 1917, 1927, and notes under Arts. 1921 to 1929, Civil Code; Arts. 44, 59–64, 92–95, 105, 168, 218–221, Mortgage Law; Arts. 912, 914 et seq., 919, Code of Commerce; Sec. 364, Adm. Code of 1917.
2. The effect of "anotación preventiva." Martinez v. Holliday etc. Co., 1 Phil. 194; Lopez v. Alvarez, 9 Phil. 28.
3. See also Olivares v. Hoskyn, 2 Phil. 689; Lampano v. Jose, 30 Phil. 537; Gonzales Diez v. Delgado, 37 Phil. 389.

ART. 1924. With respect to the other personal and real property of the debtor, the following credits shall be preferred:

1. Credits in favor of the province or municipality for the taxes of the last year, due and unpaid, not included in paragraph 1 of Article 1923;

2. Those due:

A. For court costs and expenses of the administration of the estate of an insolvent for the common benefit of the creditors, incurred with the proper authorization or approval;

B. For the funeral expenses of the debtor according to the customs of the place, and also those of his wife and of his children under his parental authority should they have no property of their own;

C. For expenses of the last illness of said persons, incurred during the last year, computed up to the day of their death;

D. For daily wages and salaries of clerks and domestic servants, for the last year;

E. For provisions, clothing, or shoes furnished the debtor during the same period for his own use and that of members of his family subject to his authority;

F. For his support during the insolvency proceedings unless given out of pure liberality.

3. Credits which without a special privilege are evidenced by:

A. A public instrument; or

B. A final judgment, should they have been the subject of litigation.

These credits shall have preference among themselves in the order of the priority of dates of the instruments and of the judgments respectively.

1. See Arts. 1917, 1922 and notes under Arts. 1921 to 1929, Civil Code; Art. 218, Mortgage Law; Secs. 524, 735 and 736, Code of Civil Procedure.
2. Article cited and applied. Peterson v. Newberry, 6 Phil. 260; Gochuico v. Ocampo, 7 Phil. 15; Soler v. Alzoua, 8 Phil. 539; Strong v. Van Buskirk etc. Co., 10 Phil. 190; McMicking v. Lichauco, 27 Phil. 386.
3. A credit evidenced by public document which has been reduced to judgment takes preference according to the date of the document and not of the judgment. Somes v. Molina, 15 Phil. 133.
4. A credit evidenced by a public document, with a collateral pledge agreement void for non-delivery of the chattels, takes precedence over an ordinary judgment of later date. McMicking v. Martinez, 15 Phil. 204.
5. Meaning of "public document." Ibañez v. Hongkong & Sh. Bank, 30 Phil. 249.
6. See also Molina v. Somes, 31 Phil. 76; Calvo v. Co Cang & Co., 36 Phil. 954; Gonzales v. Delgado, 37 Phil. 389.
7. An agreement, evidenced by a notarial document, to sell merchandise, to be performed *in futuro* for a price to be determined upon delivery, does not create a credit; and the subsequent determination of the amount due, by performance by the seller, does not create a preference under paragraph A of sub-division 3 of Article 1924 of the Civil Code. Roman v. Herridge, 47 Phil. 98.
8. The preference accorded to debts evidenced by public instruments is limited to those which are due. Jacinto v. De Leon, 51 Phil. 992.

ART. 1925. Credits of any other kind or based upon any other considerations than those included in the next preceding article shall have no preference.

1. See notes under Arts. 1921 to 1929, Civil Code.

TITLE XVIII.

PRESCRIPTION.[1]

CHAPTER I.

GENERAL PROVISIONS.

ART. 1930. Ownership and other real rights may be acquired by prescription in the manner and under the conditions specified by law.

Rights and actions, of any kind whatsoever, are also extinguished by prescription in the same manner.

1. See Chapter III, Code of Civil Procedure.
2. Article cited and explained. Arnedo Cruz v. De Leon, 21 Phil. 199; Delgado v. Bonnevie, 23 Phil. 308.

ART. 1931. Persons qualified to acquire property rights by other legal means may also acquire the same by prescription.

1. Article cited. Puruganan v. Martin, 8 Phil. 519.

ART. 1932. The extinguishment of rights and actions by prescription upon the expiration of the periods fixed by law shall operate against all persons, including juridical entities.

Persons incapacitated to manage their property shall have a right of action against their legal representatives if the negligence of the latter has been the cause of the prescription.

1. See Art. 1299, Civil Code.
2. Under this article, minority is not excepted. Alano v. Babasa, 10 Phil. 511.

[1] Concerning all articles in this title, see C. C. P. Secs. 41 et seq.

3. Prescription does not run against a minor who has no legal guardian. Wenceslao v. Calimon, 46 Phil. 906.
4. The open, continuous, adverse, and public possession of land of the public domain from time immemorial by a private individual, personally and through his predecessors, confers an effective title upon such possessor, whereby the land ceases to be public and becomes private property. Susi v. Director of Lands, 48 Phil. 424.
5. An action by the Insular Government to annul a contract of sale of land is barred by prescription if not brought within ten years from the time the action accrued. Director of Lands v. Santos, 48 Phil. 437.

ART. 1933. Prescriptive rights acquired by one co-proprietor or tenant in common shall accrue to the benefit of all the others.

1. See Arts. 450, 548, Civil Code.

ART. 1934. Prescription operates in favor of and against an inheritance, before the latter has been accepted, and during the time granted to make an inventory and for deliberation.

1. See Arts. 440, 442, 1014, Civil Code.

ART. 1935. Persons with the capacity to alienate may renounce any rights which they may have acquired by prescription, but not the right to take by prescription in the future.

Prescription shall be deemed renounced by implication when the renunciation arises from acts which lead to the inference that the right acquired has been abandoned.

1. See Arts. 1263, 1457, 1930, Civil Code; Sec. 50, Code of Civil Procedure.

ART. 1936. All things which are the subject of commerce may be acquired or lost by prescription.

1. See Art. 1271, Civil Code; Act No. 496; Sec. 46.

2. Public property such as plazas, seashores, etc., cannot be acquired by prescription. Harty v. Mp. of Victoria, 13 Phil. 152; Insular Gov't v. Aldecoa & Co., 19 Phil. 505.

ART. 1937. Creditors or any other persons interested in maintaining rights acquired by prescription may avail themselves thereof, notwithstanding the express or implied renunciation of the debtor or owner.

1. See Sec. 50, Code of Civil Procedure.

ART. 1938. The provisions of this title shall be understood to be without prejudice to anything which may be established in this code or in special laws with respect to special cases of prescription.

1. See Arts. 19 et seq., 44, 113, 118, 133, 137, 180, 197, 287, 409, 411, 468, 513, 528, 537 et seq., 546, 612, 615, 646, 652, 762, 1014 et seq., 1076, 1299, 1301, 1472, 1490, Civil Code.

