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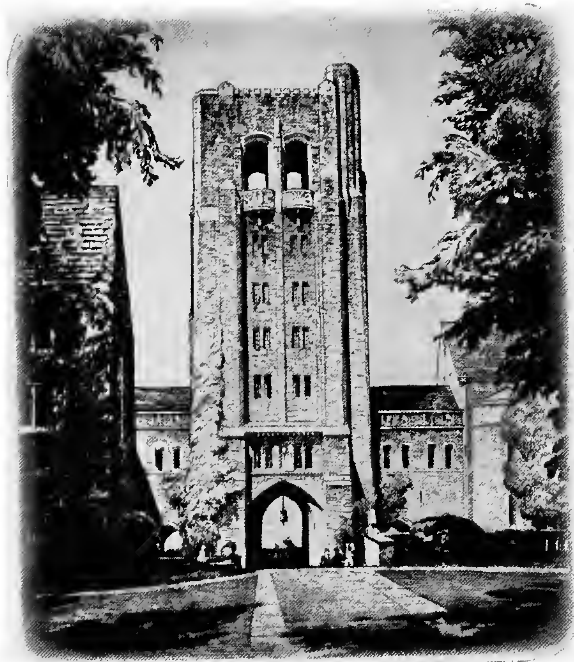

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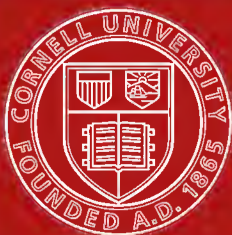

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THE SWISS CIVIL CODE

OF DECEMBER 10, 1907

(Effective January 1, 1912)

TRANSLATED BY

ROBERT P. SHICK, A.M., LL.B.

MEMBER OF THE PHILADELPHIA BAR

ANNOTATED BY

CHARLES WETHERILL, A.B., LL.B.

MEMBER OF THE PHILADELPHIA BAR

CORRECTED AND REVISED BY

EUGEN HUBER, DR. JUR., RER. PUB. ET PHIL.

LAW PROFESSOR, UNIVERSITY OF BERNE

ALFRED SIEGWART, DR. JUR.

PROFESSOR OF SWISS LAW, UNIVERSITY OF FREIBURG

GORDON E. SHERMAN, PH.B., LL.B.

MEMBER OF THE NEW YORK AND NEW JERSEY BARS

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(FOREIGN CIVIL CODE SERIES)

FOREWORD

When the Comparative Law Bureau was inaugurated in August, 1907, as a branch of the American Bar Association, the final draft of the Swiss Civil Code had already attracted the attention of legal scholars on both sides of the Atlantic. The publicity given its preparation revealed the high mastery of its author, Professor Eugen Huber, Dr. Jur., rer. publ. et phil., of the University of Berne, in dealing with and moulding into a practical yet scientific whole a multitude of ancient, local, contradictory and seemingly irreconcilable customs and statutes, cantonal and federal, which had in the course of centuries culminated in conditions no longer tolerable by an enlightened people. The gigantic and truly remarkable product of that great Master Mind in Jurisprudence was unanimously adopted without amendment in December, 1907, by the National Council and the Council of the States, to become effective on January 1, 1912, unless rejected by referendum. So well known and popular had the work become that no referendum was demanded and for the first time Switzerland was endowed with a common federal civil law.

Lawyers in this country who had observed the progress of this codification could not overlook the many features of similarity between the Swiss conditions and those difficulties our various systems of legislation and jurisprudence have long presented and which in time will demand some like remedy. The matter being precisely within the field of the Comparative Law Bureau, a member of its Editorial Staff, the late Charles Wetherill, Esq., of the Philadelphia Bar, proposed that the Bureau publish an English translation of the Code. In 1908 the work was begun; Robert P. Shick, Esq., of the

Philadelphia Bar undertook the text. He was peculiarly qualified for the task by a thorough academic training, evidenced by his Princeton University degrees of A.B. and A.M., his grounding in the common law at the Law School of Harvard University, where he received the degree of LL.B., and his years of active practice, and also by his familiarity with Germanic law, which he studied at the University of Berlin, retained by subsequent researches. Mr. Wetherill assumed the burden of the annotations, comprising cross-references to other systems and sources of legislation. He was especially fitted for this because he had given comparative legislation much study for several years and had accumulated a large amount of useful data.

Dr. Huber was communicated with and generously offered to correct and revise the translation and lend any other aid in his power. He suggested that while the official code was adopted in German, French and Italian versions, the first would be the most satisfactory for the translation by reason of the facilities of comparison with Wang's translation into English of the Imperial German Civil Code and Schuster's doctrinal treatise and commentary on that Code and basic Germanic civil law, whereby a uniformity of terminology could be maintained. This suggestion was adopted and the work proceeded, although but slowly, owing to the laborious detail of the annotations and the time required for communicating with Dr. Huber and his examination of the text as it was translated. Later the proof-sheets had to be sent him and opportunity given for revision by him and Professor Alfred Siegwart, Dr. Jur., holding the Chair of Swiss Law at the University of Freiburg, who graciously assisted him in the work of reading the entire text and annotations. The disinterested labors of these two eminent scholars not only constitute a most flattering compliment to this Bureau, the American Bar Association and the Bar of this country in general, but reveal a highly gratifying international fellowship in our profession.

In order that our work might have the benefit of an independent and final revision by one versed both in the Common Law and the legislation of Switzerland, Gordon E. Sher-

man, Esq., Professor of Comparative and International Law at Yale University and a member of the New York and New Jersey Bars, at the request of our Board of Managers, reviewed the entire work and assisted materially in deciding doubtful points of terminology to the end that the translation might be at once accurate, in conveying the meaning of the original, and amply suggestive to the American lawyer by the terms employed.

This English translation therefore is presented after more than six years of labor by Dr. Huber, Professor Siegwart, Mr. Shick, Mr. Wetherill and Mr. Sherman, whose generous joint gift to this Bureau permits publication in our own tongue of the latest codification of a federal nation's laws which has been said to be "the realization of the ideal of democratic legislation."