ART. 1939. Prescription which began to run before the publication of this code shall be governed by the prior law; but if, after this code took effect, all the time required by the same for prescription has elapsed, it shall be sufficient even if according to such prior law a longer period of time would have been required.

1. See Sec. 38, Code of Civil Procedure.
2. Prescription of actions under the law prior to the Civil Code. Araneta v. Garrido, 5 Phil. 137; Pineda v. Gasataya, 5 Phil. 139; Garcia v. Diamson, 8 Phil. 414; Sunico v. Ramirez, 14 Phil. 500; Obras Pias v. Devera, 17 Phil. 45.
3. Extraordinary prescription of thirty years under the Civil Code. Concepcion v. City of Manila, 11 Phil. 552; Cruzado v. Bustos, 34 Phil. 17.
4. See also Jumero v. Lizares, 17 Phil. 112; Soriano v. Enriquez, 24 Phil. 584; Veloso v. Fontanosa, 13 Phil. 79; Villaruz v. Azarraga, 15 Phil. 108.

CHAPTER II.

PRESCRIPTION OF OWNERSHIP AND OF OTHER REAL RIGHTS.

ART. 1940. For ordinary prescription of ownership and

other real rights, the possession of the things in good faith and under a just title, during the time specified by law, is necessary.

1. See Arts. 537, 639, Civil Code; Sec. 41, Code of Civil Procedure; Act No. 627, Sec. 6.
2. Possession of the inherited property by one co-heir, if adverse to the others, may ripen into title by prescription. De Castro v. Echarri, 20 Phil. 23; Bargayo v. Camunot, 40 Phil. 857.
3. *"Justo titulo"* and other requisites to prescription under the Civil Code discussed. Villanueva v. Claustro, 23 Phil. 54; Arcenas v. Laserna, 27 Phil. 599; Camagun v. Allingay, 19 Phil. 415.
4. See Wolfson v. Aenlle, 46 Phil. 518.

ART. 1941. The possession must be exercised under claim of ownership and must be open, peaceful, and uninterrupted.

1. See Arts. 441 to 449, and notes under Arts. 1930, 1939 and 1940, Civil Code.
2. Title to real estate by adverse possession may be proved under a general denial. Recoletos v. Crisostomo, 32 Phil. 427.
3. Article cited and applied. San Carlos v. Cebu, 19 Phil. 32; Liwag v. Yauco, 36 Phil. 856; Cuaycong v. Benedicto, 37 Phil. 781.
4. For the purpose of acquiring title to land by adverse possession, where there is privity between successive occupants, the adverse possession of the predecessor may be tacked to the adverse possession of the successor. Razote v. Razote, et al., 49 Phil. 181.
5. The purchaser of a tract of land, of which the vendor was a co-parcener only, who thereafter possesses it adversely for the required time, acquires title by prescription as against all persons originally entitled to an interest therein *pro indiviso* with the vendor. Valmonte v. Villaroman, XXVII Off. Gaz. 2572.

ART. 1942. Acts of a possessory character exercised by virtue of the license of the owner or of mere tolerance on his part do not constitute possession.

1. See Arts. 444, 447, and notes under Arts. 1940 and 1941, Civil Code.

2. An easement of light cannot be acquired by prescription by opening windows in one's own house overlooking the adjacent land of another. Cortes v. Yu-Tibo, 2 Phil. 24.
3. An occupant of land who has acknowledged another as the owner by paying him rent cannot claim title by prescription against his landlord. Ayala de Roxas v. Maglonso, 8 Phil. 745; Pascual v. Angeles, 13 Phil. 441.
4. The property was used by the Government for school purposes, with the permission of the church authorities. Held, that the church did not lose its title thereto. Nueva Caceres v. Dtor. of Lands, 24 Phil. 485.
5. See also Dominicos v. Lazaro, 42 Phil. 126.

ART. 1943. With respect to prescription, possession may be interrupted either naturally or civilly.

1. See Arts. 450, 466, Civil Code.
2. See notes under Art. 1940, Civil Code.

ART. 1944. Possession is interrupted naturally, when, for any cause whatsoever, it ceases for more than one year.

1. See notes under Art. 1940, Civil Code.

ART. 1945. Civil interruption is caused by the service of a summons upon the possessor, even should the judge who authorized its issue be without jurisdiction.

1. See Arts. 451, 1947, 1973, and notes under Art. 1940, Civil Code; Art. 944, Code of Commerce.

ART. 1946. The service of such summons shall be inoperative and shall not cause interruption:

1. If it should be void by reason of the absence of any legal formalities;

2. If the plaintiff should withdraw his complaint or should permit the proceedings to lapse;

3. If the suit against the possessor should be decided in his favor.

1. See notes under Art. 1940, Civil Code.
2. If suit to recover is subsequently abandoned, possession is not interrupted. Lacuesta v. Guerrero, 8 Phil. 719.

ART. 1947. Civil interruption shall also take place by an act of conciliation, provided that within two months from its celebration a complaint for the recovery of the possession or ownership of the thing in controversy be presented to the judge.

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1. See notes under Art. 1940, Civil Code.
2. Article cited and applied. Saul v. Hawkins, 1 Phil. 275.

ART. 1948. Possession is also interrupted by any express or implied acknowledgment on the part of the possessor of the right of the owner.

1. See notes under Arts. 1940 and 1941, Civil Code.
2. See Art. 393, Mortgage Law.

ART. 1949. The ordinary prescription of ownership or of real rights shall not operate to the prejudice of third persons against a title recorded in the Registry of Deeds except by virtue of another recorded title, and the period of prescription shall be computed from the time the latter title was recorded.

1. See Arts. 462, 605 et seq., 1930 and notes under Art. 1940, Civil Code; Arts. 25, 27, 35, Mortgage Law.
2. The meaning of "tercero" (third person). Sison v. Ramos, 13 Phil. 54.
3. A registered possessory information does not ripen into title, even after the lapse of twenty years, as against the true owner, except upon proof of possession and compliance with the provisions of Article 393 of the Mortgage Law. Querol et al. v. Querol, 48 Phil. 90.

ART. 1950. Good faith on the part of the possessor consists in his belief that the person from whom he received the thing was the owner of the same, and could transmit the title thereto.

1. See notes under Art. 1940, Civil Code.
2. "Good faith" explained. Doliendo v. Biarnesa, 7 Phil. 232; Gabriel v. Bartolome, 7 Phil. 699; Arriola v. Gomez, 14 Phil. 627; Santiago v. Cruz, 19 Phil. 145.

ART. 1951. The provisions of Articles 433, 434, 435, and 436 of this code with respect to possession in good faith shall be equally applicable for the purpose of determining the existence of the element of good faith in the prescription of ownership and other real rights.

1. See notes under Art. 1940, Civil Code.

ART. 1952. By a just title is understood one which is legally sufficient to transfer the ownership or real right of which the prescription is in question.