W. W. SMITHERS,
Secretary Comparative Law Bureau.

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HISTORICAL INTRODUCTION

Henry Chaudé, LL.D., of Paris, has, in his "Le Nouveau Code Civil Suisse dans l'œuvre de la codification moderne" [Librairie Nouvelle de Droit et de Jurisprudence, Arthur Rousseau, Editeur, 14 rue Soufflot, et rue Toullier 13, Paris (1909)] written a most excellent introduction for a proper understanding of the historical significance of the Swiss Civil Code, and a translation of the major part of his "Introduction Historique" is made use of here for the like purpose.

It is known that the Swiss Confederation is composed to-day of twenty-five cantons or semi-cantons (nineteen cantons and six semi-cantons) which, under a reservation of considerable exceptions which we will point out, have in principle each its own legislation. But if in the restricted circle of cantonal limits Switzerland long since entered into the general work of codification, so far as the Confederation is concerned it is only since thirty years ago that it has participated therein. Cantonal codification was the first stage of redaction of the Swiss Law, and never without the preparatory elements furnished by it could the federal codification have been realized so happily.

We have already had occasion to point out the influence of our Civil Code in the part of Switzerland called French-speaking Switzerland. Introduced in Geneva, at the time when the Genevan territory made a part of France, it has been maintained there since 1815, the epoch when Geneva became a Swiss canton, down to our time, and it is the most ancient of Swiss codes. It has undergone since 1815 some modifications, due to the special laws upon guardianship, pledges, etc. Our code has likewise remained in force in the Bernese Jura.

Several cantonal codes are plainly imitations either of the French Civil Code, or perhaps of its successors, *i.e.*, the subsequent revisions which governed the various states of Italy before its unification. The Vaudois Code, the second in Switzerland in order of date, is in greater part but a copy of the French Code. Nevertheless, it has kept in certain matters, as guardianship, matrimonial régime as to goods, and successions, the provisions of the ancient local customs.

The Fribourg Code, promulgated in fragments from 1834 to 1849, presents, despite its division into five books in imitation of German Codes, great similarity to the Vaudois Code and consequently to our Code. There can be found therein, nevertheless, such a local institution as "joint-tenancy between brothers and sisters and their descendants," which is ignored in the canton of Vaud.

The Code of Neuchâtel, drafted by M. Piaget and promulgated in 1855, reproduces likewise a great number of the articles of the Code Napoléon. The matrimonial law and the law of pledges are in it original matter. The Code of Valais of 1854 prepared by M. Cropt and revised in 1871, has imitated the French Code under the form derived from the Sardinian Code. The Code of Tessin of 1838, revised in 1874, has imitated it, after the Code of Parma, and it has likewise kept the principles of Austrian law along with the principles of French law. It is the only Swiss Code published exclusively in Italian.

Such is the group of French-speaking cantons of western and middle Switzerland, where prevail the Roman ideas and which all have been in good time provided with a codified law. Their respective legislations, in the domain of private law, reveal the same origin and a general community of principles, but also with differences numerous and marked from one canton to the other.

As to the cantons of the German language and where prevail the German ideas, the diversity and the confusion of legislation are even greater. It is, however, possible to distinguish three principal groups.

In the first group may be placed the small cantons of central Switzerland, living by the raising of cattle, very de-

voted to the Catholic religion, who have no codified legislation and are still governed by the old customs and local statutes. These are the cantons of Schwyz, Uri, Unterwalden and Saint-Gall, and the semi-cantons of Obwalden and Appenzell.

Those of the German cantons which, on the contrary, have a codified legislation, divide themselves into two groups, those of a codification anterior to the first half of the 19th century and those of a later period.

The first group comprises the cantons of Berne, Lucerne, Argovie and Soleure, agricultural cantons of which the legislation is modeled after the Austrian Civil Code. The Code of Berne, drafted by M. Schnell, was promulgated from 1824 to 1830 and modified many times since. That of Lucerne, which is manifestly connected with that, was drafted by M. Casimer Pfyffer and promulgated from 1831 to 1839. The Code of Soleure, prepared by M. Reinart, was promulgated from 1842 to 1848. Finally, the Code of Argovie had for its draftsman M. Keller, and was put into force from 1847 to 1855.

Much more interesting is the group composed of the cantons of western Switzerland, cantons, industrial, in the majority Protestant, and for which the Code of Zurich served as the legislative prototype. This original work, the most remarkable produced in Switzerland, is due to the celebrated jurisconsult Bluntschli, who devoted ten years to its preparation. The five parts of it were promulgated successively from 1854 to the end of 1855. The Code of Zurich has served as a model to all the small neighboring cantons, that appropriated from it almost textually its provisions, save upon certain points where their local traditional regulations differed from the special law of Zurich. Likewise the Code of Schaffhausen (1864–1865), save as to certain particular matters, as the law of succession, is but a copy of the code of Bluntschli. The Codes of Thurgovie, Zug, and Niedwalden have equally made large borrowings from that code. Finally the legislation of Bâle-Ville and Saint-Gall are manifestly connected with it.

Reference should be made separately to the two Codes of Glaris and the Grisons, which arise out of these same codes and are interesting in various titles. The Code of Glaris

(1852), drafted by Blumer, is an attempt at conciliation between the two juridical currents which divide Switzerland. It is distinguished by its brevity, to which clarity is in no wise sacrificed. The Code of the Grisons (1862–63), the work of the jurisconsult Planta, is to him also a work of compromise between the Roman and German ideas. "This code is certainly one of the most remarkable in Switzerland, not only for this reason and at base, but also in form: it was promulgated simultaneously in three languages, German, Italian, and a Romance dialect, and constitutes especially for this last a document all the more curious because the Romance language tends to disappear to the advantage of the other two."

It is seen that apart from a small part of the cantons which oppose this progress, the great majority of the cantons have bettered their secular law by codifying it. This codification has resulted generally in realizing the juridical unity internally in each canton, but even within these limits it has not caused to disappear completely the local customs and the conflicts of law to which their coexistence gives rise. If one no longer sees in the one canton twenty-five different legislations upon the same point of law, as in the canton of Vaud up to 1821, or eighteen different rights of succession as in the Grisons up to 1850, there may still be found cantons which have allowed to subsist two contradictory legislations for the same territory; this is the case notably in two of the largest ones, Berne and Saint-Gall.