1. See notes under Arts. 1940 and 1950, Civil Code.
2. A possessory information may constitute a "just title." Inchausty & Co. v. Commanding General, 6 Phil. 556.

ART. 1953. The title for prescription must be true and valid.

1. See notes under Art. 1940, Civil Code.
2. "True and valid title" explained. Doliendo v. Biarnesa, 7 Phil. 232; Wolfson v. Reyes, 8 Phil. 364.

ART. 1954. A just title must be proven; it never can be presumed.

1. See Art. 448, Civil Code.
2. See notes under Art. 1940, Civil Code.

ART. 1955. The ownership of personal property prescribes by uninterrupted possession in good faith for a period of three years.

The ownership of personal property also prescribes by uninterrupted possession for six years, without the necessity of any other condition.

The provisions of Article 464 of this code shall be observed with respect to the right of the owner to recover personal property lost or of which he may have been illegally deprived, and also with respect to personal property acquired at an auction, on exchanges, at fairs or markets, or from a merchant legally established or customarily engaged in dealing in similar things.

1. See Art. 85, Code of Commerce; notes under Art. 1940, Civil Code; Sec. 43, Code of Civil Procedure.
2. Period of prescription under this article applied. Varela v. Finnick, 9 Phil. 482; Catabian v. Tungcul, 11 Phil. 49; Sideco v. Pascua, 13 Phil. 342; Arenas v. Raymundo, 19 Phil. 46; U. S. v. Cerna, 21 Phil. 144.
3. Prescription under the Code of Civil Procedure applied. Cajuigan v. Natividad, 14 Phil. 734.
4. Arts. 1955 and 1962 have been repealed by the Code of Civil Procedure. Augustinian Corpn. v. Crisostomo, 32 Phil. 427.
5. See also Delgado v. Bonnevie, 23 Phil. 308.

ART. 1956. The ownership of personal property stolen or taken by robbery cannot be acquired by prescription by the thief or robber, or his accomplices, or accessories, unless the crime or misdemeanor or the penalty therefor and the action to enforce the civil liability arising from the crime or misdemeanor are barred by prescription.

1. See notes under Arts. 1940 and 1955, Civil Code.
2. See Arts. 547 et seq., Code of Commerce; and Arts. 1, 14 et seq., 131 et seq., 502, 517, Penal Code.

ART. 1957. Ownership and other real rights shall prescribe by possession in good faith and under a just title for ten years as between persons present, and for twenty years as between absentees.

1. See Arts. 409, 537, 598, and notes under Arts. 1940, 1950 and 1955, Civil Code; Secs. 40 and 41, Code of Civil Procedure.
2. Arts. 1957 to 1968, repealed (Willard). See also Augustinian Corp. v. Crisostomo, 32 Phil. 427.
3. Possessory information title is without prejudice to a third person with a better right. Garchitorena v. Postigo, 12 Phil. 374.
4. Article cited and applied. Veloso v. Naguit, 3 Phil. 604; Inchausti v. Commanding General, 6 Phil. 556; Doliendo v. Biarnesa, 7 Phil. 232; Rey v. Morales, 35 Phil. 230; Bargayo v. Camumot, 40 Phil. 857.

ART. 1958. For the purposes of prescription, a person who resides in a foreign country or in the ultramarine colonies, shall be deemed an absentee.

If such person was present during part of the time and absent another part, every two years of absence shall be computed as one year to complete the ten years of the time required as between persons present.

Absence for less than a whole and continuous year shall not be considered in the computation.

1. See notes under Art. 1957, Civil Code.

ART. 1959. Ownership and other real rights in real property shall also prescribe by the uninterrupted possession of the same for thirty years without the necessity of title or good faith and without distinction between present and absent persons, saving the exception established by Article 539.

1. See Arts. 409, 1620, and notes under Arts. 1941, 1942, 1955 and 1957, Civil Code.
2. Article cited and applied. Garcia v. Hipolito, 5 Phil. 503; Catbalogan v. Dtor. of Lands, 17 Phil. 216; Arnedo Cruz v. De Leon, 21 Phil. 199; Kincaid v. Cabututan, 35 Phil. 383; Bargayo v. Camumot, 40 Phil. 857.
3. See also Perez v. Cortes, 15 Phil. 211; Dominicos v. Lazaro, 42 Phil. 126.

ART. 1960. In the computation of the time necessary for prescription, the following rules shall be observed:

1. The actual possessor may complete the time necessary for prescription by adding to the time of his possession that of his predecessor;

2. It shall be presumed that a person in possession who has also been in possession at a former time has been in possession during the time intervening, in the absence of proof to the contrary;

3. The day on which the time begins to run shall be computed as a whole day, but the last day must be wholly completed.

1. See notes under Arts. 1957 and 1959, Civil Code.

CHAPTER III.

PRESCRIPTION OF ACTIONS.

ART. 1961. Actions are prescribed by the mere lapse of the time specified by law.

1. See Art. 950, Code of Commerce; Act No. 627; Sec. 6; Sec. 39, Code of Civil Procedure.
2. Arts. 1960 to 1968 have been repealed by the Code of Civil Procedure. Pelaez v. Abreu, 26 Phil. 415.
3. The Government may sue to collect loans made by the former sovereignty out of trust funds, and prescription does not run against the Government. Government v. Monte de Piedad, 35 Phil. 728.
4. Cause of action accrued July 24, 1899. Complaint filed July 18, 1913. Prescriptive provisions of Civil Code govern. Marella v. Agoncillo, 44 Phil. 844.
5. Rights of action which had accrued when the rules of the Civil Code concerning prescription were superseded by those established by the Code of Civil Procedure, which took effect October 1, 1901, were barred in ten years from that date, unless a shorter period was prescribed by the Civil Code with respect to such right of action, saving only the rights of persons under disability. Quijano et al. v. Gomez Cabale, 49 Phil. 263.
6. As against the beneficiary prescription is not effective in favor of a person who is acting as trustee of a continuing and subsisting trust. Cristobal v. Gomez, 50 Phil. 810.

ART. 1962. Real actions relating to personal property shall prescribe after the lapse of six years from the loss of possession unless the possessor of such property has acquired title thereto by prescription in a shorter period in accordance with the provisions of Article 1955. From this rule are excepted cases in which personal property is lost or is sold at public sale or its possession has been lost by theft or robbery, which cases shall be governed by the provisions of the third paragraph of said article.

1. See Arts. 353 et seq., 460 et seq., 464 et seq., and notes under Arts. 1941, 1955, 1957 and 1959, Civil Code.

ART. 1963. Real actions relating to real property prescribe after thirty years.

This provision is to be understood without prejudice to the provisions relating to the acquisition of ownership or of real rights by prescription.

1. See Arts. 411, 546–548, 1959, and notes under Art. 1957, Civil Code.
2. This article has been repealed by Sec. 40 of the Code of Civil Procedure. Conspecto v. Fruto, 31 Phil. 144.
3. See also Cruzado v. Bustos, 34 Phil. 17.

ART. 1964. Mortgage actions prescribe after twenty years; personal actions, for which no special term of prescription is fixed, after fifteen years.

1. See Arts. 1591, 1880, and notes under Arts. 1941, 1957, 1961 to 1963, Civil Code; Art. 943, Code of Commerce; Art. 134, Mortgage Law.
2. Periods of prescription for personal and for real actions under the Civil Code and laws prior to it, discussed. Somes v. Gorricho, 4 Phil. 713; Araneta v. Garrido, 5 Phil. 137; Pineda v. Gasataya, 5 Phil. 139; Benedicto v. Perizuelo, 5 Phil. 632; Palacio v. Sudario, 7 Phil. 275; Azarraga v. Rodriguez, 9 Phil. 637; Veloso v. Fontanosa, 13 Phil. 79; Sunico v. Ramirez, 14 Phil. 500; Marzon v. Udtujan, 20 Phil. 232; Yañez v. Fuster, 29 Phil. 606; Lichauco v. Soriano, 35 Phil. 203.
3. If the capital has prescribed, interest has also prescribed. Soriano v. Enriquez, 24 Phil. 584.

ART. 1965. As between co-heirs, co-owners, or proprietors of adjacent estates, the action to demand the partition of the inheritance or of the thing held in common, or the survey of the adjacent properties, does not prescribe.

1. See Art. 400 and notes under Art. 1957, Civil Code.
2. Article cited and applied. Aliasas v. Alcantara, 16 Phil. 489; Irlanda v. Petargue, 22 Phil. 383; Dimagiba v. Dimagiba, 34 Phil. 357; Alcala v. Alcala, 35 Phil. 679; Cabello v. Cabello, 37 Phil. 328.

3. This article refers to extinctive prescription, and does not prevent a co-heir from acquiring an inheritance property by prescription. De Castro v. Echarri, 20 Phil. 23; Bargayo v. Camumot, 40 Phil. 857.
4. Acquisitive prescription operates against a co-heir in the same manner as in other cases. Ramos v. Ramos, 45 Phil. 362.
5. Article cited and construed. De los Santos v. Santa Teresa, 44 Phil. 811.
6. As a general rule, prescription cannot be pleaded between co-heirs; but this rule does not apply when one heir has openly occupied property adversely to his co-heirs for a long period of time. Casañas v. Rosello, 50 Phil. 97.
7. See Valmonte v. Villaroman, XXVII Off. Gaz. 2572, cited under Art. 1941.
8. See also Solla v. Ascueta, 49 Phil. 333.

ART. 1966. Actions to enforce the performance of the following obligations prescribe in five years:

1. The payment of allowances for support;
2. The payment of rents, whether derived from rural or from urban property;
3. Any other payments which should have been made annually or in shorter periods.

M. L., 114.

1. See Arts. 346, 762, 1620, 1623, and notes under Art. 1957, Civil Code.
2. Article cited and applied. Somes v. Gorricho, 4 Phil. 713.

ART. 1967. Actions to enforce the performance of the following obligations shall prescribe in three years:

1. That of paying judges, lawyers, registers, notaries public, clerks of court, experts and agents for their charges and fees or for any expenses or disbursements incurred by them in the discharge of their duties or offices in connection with the matters from which the obligations arose;
2. That of paying apothecaries for medicines which they have supplied; professors and teachers for their salaries and stipends for the instruction they have given, or for the exercise of their profession, art, or trade;
3. That of paying mechanics, servants, and laborers the

amounts due for their services, and for supplies furnished or disbursements made by them with relation to the same;

4. That of paying innkeepers for board and lodging, or tradesmen for the value of goods sold to others who are not tradesmen, or who, being such, are engaged in business of a different kind.

The time for the prescription of actions referred to in the next three preceding paragraphs shall be computed from the time the respective services were last rendered.

1. See Arts. 155, 1544, 1969, and notes under Art. 1957, Civil Code.
2. "Mechanic" (menestral) defined. Domingo v. Osorio, 7 Phil. 405.

ART. 1968. The following actions prescribe in one year:

1. Actions to recover or retain possession;
2. Actions to enforce civil liability for grave insults or calumny, and for obligations arising from fault or negligence mentioned in Article 1902, computed from the time the aggrieved person had knowledge thereof.

1. See Arts. 652, 460, 1483, 1639, 1646, 1902, 1914, and notes under Arts. 1957 and 1961, Civil Code; Arts. 17 et seq., 119, 121 et seq., 131, 133, Penal Code.
2. Paragraph 1 of this article has been repealed by Sec. 39, Code of Civil Procedure. Alonso v. Placer, 5 Phil. 71.
3. "Acción publiciana" defined. Bishop of Cebu v. Mangaron, 6 Phil. 286.

ART. 1969. The time for the prescription of all kinds of actions, when there is no special provision to the contrary, shall be computed from the day on which they might have been brought.

1. See Arts. 1113, 1125, 1128, 1967, Civil Code.
2. Arts. 1969 to 1972 repealed by Chapter III, Code of Civil Procedure. Pelaez v. Abreu, 26 Phil. 415.
3. Extinctive prescription begins as a rule from the date in which the action may be brought. Montilla v. Augustinian Corpn., 25 Phil. 447.

4. The term of prescription of an action to recover a balance due on an open mutual account is to be computed from the date of the last item proved, regardless of the time when transactions represented by the earlier entries occurred. Yap Tico & Co. Ltd. v. Lopez Vito, 49 Phil. 61.

ART. 1970. In cases in which rent or interest is paid upon a capital sum, the period for the prescription of all actions whose purpose is the enforcement of obligations relating thereto shall be computed from the time of the last payment of rent or interest.

The same rule shall apply with respect to the principle of consignative *censos*.

In emphyteutic and reservative *censos* the period of prescription shall be computed from the last payment of the annuity or income.

1. See Art. 1620, Civil Code.
2. See notes under Art. 1969, Civil Code.

ART. 1971. The period for the prescription of actions whose purpose is the enforcement of obligations reduced to judgment shall be computed from the day the judgment became final.

1. See Arts. 1952 et seq., 1963, and notes under Art. 1969, Civil Code.

ART. 1972. The term for the prescription of actions for an accounting shall be computed from the day on which the person who should have rendered such account relinquishes his office or trust.

The period of prescription of the action for the recovery of a balance due upon an account stated shall be computed from the date on which such balance was acknowledged by agreement of the parties interested.

1. See notes under Arts. 1966, 1969, Civil Code.

ART. 1973. The prescription of actions is interrupted by the commencement of a suit for their enforcement, by an

extrajudicial demand by the creditor, and by any act of acknowledgment of the debt by the debtor.