But it is especially among the diverse cantonal legislations that the contradictions appear multiplied and striking, and it is only in a very feeble measure that cantonal codification has contributed to their diminishment. If, in fact, we have grouped in three or four families the Swiss systems of private laws, it must not be thought that these groups are as defined as they may at first appear. In reality, "Switzerland forms a veritable mosaic; what is first striking, is the variety in the details, rather than the resemblances of the families." We will return later to this extreme diversity of juridical systems, to the conflicts which result therefrom, and to the hindrance which it presents to every attempt at federal codification. Actually, we would like only to remark that the

cantonal codification has contributed in a certain measure to remedying this situation, in appearance inextricable, but that it could not sensibly accomplish the unification of the general law of Switzerland.

If in fact any such canton, in giving itself a civil code, has yielded to the inevitable temptation of imitating similar works of neighboring cantons (as happened in the neighboring cantons to Zurich), it did not for that purpose overlook its own particular needs, nor did it renounce its customary traditions, such regional institutions of which it had a secular usage. No part of the particularistic spirit lost its rights. "It should be understood," one has written, "that in 1873 the people of Zurich gave up the code, which they were proud to replace by a Swiss Code; it should not be understood that a sacrilegious hand dared to touch the work of Bluntschli to give it a false resemblance to the laws of Neuchâtel. We have intended to express the opinion that Switzerland should adopt the Code of Zurich. That code is one of the most remarkable of modern legislative monuments. But aside from its scientific value, it is distinguished specially for its originality and because it has conserved with care the peculiarities of the law of Zurich. What makes its merit for the canton of Zurich would be a capital defect as soon as it would be a question of imposing it upon all Switzerland."

Far from causing the divergencies to disappear, cantonal codification has in most cases but brought them to light and revealed them. Its aim was redaction and unification of cantonal law, and it rarely served, and that in a quite fortuitous fashion, to effect a general unification of Swiss law. Such as it is, it is nevertheless very important, for it came to furnish precious documents and sure indications for future editors of the federal codes.

Aside from cantonal codification, of which we have just given a hasty review, the need made itself felt very soon in Switzerland for a legislation that would offer all cantons the common solution for a certain number, at least, of points of law, of interest particularly in intercantonal relations. Already on January 5, 1798, the Councils of the Helvetian

Republic had approved the idea of a uniform civil legislation for all Switzerland, but this idea did not survive the "Republic one and indivisible" which had given it birth. In 1848, it reappeared in the form of a proposition of unification of the commercial law. But the reform was not yet ripe and the proposals were rejected: the constitution of September 12, 1848, abandoned the whole matter of private law to the cantons. It is true that this charter of 1848 restrained their particular sovereignty in matter of public law, — coinage of money, weights and measures, posts and customs, federal institutions, organization of a federal army, recognition finally of all common liberties (free choice of residence, freedom of confessional, of the press, of assembly, of petition); this charter of 1848 was already a first and considerable success for the partisans of centralization, an incontestable check for the particularistic cantonal spirit. Even after 1848, matters of private law continued to be under the reign of the absolute sovereignty of each canton, *i.e.*, under the coexistence within its boundaries of twenty-five cantonal legislations without any harmony between them, and of a great number of cantonal customs diverging from the general law of their proper canton. The juxtaposition of twenty-five different penal laws aggravated again the confusion. This situation was tolerable so long as the local law or custom was applicable only to the individuals coming from the country where they saw birth, but in proportion as the changes of population became more frequent, and the field of civil transactions and commercial relations extended itself, the conflicts of legislations multiplied and the insecurity of the law made itself more felt. Thus among men of affairs and in certain industrial and commercial centers the conviction became strong that the diversity of laws was prejudicial to the vital interests of the country.

Already in 1853, the Bernese Magistrate, E. Bloesch, denounced the incoherence and the inextricable maze of this multiplicity of juridical systems for a people of two and a half million inhabitants. Upon this initiative the canton of Berne in the following year called a conference with a view of studying the introduction of a law of a unique change

by means of a concordat: fourteen cantons were represented in it. In 1856 the project was completed and studied in a new conference of nine cantons only. Unfortunately, cantonal rivalries, the fear of innovations and the pride of certain interests that imagined themselves possessed of a legislation superior to that which was sought to be established, caused the reform to fail.

In 1862 the Federal Council took up again the question and enlarged it by occupying itself with the preparation of a commercial code. This commercial code was not yet voted upon when the constitutional revision of 1872 intervened. The partisans of juridical centralization wished to profit by this revision to unify the civil law. To this end they inserted in the plan of a federal constitution of March 5, 1872, an article which gave competency to the Confederation upon all matters of civil law. But it was a great reform, for which the cantons, profoundly attached to their autonomy, were as yet insufficiently prepared. Suffice it to say that this premature disposition caused the rejection of the revised charter by a slight majority (260,-859 votes against 255,606, and thirteen states against nine).

It was for reasons exclusively political that a reform was postponed which at base was desired by all. The proof of it was immediately furnished by the adoption of the constitution of August 19, 1874, which retained the text of 1872 in the following manner: "Art. 53: The civil status and the keeping of registers relating thereto is within the competence of civil authorities. Federal legislation will fix for this subject the final provisions.—Art. 54. The law of marriage is placed under the protection of the Confederation . . . . —Art. 64: Legislation as to civil capacity, in all matters of law relative to commerce and transactions as to personal property (law of obligations, comprised therein the commercial law and law of exchange), as to literary or artistic property, execution for debts and involvency, is within the jurisdiction of the Confederation."

The Confederation, using the new powers which were conferred upon it, commenced forthwith the preparation of federal laws which were to be, as it were, the landmarks

of the future codification. These were at first the law of December 24, 1874, upon the civil status, the law of July 3, 1876, upon Swiss naturalization and the renunciation of Swiss nationality, and the law of June 22, 1881, upon civil capacity. In its train was an entire chapter of the Swiss codification — the "Federal Code of Obligations" of June 19, 1881.

The features which mark this code are practically the same as those from which is drawn the originality, as a whole, of the Civil Code in which it was incorporated thereafter. We will analyze them later in studying this latter. It should be remarked only, for the present, that Swiss legislation, inversely from almost all the modern legislation, has subjected to the same principles civil and commercial obligations. There was in Switzerland no particular law of usage among merchants. "This tendency is, in connection with the democratic institutions of Switzerland, and the republican spirit of its population, hostile to every distinction of persons. For the rest, it is justified by the education and commercial spirit that are certainly prevalent in Switzerland in all classes of society to a greater degree and in a manner more general than in any other country of Europe."