1. See Arts. 1945, 1948, and notes under Art. 1966, Civil Code; Arts. 138, 393, Mortgage Law; Secs. 46 and 50, Code of Civil Procedure.
2. How prescription may be interrupted by acknowledgment. Veloso v. Fontanosa, 13 Phil. 79; Lichauco v. Limjuco, 19 Phil. 12.
3. An action although subsequently dismissed, interrupts prescription. *In re* Mijares, 13 Phil. 63.
4. This article has been repealed by Sec. 50, Code of Civil Procedure. Pelaez v. Abreu, 26 Phil. 415.
5. Under this article, extrajudicial demand (as by letters) for payment interrupts the period of prescription. Marella v. Agoncillo, 44 Phil. 844.
6. A suit by the owner of land against one formerly in possession does not interrupt the prescription of the action against the actual possessor, although he may have had knowledge of the action brought against his predecessor in possession. Razote v. Razote, 49 Phil. 181.

ART. 1974. The interruption of the prescription of actions arising from solidary obligations shall benefit all the creditors and operate against all the debtors alike.

This provision is likewise applicable with regard to the heirs of the debtor as to obligations of all kinds.

In joint (*mancomunada*) obligations, when the creditor does not claim from one of the debtors more than the part for which he is liable, prescription is not interrupted thereby with respect to the other co-debtors.

1. See notes under Art. 1973, Civil Code.

ART. 1975. An interruption of the prescription as against the principal debtor by suit for the recovery of the debt shall also operate against his surety; but an extrajudicial demand on the part of the creditor or a private acknowledgment on the part of the debtor shall not affect the surety.

1. See U. S. v. Serapio, 23 Phil. 601.

FINAL PROVISION.

ART. 1976. All laws, statutes, uses, and customs which constitute the common civil law in all matters which are the subject of this code are hereby repealed, and shall henceforth be without force or effect either as direct obligatory laws or as supplementary law. This provision is not applicable to the laws which have been declared by this code to continue in force.

[12, 16, 1168]

1. See par. 6, Sec. 795, Code of Civil Procedure.
2. Article cited and applied. Llorente v. Rodriguez, 3 Phil. 697; Patriarca v. Orate, 7 Phil. 390; Albert v. Punsalan, 9 Phil. 294.

TRANSITORY PROVISIONS.

Changes introduced by this code in derogation of rights vested under the prior civil legislation shall have no retroactive effect.

In order to determine the proper law applicable in cases not expressly provided for by this code the following rules shall be observed:

1. Rights vested under the legislation prior to this code by virtue of acts which transpired while it was in force, shall be governed by such prior legislation even if the code should otherwise provide with respect thereto, or should not recognize such rights. But if any such right is recognized for the first time by this code, it shall be effective at once, even though the act which gave rise thereto may have taken place under the prior legislation, provided it does not conflict with other vested rights having the same origin.

2. Acts and contracts executed under the prior legislation, and which are valid in accordance therewith, shall produce all their effects as by such prior law provided, subject to the limitations established by these rules. Therefore wills, even when joint, powers of attorney to make wills, and codicils which may have been executed or written before this code became operative, shall be valid; and the *ad cautelam* clause, *fideicomisa* to apply property in accord-

ance with the private instructions of the testator, and any other acts permitted by the old law shall be efficacious; but the revocation or modification of these acts or of any of the clauses contained in the same cannot take place after this code has become operative except by making a will in accordance with the same.

3. The provisions of this code by which any civil penalty or deprivation of rights is attached to acts or omissions not subject thereto under the prior law shall not be applicable to a person who, when such prior law was in force, may have incurred in the omission or committed the act forbidden by this code.

When the offense is also punishable by the prior law, the milder provision shall be applied.

4. Actions and rights which accrued before this code became operative, but which have not been enforced, shall continue to subsist with the same force and effect given them by the prior law, but shall be subject, with respect to their exercise, duration, and the procedure for enforcing them, to the provisions of this code.

If official proceedings for the enforcement of the right or action, commenced under the provisions of the prior law, should be pending and such proceedings should be different from those prescribed by this code the parties may elect to make use of either procedure.

5. Minors who have attained the age of 23 years when this code goes into operation are hereby emancipated and released from parental authority, but should they continue to live in the house and at the expense of their parents the latter may retain the usufruct, the administration, and other rights which they may be enjoying in the private property of their children up to the time when such children would be freed from the parental authority in accordance with the prior legislation.

6. Any father who may have voluntarily emancipated a child, reserving to himself rights over the adventitious property of the latter, may continue to enjoy the same until the

time when the child would be freed from parental authority in accordance with the prior legislation.

7. Fathers, mothers, or grandparents who are exercising the guardianship of their descendants, cannot withdraw any securities therefor which they may have given, or be obliged to furnish such security, if not already given, or, to complete the same should that given be insufficient.

8. Guardians and curators appointed under the provisions of the prior law and subject to the same shall retain their offices, but shall be subject with respect to their exercise to the provisions of this code.

This rule shall also be applicable to the possessors and temporary administrators of the property of other persons, in the cases in which the law authorizes the same.

9. Guardianships and curatorships, the final establishment of which may be pending the decision of the courts at the time this code goes into operation, shall be constituted in accordance with the prior law, without prejudice to the provisions established by the next preceding rule.

10. Municipal judges and prosecuting officers shall not proceed *ex officio* in the matter of the appointment of family councils, except with regard to minors whose guardianship may not be definitely constituted when this code becomes operative. If the guardian or curator should already have begun to perform the duties of his office, the family council shall not be named until one of the persons eligible to membership therein, or the guardian or curator himself, requests the constitution of such council. In the meantime the appointment of a protutor shall be left in abeyance.

11. Proceedings for adoption, those for voluntary emancipation, and those for dispensation of law pending before the government or the courts, shall be continued in accordance with the prior legislation, unless the parents or petitioners for such dispensation should discontinue said proceedings and elect to avail themselves of those established in this code.

12. Rights to the inheritance of a person who may have

died, with or without a will, before this code was in force, shall be governed by the prior legislation. The inheritance of those who die after that time, with or without a will, shall be allotted and divided in accordance with this code, but in harmony, in so far as the latter permits it, with the testamentary dispositions. Therefore the legitimes, betterments, and legacies shall be respected; but their amounts shall be reduced when it is not possible in any other manner to give to each participant in the inheritance the share pertaining to him, according to this code.

13. Cases not expressly included in the foregoing provisions shall be decided by applying the principles on which they are based.

ADDITIONAL PROVISIONS.

1. The presiding justice of the Supreme Court and those of the territorial *audiencias* shall forward to the Department of Grace and Justice at the end of each year a report in which, referring to the cases of which the civil branches may have taken cognizance during the same year, they shall point out any deficiencies and doubtful points they may have discovered in applying this code. They shall state in detail therein the questions and points of law controverted and the article or omissions of the code which have given rise to doubts on the part of the court.

2. The Secretary of Grace and Justice shall forward these reports and a copy of the civil statistics of the same year to the General Commission.

3. In view of this data, of the progress made in other countries which may be utilized in our own, and of the decisions of the Supreme Court, the Codification Commission shall draft and submit to the Government every ten years such reforms as it may be deemed advisable to introduce.