The Federal Code of Obligations was compiled concurrently in three languages, French, German and Italian, and the three texts are considered originals. Its appearance rendered necessary the giving point to the diverse legislations of the cantons, and the promulgation in the greater part among them of laws designed to assure their harmony with the new Federal Code. It was necessary, in effect, to regulate with precision the transition from the old to the new régime; it was necessary, in consequence, to determine exactly the frontiers between the domains hitherto assigned to the federal law, and those which were left to the cantonal law: This was the aim of the transitory provisions of the code itself, and of the laws of concordance.

Despite all this, the confusion is in the great danger of partial unifications, and leading spirits feared that the going into effect of the new code would give birth to numerous controversies, and that its application would encounter great

difficulties. Experience has demonstrated that these fears were, however, unjustified or at least greatly exaggerated. Jurisprudence has known most frequently how to rapidly find a solution, clear and satisfactory, for those rare conflicts which raised themselves up, and the Federal Code of Obligations has rapidly acclimated itself in all regions. Its success was a good omen for the future of the Federal legislation, and permitted the provision for the subsequent enlargement of the competence of the Confederation.

In accomplishing this enlargement, the Federal civil law was filled out in matters which were already within its domain. Thus, a whole series of laws relative to literary and industrial protection were published during several years (the law of April 25, 1883, upon literary and artistic property; of June 29, 1888, upon Letters Patent for inventions; of December 21, 1888, upon industrial designs and models; of September 26, 1890, upon the protection of trade-marks). During the same time were promulgated the important law of April, 11 1889, upon execution for debts and insolvency, and a law of June 25, 1891, upon the relations of the civil law for citizens in residence or in sojourn.

A great step was made in 1881 towards the integral unification of the Swiss Law, by the promulgation of the Federal Code of Obligations; but after it went into effect, there made itself vividly felt the need of a reform more radical, which would result in the definitive federalization of all civil law. In the matters still reserved to the cantons, the complexity was extreme. Thus it is necessary to refer only to the law of pledges, and that there existed upon this matter twenty-nine different cantonal laws. It is impossible, if one would wish to have an exact knowledge thereof, to work out a group of cantonal legislation: the individual study thereof is required. There is not one of them which is not distinguishable from its neighbor in some direction; "the law of the mountain contradicts that of the valley; the law of the City of Bâle is not that of the Country of Bâle." The best manner of obtaining a rapid idea of the fettering by these ancient cantonal legislations, is to consider for a few moments the charts representing under different forms the different

systems in force, that the eminent Minister of the Swiss Confederation at Paris, M. Lardy, has placed at the end of his volume upon the Swiss legislation of the Swiss cantons. Nothing can better show than this curious atlas of juridical geography, the impression of the veritable mosaic formed by the juxtaposition of the multiplied Swiss laws.

If the difference of environments explains many of the divergencies, the greatest number appear to be the result of fantasy and pure chance. But even though the law reveals characters quite original, it commences to lose its authority, for it is then no longer imposing itself upon exclusively autochthonous citizens. The number of those domiciled therein become each day more considerable, while that of those changing adherence thereto diminishes, by reason of the incessant emigration of the Swiss from one canton to the other. In certain cantons the non-adhering are in the majority. (See Census of 1900, Neuchâtel, Geneva, and Bâle-Ville.) As in principle the law of domicile has been caused to prevail over the law of origin, the law no longer applies to those for whom it was made. Hence have arisen conflicts quite grave, as well as frequent, and a permanent insecurity of law.

Two spouses of Berne move to Zurich, where one of them dies. The survivor has been deprived of all right of succession to his consort, whereas at Berne he was a compulsory heir. A mother of Zurich is absolutely shut out of the succession to her son deceased in Schwyz; if this son had died in any other canton she would have had a right of succession. A citizen of Berne who is proceeded against in an action to establish paternity, has only to go to French-speaking Switzerland to relieve himself of all claims of the mother of the child. That in Zurich a woman, upon an attachment against her husband, may claim his deposits, and exercise his prerogative, the husband remaining meanwhile in possession, and enjoyment of the goods of the wife, — this gives force to her rights as a creditor under the control of the other creditors. Why this happens whenever the spouses, after the first attachment, pass to the canton of Berne, where the insolvency of the husband brings about the separation of goods, no one knows.

It would be easy to multiply the examples of similar bizarre conditions, due to the strict application of the law of domicile. Those who have once suffered the rigorous consequences of these conditions call with all their voices for the establishment of a law precise and uniform. The example of the Code of Obligations had pointed out, in a convincing fashion, the advantages of this uniformity, and from all parts a demand arose for the completion of the codification which had been cut off in 1881.

If the advantages of the unification of the civil law were manifest, the difficulties of the reform appeared with no less evidence. In 1881, it was relatively easy to arrive at a general accord upon one section of law where the disagreements of opinion were less profound, and which would but rarely bring into consideration the regional susceptibilities. Upon such matters as the matrimonial régime or succession, it was no longer the same. The divergencies were serious, and had very often ethical and moral causes. It was not a mere question of juridical conflicts, but also of conflicts of races, languages, customs or confessions. It appeared impossible to construct a code that would satisfy at the same time Germans, French-speaking and Italians, Catholics and Protestants, men of the German, French, Italian or Romance language. How to make one law responding at the same time to the needs of the peasants of the Engadine or of the Grisons, and those of the workmen of the Neuchâtel Jura?

In truth, the difficulty arising from this diversity was not so invincible as it might appear. The divergencies existing among the various cantonal legislations are in fact explicable neither upon grounds of religion, nor of language, nor even of race. This has been clearly brought to view by M. Rossel, the French reporter of the National Council. "What is, for example," he said, "the matrimonial régime, which most closely approaches that of the cantons of Neuchâtel? Search not very close at hand; go, on the contrary, to the extreme Oriental frontier of Switzerland, in the cantons of the Grisons! You think perhaps that the matrimonial régime of the cantons of Thurgovie, and even all the economy of its civil legislation, would draw it closely to its neighboring canton of Zurich?