1. Law prior to the Civil Code applied:
   a. Inheritance rights. Mijares v. Nery, 3 Phil. 195.

b. Status as natural child. Llorente v. Rodriguez, 3 Phil. 697; Capistrano v. Gabino, 8 Phil. 135; Cosio v. Pili, 10 Phil. 72; Salunga v. Evangelista, 20 Phil. 273.
c. Contracts. Torres v. Standard Oil Co., 34 Phil. 370.
d. Wills. Cabigting v. Samia, 35 Phil. 284.

2. See also Albert v. Punsalan, 9 Phil. 294; Sy Joc Lieng v. Sy Quia, 16 Phil. 137; Jumero v. Lizares, 17 Phil. 112; Aguillon v. Dir. of Lands, 17 Phil. 506; Ferrer v. De Inchausti, 38 Phil. 905; De Gala v. De Gala, 42 Phil. 771; Ramirez v. Gmur, 42 Phil. 862.

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1946 SUPPLEMENT

TO

FISHER'S

CIVIL CODE OF SPAIN

FOURTH REVISED EDITION

CONTAINING ALL STATUTORY
CHANGES AND ADDITIONS
FROM 1930 TO DATE

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Manila

CIVIL CODE

ART. 1387. The married woman, of age, may alienate, encumber or mortgage or otherwise dispose of her paraphernal property, and appear in court to litigate with regard to the same, without necessity of the permission or presence of the husband.

Act 3922, Sec. 1.

* * * *

ART. 1454-A. In a contract for the sale of personal property payable in installments, failure to pay two or more installments shall confer upon the vendor the right to cancel the sale or foreclose the mortgage if one has been given on the property, without reimbursement to the purchaser of the installments already paid, if there be an agreement to this effect.

However, if the vendor has chosen to foreclose the mortgage he shall have no further action against the purchaser for the recovery of any unpaid balance owing by the same, and any agreement to the contrary shall be null and void.

The same rule shall apply to the leases of personal property with option to purchase, when the lessor has chosen to deprive the lessee of the enjoyment of such personal property.

Act 4122, Sec. 1.

* * * *

ART. 1924-2D. For daily wages, salaries and legal compensations of laborers, clerks and domestic servants, for the last year;

Act 4114, Sec. 1.

AMENDMENTS TO ACT NO. 3613
THE MARRIAGE LAW

SEC. 4. **Persons authorized to solemnize marriages.**—Marriage may be solemnized by—

(a) The Chief Justice and Associate Justices of the Supreme Court;

(b) The Presiding Judge and Appellate Judges of the Court of Appeals;

(c) Judges and Judges-at-large of the Courts of First Instance;

(d) The municipal judges of Manila and justices of the peace; and

(e) Priests or ministers of the gospel of any denomination, church, sect or religion, and chaplains of the Army and Navy of the United States registered in the Philippine National Library as provided in Chapter IV of this Act.

Com. Act 62, Sec. 1.

SEC. 7. **Formal requisites—Marriage license.**—With the exception of the marriages of an exceptional character authorized in Chapter II of this Act, no marriage shall be solemnized in the Philippines without a license first being issued by the Local Civil Registrar where the female has her habitual residence. Said local civil registrar shall issue the proper license if each of the contracting parties swears separately before him or before any public official authorized to administer oath or any priest or minister authorized to solemnize marriage, to an application in writing setting forth that each party has the necessary qualifications for contracting marriage in conformity with this Act. The applicants, their parents or guardians shall not be required to exhibit their personal cedulas in any formality in connection with the securing of the marriage license. Such application shall in so far as possible contain the following data:

(a) Full name of the contracting party.
(b) Place of birth.
(c) Age, date of birth.
(d) Civil status (single, widow or widower, or divorced).
(e) If divorced, how and when the previous marriage was dissolved.
(f) Present residence.
(g) Degree of relationship of contracting parties.
(h) Full name of father.
(i) Residence of father.
(j) Full name of mother.
(k) Residence of mother.
(l) Full name and residence of guardian or person having charge (in case the contracting party has neither father nor mother and is under the age of twenty years, if a male, or eighteen years, if a female).

Com. Act 114, Sec. 1.

* * * *

SEC. 8. **Baptismal certificate—Instrument in lieu thereof.**—The local Civil Registrar, upon receiving such application, shall require the exhibition of the original baptismal or birth certificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. These certificates or certified copies of the documents required by this section need not be sworn to and shall be exempt from the documentary stamp tax. The signature and official title of the person issuing the certificate shall be sufficient proof of its authenticity.

If either of the contracting parties is unable to produce his baptismal or birth certificate or a certified copy of either because of the destruction or loss of the original, or if it is shown by an affidavit of such party or of any other person that such baptismal or birth certificate has not yet been received though the same has been requested of the person having custody thereof at least fifteen days prior to the date of the application, such party may furnish in lieu thereof his personal cedula for the current year or previous

years, to show the age stated in his application or, in the absence thereof, an instrument drawn up and sworn to before the local civil registrar concerned or any public official authorized to solemnize marriage. Such instrument shall contain the sworn declaration of two witnesses of lawful age, of either sex, setting forth the full name, profession, and residence of such contracting party and of his or her parents, if known, and the place and date of birth of such party. The nearest of kin of the contracting parties shall be preferred as witnesses, and in their default persons well known in the province or the locality for their honesty and good repute.

The exhibition of baptismal or birth certificates shall not be required if the parents of the contracting parties appear personally before the local civil registrar concerned and swear to the correctness of the lawful age of said parties, as stated in the application, nor when the local civil registrar shall, by merely looking at the applicants upon their personally appearing before him be convinced that both or either of them have the required age.

Com. Act 114, Sec. 1.

* * * *

SEC. 10. **Issuance of marriage license.**—The local civil registrar shall post during ten consecutive days at the main door of the building where he has his office a notice the location of which shall not be changed once it has been placed, setting forth the full names and domiciles of the applicants for marriage license, their respective ages, and the names of their parents if living or of their guardians if otherwise. The license applied for shall be issued at the expiration of said period; but if either of the applicants and a priest or minister of the religion professed by such applicant state in writing and under oath that the rules and practices of the church, sect, or religion under which such applicant desires to contract marriage require bans or publications prior to the solemnization of the marriage, and that said church, sect, or religion complies with said rules and practices and has obtained the proper certificate from the Director of the Philippine National Library; it shall not be necessary for the local civil registrar to make the publication required in this paragraph, and in this case the license shall issue immediately after the filing of the application and shall state the church, sect, or religion in which the marriage is to be solemnized. Neither shall such publication be necessary if the father, mother, guardian, or person in charge of each of the contracting parties, whether the latter be over or under twenty, if male, or eighteen years of age, if female, accompany the same when they apply for the license, or if both contracting parties have the appearance of having the required age, in the discretion of the local civil registrar, and the female asks for the immediate issuance of the license, in which case such license shall be issued immediately, after preparation of a document in duplicate signed by the persons above mentioned, the duplicate to be attached to the license and the original to be filed.