The analogies are much more striking between the Code of Thurgovie and the Code Napoléon, and between the same Code of Thurgovie and that which Bluntschli edited. Therein is the best demonstration of that which is artificial and fortuitous in the formation of our Swiss Law."

Moreover, if one happens to find under the Helvetian Cross different civilizations and customs, it is not necessary to find in it a decisive objection to every attempt at juridical unification. Is that not, in fact, the very destiny of Switzerland? "A German majority respecting a minority speaking the French tongue, a Protestant majority respecting a Catholic minority, a certain number of states relatively populous and strong launched under full sail upon the current of modern life, respecting the mildness of those old pastoral democracies for whom the centuries may have been years; that is the example that Switzerland should give to the world, that is the mission that nature has imposed upon her."

In reality, the danger should come specially from the secular antagonism of the German and French civilizations, from the old rivalry between the German Switzerland and the French-speaking Switzerland. There, in fact, is a permanent source of conflicts, and it cannot be denied that the dissensions and estrangements that one sees reproducing themselves at each of the turning points in Swiss history have their germ in that. This antagonism is perhaps more marked in the domain of law than in any other; for there have struggled against one another the two juridical currents of characters essentially different, the ancient Roman current which has been purified in its course by France, and the German current of more recent formation. Was it not to be doubted that in the work of centralization a sacrifice would be made involuntarily of one of these juridical formations to the other, or that there would be a building up, upon reciprocal concessions, a sort of compromise which would satisfy neither the Germans nor those speaking French? Here again it is not necessary to make any exaggeration. If there was an indisputable antagonism between two important regions of Switzerland, this antagonism was not irreconcilable. "It is permitted us to state," writes a French-speaking Swiss, "that

often in studying our law, and in explaining it by its method, our confederates of German Switzerland have often felt themselves drawn to it. The works which have been done with a view of establishing the foundations of a single and identical Civil Code for the French and German parties of the canton of Berne are a precious witness thereto."

It would often be difficult to trace a defined frontier between the regions where the Roman ideas prevail and those where the Germanic conceptions flourish. "One frequently finds inversions in cases where the cantons of the German family become champions of the Roman ideas against the French-speaking cantons which admit a Germanic principle." In the discussion of the Civil Code of Berne, to which we have just made allusion, one of the rare points of divergence between the German party of the canton and the Jura was the obligation upon parents to give a dot to their children in certain cases. The reporter in the French language adjures his fellow-citizens to make certain concessions upon this point, and his request was all the more justified because it was the influence of the Roman law, where the father is obliged to give a dot to his daughter, and which was re-enforced in Germany by the custom of furnishing at least a trousseau, and thereby made of it a sort of rule of the common law. One could easily show by other examples that the divergencies of legislation do not always correspond with the differences of origin or customs.

Besides, is not the work of codification a work of harmonizing, and should not one see therein much more than an opportunity for dissension, a means rather of consolidating the unity of the Swiss Confederation? Is not the greater danger in that status of secret divorce, which exists between this group and that other group of confederated states, and of which any aggravation should be avoided at all price? "We were menaced," could be said by the French reporter before the National Council, "we were menaced, if we had not averted this peril in codifying our law, by a sort of moral rupture between the German Switzerland and French Switzerland. . . . We were marching towards the progressive denationalization of our law, and one never knows where a people may stop

upon such a road. It was necessary absolutely to codify at the psychological moment, before our law should become saturated with elements strange and drawn from sources so different, that the work of a future codification would have been surrounded by difficulties almost insurmountable."

For the reasons just indicated, it was not possible to draw from the diversity of races, languages and customs an objection preliminary to the study of every project of codification. It is for the authors of the law that this diversity should be the source of difficulties — difficulties over which, as we shall see, they have generally known how to triumph. The importance of the concessions made by the cantons, and the large spirit of tolerance amongst the Swiss citizens, became also their peculiar facility in the task.

There remained an obstacle of importance, the absence in the Constitution of any provision granting the Confederation the competency necessary to enact legislation in civil matters (if it was not granted upon the points already noted). Nothing could be undertaken without an extension in this sense of the Federal powers. Although it was much desired by the interested parties, there was hesitation in proposing this reform. The recollection was quite fresh of the failure of the project of 1872, which had encountered the particularistic sentiments of the cantons, and fear was entertained that a like fate was reserved for every project of the same tendency. It was in fact (it could not be disguised) the definitive renunciation of their legislative independence that was about to be demanded of these cantons, so proud of their franchises and privileges, and so jealous of their autonomy; and it was doubtful whether the national spirit had acquired an authority sufficiently powerful to obtain from the states this important sacrifice. In 1896, the Federal Council thought nevertheless that it could make the attempt, and it demanded of Parliament the extension to all these matters of civil law, of the Federal competence. Parliament adopted the constitutional reform (Art. 64, New), and upon a demand for a referendum, the people ratified it on November 13, 1898, with an imposing majority (264,914 votes for; against, 101,762).

It is one of the objects of our work to study the composition of the Swiss Civil Code, the conceptions which control in its elaboration, and the method followed in its preparation. We have then only to retrace briefly its genesis to return again at leisure to each one of the points which may require some commentary.

The unity of conception, and at the same time the very great publicity, are the things that one should consider before everything else in the works preparatory to the Code. Thus, at the same time that the task was given to an unique editor, M. Prof. Huber, of preparing a preliminary draft, the collaboration of public opinion, in all its forms, to the national work was invited. By reason of his profound knowledge of the history of the Swiss Law, his independence of the shadow of any suspicion, and his spirit, at the same time intelligent and largely open to modern ideas, no one was better prepared than M. Eugène Huber to lay the solid foundations of the monument that it was proposed to rear. The fact alone that his preliminary draft underwent in its compilation as a draft, and then as a definitive text, but very few retouches and that only in detail, is proof that he generally knew how to present the best solution and that he was pre-eminently worthy of the mission entrusted to him.

The preliminary draft, divided into four books, treating first, persons; secondly, the family; thirdly, successions; and fourthly, real rights, was published November 15, 1900. The summary annexed to this preliminary draft gives the complete references to the documents which were utilized.

The Federal Department of Justice and Police named in the month of May, 1901, a commissiom charged with the examination of this preliminary draft. This commission was composed of thirty-one members, for the most part professors, deputies or magistrates, and of nine special experts. It discussed the preliminary draft in four sessions, which were held at Lucerne, from the 7th to the 30th of October, 1901 (Right of Persons and the Family); at Neuchâtel, from the 3d to the 22d of March, 1902 (Guardianship and Successions); at Zurich, from the 3d to the 15th of November, 1902 (Real Rights, first part); and at Geneva, from the 15th of

April to the 2d of May, 1903 (Real Rights, continued and finished). This election, as it were, of a domicile in four different cities, two French-speaking cities and two German cities, contributed largely to assure the publicity of a work in which it was desired to interest all the regions of Switzerland.

At the same time, and to better realize this publicity, the Department of Justice and Police solicited the submission of all the views, observations, propositions, that one could formulate, and gave assurances that all would be transmitted to the commission. All opinions could thus be heard, and all the contentions could have their day. Use was made in large measure of this privilege, in such a way that from the reports coming to the Department one can compose a sort of table following the preliminary project, article by article, and giving upon the delicate questions therein valuable suggestions. Outside of these reports, the commission likewise received, in 1901 and 1902, a discussion of the motives of this preliminary draft, which controlled M. Huber in its composition.

This large commission having completed its task, the Federal Department designated a commission for a more exact redaction, which was presided over by the Federal Councillor Brenner, and composed of M. Huber and six other members. It is the redaction of this Commission that was submitted on May 28, 1904, by the Federal Council to the Federal Assembly, and which is designated commonly by the name of the "Project." A final title relative to the conflicts of legislation, and re-enacting the law of obligations brought into harmony with the new matters, has been made since that time the object of an independent draft, and submitted in that same form to two Councils.

The discussion, commenced on June 6, 1905, before the National Council, was taken up concurrently before this Council and the Council of the States during the course of the years 1905, 1906, 1907. Two reporters, one in the German language, the other in the French language, presented the matters, and a vote was had without even disjointing several articles forming a whole, and likewise entire chapters. A

very small number of questions furnished the occasion for a public debate of some length: the Parliamentary Commissions generally made allowance for the criticisms and the observations made after the publication of the "Project," and each of the Assemblies contented itself with ratifying the corrections proposed by its Commission.

Finally, on December 10, 1907, the special vote of the various parties being had, the National Council and the Council of the States adopted unanimously the complete "Project" of the Swiss Civil Code.

The work was already popular, and the nation immediately gave it a sort of tacit ratification in refraining from any demand for a referendum within the time limit. In addition, with a view of facilitating the knowledge and assimilation of the new law, provision was made that it should not go into definitive force and effect until January 1, 1912.

Professor Dr. Max Gmür of Berne, Switzerland, in his "Kommentar zum Schweizerischen Zivilgesetzbuch" (Bern, Verlag von Stämpfli & Cie., 1909), has described graphically the peculiar significance of this Swiss Civil Code, and the special equipment of its author, Professor Eugen Huber, for the task entrusted to him to prepare it. These sections of the general introduction to that Commentary are translated from that German text-book.

On December 10th, 1907, the Swiss Civil Code was adopted by the Councils, and on March 21st, 1908, it received its sanction from the Swiss people by reason of the unused lapse of the time for a referendum, and upon January 1st, 1912, the codification went into effect. These three days marked the milestones in the history of the Swiss Confederated State. Never before has a law been emitted by it whose execution will be followed with so general interest, and whose effectiveness will be weighted with so rich hopes and expectations. Even if most people in their relation to life and commerce cannot take directly from the paragraphs of this law a plumb-line, yet one is conscious that in its wide boundaries the influence of the Civil Code will be a general and deep-

reaching one. It regulates those institutions which are the foundation pillars of our economical, social and moral order, family and property; it is just in these domains, by distinction from the law of obligation, that the general rules of honorable commerce do not suffice; there are necessary, fixed standards and proven regulations. It is true that such have been worked out in the cantons in rich number, but they stand upon such different steps of development, and are in such a mixed confusion of law, that the call for uniformity of law and a thoroughgoing modern revision of the civil law became imperative.

The Swiss Civil Code is purposed to give the material and spiritual life of the Swiss folk a more uniform, more fixed, and higher standing basis. From an economical viewpoint, the introduction of the Land Registry system, and of a bettered system of pledges, will bring great advantages in its wake. The various classes of occupations and professions receive thereby a response to the demand that they shall have the freedom to work out their relations in accordance with their special interests, as, for example, through the introduction of the marriage contract, and through specific institutions in the law of the family and inheritance. (*Cf.*, *e. g.*, Arts. 335 ff., 620 ff.) Especially acceptable is the law in regard to the necessities of the small farmer and the working classes, but the classes of the industrial workers will gain much also, particularly by reason of the increased protection of the wife, and the increased provision for children.

It will be not only from the economical, but also from the ideal standpoint, of great value, that the Swiss Civil Code brings with it the harmony of legal regulations for the whole land, and bound therewith an increased security of law. In the place of about twenty-five, in part not even codified, cantonal laws, will prevail a single, to all hands accessible, clear and readily understandable Swiss national law. Already this fact alone means a great gain, but in addition thereto is the fact that the new law, in rich measure, is adapted to work upon the whole nation by way of instruction, and to increase in like measure its independence in economical respects, and its freedom in moral respects. It is necessary to recall only

those revisions which are directed to the purpose of knitting faster the bands of the immediate family, and to place the wife in the position of a companion of like birth.

And finally, the political significance of the Swiss Civil Code can hardly be overestimated. The Swiss do not enjoy that which in most lands is considered as the greatest fruit of the national spirit, a common speech; up to this time they have been bound by historical recollections and peculiar political institutions. Now they will receive a new strong bond of common political interests, a symbol of a common spiritual work and of a common national feeling. The dependence of our legal system upon the foreign example, which became so strikingly noticeable in the 19th century, will find a proper place for the conscious pride in our native and nationally peculiar law. We must also consider that by reason of our codification's being well regarded abroad, the respect and the influence of Switzerland will grow stronger as an International Union of life and culture.