Act 3848, Sec. 1; Com. Act 114, Sec. 1.

SEC. 11. **Fees—Validity of license.**—The local civil registrar shall require the previous payment of two pesos for each license issued, which fee shall accrue to the school funds of the municipality in which it is paid. No other sum shall be collected, in the nature of a fee or tax of any kind, for the issuance of a marriage license, in addition to the two pesos required by this section. Marriage licenses shall be issued free of charge to indigent parties, i.e., when both male and female do not each own assessed real property in excess of two hundred pesos, a fact certified to, without cost, by the provincial treasurer, or in the absence thereof, by a statement duly sworn to by the contracting parties before the local civil registrar. The license shall be valid in any part of the Philippines; but it shall be good for no more than one hundred and twenty days from the date on which it is issued and shall be deemed cancelled at the expiration of said period if the interested parties have not made use of it.

Act 3848, Sec. 1; Com. Act 114, Sec. 1.

* * * *

SEC. 16. **Certificate to be sent to authorities.**—It shall be the duty of the person solemnizing the marriage to furnish to either of the contracting parties one of the three copies of the marriage contract in triplicate referred to in section three of this Act, and to send another copy of said document not later than fifteen days after the marriage took place to the local civil registrar concerned, whose duty it shall be to issue the proper receipt to any person sending a marriage contract solemnized by him, including marriages of an exceptional character. The official, priest, or minister solemnizing the marriage shall retain the third copy of the marriage contract, the marriage license and the affidavit of the interested party regarding the solemnization of the marriage in a place other than those mentioned in section five of this Act, if there be any such affidavit, in the file that he must keep.

Com. Act 114, Sec. 1.

* * * *

SEC. 45. **Disqualification of priests and ministers.**—Any priest or minister of the gospel of any denomination, church, sect, or religion convicted of the violation of any of the provisions of this Act or of any crime involving moral turpitude, shall, in addition to the penalties incurred in each case, be disqualified to solemnize marriage for a period of not less than six months nor more than six years at the discretion of the court.

Act 4236, Sec. 1.

(ACT No. 3753)

AN ACT TO ESTABLISH A CIVIL REGISTER

Be it enacted by the Senate and House of Representatives of the Philippines in Legislature assembled and by the authority of the same:

SECTION 1. **Civil register.**—A civil register is established for recording the civil status of persons, in which shall be entered: (a) births; (b) deaths; (c) marriages; (d) annulments of marriages; (e) divorces; (f) legitimations; (g) adoptions; (h) acknowledgments of natural children; (i) naturalizations; and (j) changes of name.

SEC. 2. **Civil Registrar-General; his duties and powers.**—The Director of the National Library shall be Civil Registrar-General and shall enforce the provisions of this Act. The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized to prepare and issue, with the approval of the Secretary of Justice, regulations for carrying out the purposes of this Act, and to prepare and order printed the necessary forms for its proper compliance. In the exercise of his functions as Civil Registrar-General, the Director of the National Library shall have the power to give orders and instructions to the local civil registrars with reference to the performance of their duties as such. It shall be the duty of the Director of the National Library to report any violation of the provisions of this Act and all irregularities, negligence or incompetency on the part of the officers designated as local civil registrars to the (Chief of the Executive Bureau or the Director of the Non-Christian Tribes) Secretary of the Interior, as the case may be, who shall take the proper disciplinary action against the offenders.

SEC. 3. **Local civil registrars.**—Except in the City of Manila, where the duties of local civil registrar shall be performed by the officer of the Philippine Health Service designated by the Director of said Service, the treasurers of the regular municipalities, municipal districts and cities shall be local civil registrars of the respective municipalities, municipal districts or cities, and shall perform the duties imposed upon them by this Act without extra compensation, in addition to their ordinary duties. In his capacity as local civil registrar, the officer designated by the Director of the Health Service as local civil registrar of Manila and the treasurer above mentioned shall be under the direction and supervision of the Civil Registrar-General.

SEC. 4. **Civil register books.**—The local civil registrars shall keep and preserve in their offices the following books, in which

they shall, respectively, make the proper entries concerning the civil status of persons.

1. Birth and death register.

2. Marriage register, in which shall be entered not only the marriages solemnized but also divorces and dissolved marriages.

3. Legitimation, acknowledgment, adoption, change of name, and naturalization register.

SEC. 5. **Registration and certification of births.**—The declaration of the physician or midwife in attendance at the birth or, in default thereof, the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register. Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (a) date and hour of birth; (b) sex and nationality of infant; (c) names, citizenship, and religion of parents or, in case the father is not known, of the mother alone; (d) civil status of parents; (e) place where the infant was born; (f) and such other data as may be required in the regulations to be issued.

In the case of an exposed child, the person who found the same shall report to the local civil registrar the place, date, and hour of finding and other attendant circumstances.

In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified.

Any foetus having human features which dies after twenty-four hours of existence completely disengaged from the maternal womb shall be entered in the proper registers as having been born and having died.

SEC. 6. **Death certificate and register.**—No human body shall be buried unless the proper death certificate has been presented and recorded in the office of the local civil registrar. The physician who attended the deceased or, in his default, the health officer concerned, or in default of the latter, any member of the family of the deceased or any person having knowledge of the death, shall report the same to the local health authorities, who shall issue a death certificate and shall order the same to be recorded in the office of the local civil registrar. The death certificate, which shall be issued by the attending physician of the deceased or, in his default, by the proper health officer, shall contain the following data which shall be furnished by the person reporting the death: (a) date and place of death; (b) full name, (c) age, (d) sex, (e) occupation or profession, (f) residence, (g) status as regards marriage, (h) nationality of the deceased, and (i) probable cause of death.

During epidemics, bodies may be buried provided the proper death certificates have been secured, which shall be registered not later than five days after the burial of the body.

SEC. 7. **Registration of marriages.**—All civil officers and priests or ministers authorized to solemnize marriages shall send a copy of each marriage contract solemnized by them to the local civil registrar within the time limit specified in the existing Marriage Law.

In cases of divorce and annulment of marriage, it shall be the duty of the successful petitioner for divorce or annulment of marriage to send a copy of the final decree of the court to the local civil registrar of the municipality where the dissolved or annulled marriage was solemnized.

In the marriage register there shall be entered the full name and address of each of the contracting parties, their ages, the place and date of the solemnization of the marriage, the names and addresses of the witnesses, the full name, address, and relationship with the minor contracting party or parties of the person or persons who gave their consent to the marriage, and the full name, title, and address of the person who solemnized the marriage.

In cases of divorce or annulment of marriage, there shall be recorded the names of the parties divorced or whose marriage was annulled, the date of the decree of the court, and such other details as the regulations to be issued may require.