* * * * * * * *

A work of the scope and significance of the codification of the civil law required for its completion very great intellectual labor, as well as favorable conditions; a great mass of juristical as well as political difficulties were to be overcome. It may well be said that the history of the origin of the Swiss Civil Code, even if it did not have a very short career, nevertheless had a strikingly favorable course. The whole way and manner of the Civil Code's coming into existence stand in favorable contrast to the completion of the German Civil Code, where the first ground-laying draft, prepared by a very unfriendly commission, in respect to form and content, aroused the antagonism and spite of half the nation, and had to be painfully worked over. With us, on the contrary, there was found a single personality endowed with remarkable gifts and unusual capacity, that created not only the whole framework at one time, but also stood on middle ground in the extended juristical and parliamentary deliberation. From the beginning on, the endeavors of the officials and friends of the law were carefully planned, from step to step; wider circles were attracted and won over, until finally a

complete work resulted. We lost nothing of the spirit of uniformity in the long deliberations, but rather gained general competence for it.

Professor Eugen Huber, in the year 1884, had been commissioned with the compilation of the cantonal private laws. He fulfilled his task in the work of four volumes, "System and History of the Swiss Private Law" (1886–1893). While the fourth volume gives a comprehensive historical view thereof, the first three volumes present the cantonal law prevailing before the year 1912. The author who here with such zealous care has pointed to the real germs of the indigenous law, and laid bare the common as well as the divergent in the cantonal laws, was acknowledged by the friends and foes of the uniformity of law as the first authority in the field of Swiss private law, and its natural codifier.

In the year 1892, Prof. Huber received the commission from the Federal Department of Justice to proceed with the working out of the projected Swiss Civil Code. For him who showed himself in the result as the real creator of the great work, his life and educational career were in many respects fitting for the path which he followed. Born in the year 1849, a son of a noble German family, Prof. Huber received his high school and university training in Zurich. With a dissertation upon the development of the Swiss Law of Inheritance (1872), he entered upon the paths of a scientific career which he was to follow to the end. Studies abroad, as well as the insight into the political heart-beat of the Confederation won in his activity for a while upon the editorial staff of a large paper, and as a private teacher in Berne, laid the ground for his qualities as a statesman in a way not customary with students. Several years' practical activity as Examining Judge of the Canton Appenzell-Ausserrhoden were apparently only lost for the academical civil law destiny, but in fact they meant a great gain for the later codifier of the civil law; for this position gave him the opportunity to acquire deeper psychological knowledge, and likewise allowed the ideal of a Swiss folk-legislation to come before his eyes in a new light, through the acquaintance made by him with an original mountain folk and its native law. New stimuli again came to Prof.

Huber in the commercially active and art enjoying Basel, whither in 1880 he was called as Professor of the Swiss Private Law. Given wholly to science, he soon made for himself a great name as a Germanist, particularly by his work upon "The System and History of the Swiss Private Law," appearing in 1886. Several years of academical activity in Halle brought him into touch with the advantages of the German intellectual life, and brought him also valuable friendships, as, for example, with the keenly intellectual Rümelin, and the very progressive spirit Stammler. In 1892, finally, Prof. Huber returned to Berne, where he, for his chief work now begun, had the best location. Here was furnished for him not only the direct contact with the officials of the Confederation, so necessary for his legislative labors, but also the opportunity as a highly esteemed Lecturer at the largest Swiss University to educate to his ideas the successive generations. The electoral district of the City of Berne sent him as its representative to the National Assembly, where he very naturally took a leading part in the deliberations upon the Swiss Civil Code, — as a whole, a career of the greatest and untiring activity, likewise of a very fortunate development and rich in fruits for our folk, as well as for science.

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EXPLANATION OF ABBREVIATIONS

B.G.B. — Bürgerliches Gesetzbuch, Imperial Civil Code of Germany.

C. of Com. — Commercial Code of Germany.

Dan. C. of Chr. V. — Danish Code of Christian V (1683).

Ger. Co. Civ. Proc.
Ger. Co. Proc. } German Code of Civil Procedure.

Ger. C. Genl. Com. of Goods. — German Civil Code — General Community of Goods.

Imp. Co. Military Law. — Imperial Code of Military Law of Germany.

Intr. L. — Introductory Law of German Civil Code.

I.S. — Introductory Statute of Swiss Civil Code (Appendix).

Jap. C. of 1898. — Japanese Civil Code of 1898.

Sch.
Sch. C. } —Schuster's "Principles of German Civil Law."

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SWISS CIVIL CODE

OF DEC. 10, 1907.

The Federal Assembly of the Swiss Confederation, by virtue of Article 64 of the Federal Constitution, after consideration of a message from the Federal Council of May 28, 1904, enacts

THE SWISS CIVIL CODE.

THE SWISS CIVIL CODE.

INTRODUCTION.

ARTICLE 1.

A. Application of the Law.

The Code applies to all legal questions for which it contains a provision in its terms or its exposition. If no command can be taken from the statute, then the judge shall pronounce in accordance with the customary law, and failing that, according to the rule which he as a legislator would adopt. He should be guided therein by approved precept and tradition.

2.

B. Definition of the legal Relations.

I. Acting with Truth and Faith.

Everyone must, in the exercise of his rights and in the performance of his duties, act with truth and faith.

The open misuse of a right finds no protection in the law.

3.

II. Good Faith.

Its existence is to be presumed wherever the statute attaches a legal consequence to the good faith of a person. Whoever cannot be faithful to the care demanded of him by the circumstances is not justified in invoking good faith.

4.

III. Judicial Discretion.

Where the statute refers the judge to his discretion or estimation of the circumstances, or to sufficient reasons, there he must decide according to right and equity.

5.

C. Relation to the Cantons.
I. Cantonal Civil Law and Local Custom.

So far as the federal law preserves the validity of the cantonal law, the cantons are empowered to enact or repeal civil law regulations. Where the statute refers to the custom or local usage, there the cantonal law then in force is its expression, until a contrary custom is proven.

6.

II. Public Law of the Cantons.

The cantons shall not be restricted by the federal civil law in their powers over public matters. Within the bounds of their supremacy they can regulate the traffic in certain classes of things, or prohibit it, or declare void legal transactions as to such things.

7.

D. General Provisions of the Law of Obligations.

The general provisions of the law of obligations touching the conclusion, fulfillment and rescission of the contracts, apply also to other civil relations.

8.

E. Rules of Evidence.
I. Burden of Proof.

Where the statute does not otherwise provide, he must prove the existence of an alleged fact, who would deduce rights therefrom.