SEC. 8. **Registration of legitimations by subsequent marriage.**—The acknowledgment of the children legitimated by subsequent marriage, referred to in article one hundred and twenty-one of the Civil Code, may be recorded in the legitimation register, entering: (a) the names of the parents; (b) that at the time when the children were conceived, the aforesaid parents could have contracted marriage, and that they actually contracted marriage, stating the date and place when such marriage was solemnized, the minister who officiated, and the civil register where such marriage was recorded; (c) the names of the children legitimated, with reference to their birth certificates.

SEC. 9. **Registration of acknowledgments by public instrument.**—Any voluntary acknowledgment by the natural parents or by only one of them by public instrument, shall be recorded in the acknowledgment register of the civil register of the municipality where the birth of the acknowledged child was registered, setting forth the following data: (a) full name of the natural child acknowledged; (b) age; (c) date and place of birth; (d) status as to marriage, and residence of the child acknowledged; (e) full name of the natural father or mother who makes the acknowledgment; (f) full name of the notary public before whom the document was acknowledged; (g) full names of witnesses to document; (h) date and place of acknowledgment of said document, and entry and page number of the notarial register in which the same was recorded.

It shall be the duty of the natural parent whose voluntary acknowledgment was made by means of a public instrument to send a certified copy thereof to the local civil registrar of the municipality in the civil register whereof the birth of the acknowledged child was recorded, not later than twenty days after the execution of such instrument, for the registration thereof.

SEC. 10. **Registration of adoptions, changes of name, and naturalizations.**—In cases of adoptions, changes of name, and naturalizations, it shall be the duty of the interested parties or petitioners to register the same in the local civil register of the municipality where the decree was issued. The names of the interested parties and such other data as may be required by the regulations to be issued shall be entered in the register.

SEC. 11. **Duties of clerks of Court to register certain decisions.**—In cases of legitimation, acknowledgment, adoption, naturalization, and change of given or family name, or both, upon the decree of the court becoming final, it shall be the duty of the clerk of the court which issued the decree to ascertain whether the same has been registered, and if this has not been done, to have said decree recorded in the office of the civil registrar of the municipality where the court is functioning.

SEC. 12. **Duties of local civil registrars.**—Local civil registrars shall (a) file registrable certificates and documents presented to them for entry; (b) compile the same monthly and prepare and send any information required of them by the Civil Registrar-General; (c) issue certified transcripts or copies of any certificate or document registered upon payment of the proper fees; (d) order the binding, properly classified, of all certificates or documents registered during the year; (e) send to the Civil Registrar-General, during the first ten days of each month, a copy of the entries made during the preceding month, for filing; (f) index the same to facilitate search and identification in case any information is required; and (g) administer oaths, free of charge, for civil register purposes.

SEC. 13. **Documents registered are public documents.**—The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the truth of the facts therein contained. They shall be open to the public during office hours and shall be kept in a suitable safe which shall be furnished to the local civil registrar at the expense of the general fund of the municipality concerned. The local civil registrar shall not under any circumstances permit any document entrusted to his care to be removed from his office, except by order of a court, in which case the proper receipt shall be taken. The local civil registrar may issue certified copies of any document filed, upon payment of the proper fees required in this Act.

SEC. 14. **Expenses and fees of the office of the civil registrar.**—All expenses in connection with the establishment of local civil registers shall be paid out of municipal funds, and for

this purpose, municipal councils and boards shall make the necessary appropriations out of their available general funds.

For the registration of documents and for certified copies of documents on file in the local civil registrar's office, fees shall be charged in accordance with the following schedule:

For registration of a legitimation	₱2.00
For registration of an adoption	2.00
For registration of an annulment of marriage	10.00
For registration of a divorce	10.00
For registration of a naturalization	20.00
For registration of a change of name	2.00
For certified copies of any document in the register, for each one hundred words	.20

The Civil Registrar-General or any local civil registrar may issue certified copies of documents free of charge for official use or at the request of a competent court. All fees collected for such purposes shall accrue to the general fund of the municipality concerned.

SEC. 15. **Preservation of present register books.**—All birth, death, and marriage registers and other papers relating thereto at present in the keeping of the municipal secretaries or the clerk of the Municipal court of Manila shall be transferred by the same to the officers acting as local civil registrars in each city or municipality and shall form part of the archives of the latter.

SEC. 16. **False statements.**—Any person who shall knowingly make false statements in the forms furnished and shall present the same for entry in the civil register, shall be punished by imprisonment for not less than one month nor more than six, or by a fine of not less than two hundred pesos nor more than five hundred, or both, in the discretion of the court.

SEC. 17. **Failure to report—Other violations.**—Any person whose duty it is to report any fact concerning the civil status of persons and who knowingly fails to perform such duty, and any person convicted of having violated any of the provisions of this Act, shall be punished by a fine of not less than ten pesos nor more than two hundred.

SEC. 18. **Neglect of duty with reference to the provisions of this Act.**— Any local civil registrar who fails properly to perform his duties in accordance with the provisions of this Act and of the regulation issued hereunder, shall be punished, for the first offense, by an administrative fine in a sum equal to his salary for not less than fifteen days nor more than three months, and for a second or repeated offense, by removal from the service.

SEC. 19. **Application of this Act to the special provinces.**—The Director of the National Library, in his capacity as Civil Registrar-General, is hereby authorized, upon recommendation of the (Director of the Bureau of Non-Christian Tribes) Secretary of the Interior, to designate the municipalities in the specially organized provinces where the provisions of this Act shall be applied.

SEC. 20. **Transitory provisions.**—All rights, duties, and powers established by Act Numbered Thirty-six hundred and thirteen, entitled the Marriage Law, with reference to the procedure for the issuance of the marriage license prior to the solemnization of marriage, the registration of marriages, and the filling of the documents in connection therewith, conferred and imposed by said Act upon the clerk of the Municipal Court of Manila and the municipal secretaries, are hereby transferred to the officer of the Health Service designated by the Director of said Service, in accordance with section three of this Act, and to the municipal treasurers, respectively, in their capacity as local civil registrars.

All duties and powers established by subsections (d) and (e) of section twenty-two hundred and twelve of the Administrative Code, imposed and conferred by said section upon the municipal secretaries, are hereby likewise transferred to the municipal treasurers in their capacity as local civil registrars.

SEC. 21. All acts or parts of acts inconsistent herewith are hereby repealed.

SEC. 22. This Act shall take effect three months after its approval.

Approved, November 26, 1930.

(COMMONWEALTH ACT No. 284)

An act fixing the minimum indemnity in all cases of civil liability for the death of a person at two thousand pesos.

Be it enacted by the National Assembly of the Philippines:

SEC. 1. The civil liability for the death of a person shall be fixed by the competent court at a reasonable sum, upon consideration of the pecuniary situation of the party liable and other circumstances; but it shall in no case be less than two thousand pesos.

SEC. 2. This Act shall take effect on its approval.

Approved, June 3, 1938.