9.

II. Evidence of Public Records.

Public registers and records are full proof of the facts evidenced thereby until the incorrectness of their contents is shown.

Such evidence requires no special form of authentication.

10.

III. Rules of Evidence.

Where the federal law provides no special form for the validity of any legal transaction, the cantonal law also may not prescribe any such for the proof thereof.

FIRST PART.

THE LAW OF PERSONS.

FIRST TITLE—NATURAL PERSONS.

FIRST SECTION—THE LAW OF PERSONALITY.

11.

Every man is capable of rights. For all men, therefore, within the bounds of the law's regulation the same capacity exists to have rights and duties.

A. Personality in General.
I. Legal Capacity.

12.

He who has commercial capacity (*handlungsfähigkeit*) has the capacity by his acts to establish rights and duties.

v. Sch. 26, 92 to 94.

II. Commercial Capacity.
1. Definition.

13.

He possesses commercial capacity who is of age and capable of judgment.

2. General principles.
a. In General.

14.

He is of age who has completed his twentieth year. Marriage makes him of age.

v. Sch. 27, B. G. B. 2.

b. Majority.

15.

He who has completed his eighteenth year can, with his consent and the approval of the parents, be declared of age by the Guardians' Court.[1] His Guardian, if he has one, shall be heard upon the petition.[2]

c. Emancipation.

[1] v. Sch. 27, B. G. B. 3 to 5.
[2] v. Sch. 449.

16.

d. Capacity of Judgment.

Everyone, in the sense of the statute, is capable of judgment whose ability to act reasonably is not impaired by reason of infancy or in consequence of mental infirmity, mental weakness or drunkenness.

v. Sch. 27 to 31. B. G. B. 104, 105, 114 (6) 828, 829.

17.

III. Commercial Incapacity.
1. In General.

The commercially incapable are those persons who are not capable of judgment, or are minors, or legally incapacitated.

18.

2. Failure of Capacity of Judgment.

He who lacks the capacity of judgment cannot bring about any legal consequence by his commercial acts, save in cases specially reserved by law.

v. Sch. 29. B. G. B. 6, 114.

19.

3. Persons with Capacity of Judgment, but Minors or Legally Incapacitated.

Persons with capacity of judgment, but minors or incapacitated, can obligate themselves in their transactions only with the consent of their legal representatives. Without this consent they may accept voluntary benefits and exercise rights belonging to them by reason of their personality.

They are responsible for damage caused by their unlawful acts.

v. Sch. 26, 27. B. G. B. 3, 5. Sch. 28. Sch. 92, 93 and citations. Sch. 94, 129. B. G. B. 183 to 185, 2229, 2238, 2247.

20.

IV. Relationship.
1. Blood Relationship.

The degree of relationship is fixed by the number of births creating it.

In direct line two persons are related whenever one is descended from the other, and in the collateral line when they spring from a third person and are not related in the direct line.

v. Sch. 424, citing the Roman Civil Law.

21.

2. Relationship-in-Law.

A blood relation is related "in-law" (by affinity) in the same line and degree to the spouse. Relationship "in-law" is not destroyed by the dissolution of the marriage that created it.

22.

The domicile of a person is fixed by his citizenship; that is fixed by the public law.

V. Domicile and Residence.
1. Domiciliary Status.

If a person enjoys citizenship in several places, his domiciliary status is to be fixed by the place where he has his residence or last had it; and failing such a residence, by the place whose citizenship was last acquired by him or his direct ancestors.

v. Sch. 40 to 42. B. G. B. 7 to 11.

23.

2. Residence.
a. Definition.

The residence of a person is the place in which he sojourns with the intention of a continuing stay. No one can have a residence in several places at one time. The business visit is not contemplated by this provision.

24.

b. Change in Residence or Abode.

The residence of a person once acquired remains such until the acquisition of a new one. If no former residence can be proven, or a residence established abroad is given up, and no new residence in Switzerland acquired, the place of abode becomes the residence.

The B. G. B. regulates domicile, but not residence.

25.

c. Residence of Dependent Persons.

The residence of the husband is the residence of the wife; the residence of the father and mother that of the children under their power; the seat of the Guardians' Court that of the wards. If the husband's residence is not known, or the wife legally separated, then she can have an independent residence.

26.

d. Sojourn in Institutions.

The sojourn in a place for attending an educational institution, or the confinement of a person in a reformatory, sanitarium, hospital, or penal institution establishes no residence.

27.

B. Protection of the Personality.
I. In General.
1. Inalienability.

No one can renounce his legal or commercial capacity in whole or in part. No one can renounce his freedom or restrict himself in its use in a degree offensive to law or morality.

28.

2. Complaint for Injury.

He who is unauthorizedly injured in his personal relations can sue for relief from the trouble. A complaint for damages or the penalty of a sum of money as satisfaction is allowed only in those cases provided by law.

Sch. 284 to 296. B. G. B. 847 and others cited.

29.

II. Right to a Name.
1. Protection of the Name.

If the bearing of one's name is called into question he can sue for the determination of his right. If any one is injured by another's usurping his name he can sue for the cessation of this usurpation, as well as for compensation for damages, and where the manner of the injury justifies it, demand payment of a sum of money in satisfaction.

30.

2. Change of Name.

Change of name is allowed any person by the government of his domiciliary canton whenever sufficient reasons exist therefor. A change of name is to be registered in the Civil Status Record and advertised, but causes no change of the personal status. Whoever is injured by the change of a name can judicially contest it within the term of one year after he has received knowledge of it.

31.

C. Beginning and End of the Personality.
I. Birth and Death.

The personality begins with life after the completed birth and ends with death. Before birth the child is capable of rights, with the proviso that it shall be born alive.

Sch. 24, B. G. B. 1, 1912, 1923, 1942.

32.

II. Proof.
1. Burden of Proof.

He who in the exercise of a right relies upon the fact that a person may be living or dead, or was alive at a certain time, or survived another person, must present the proof thereof. In case it cannot be proven that of several deceased persons that one survived the others, then all are presumed to have died simultaneously.

Sch. 46. B. G. B. 20.

33.

2. Means of Proof.
a. In General.

The proof of the birth or death of a person is furnished by the Civil Status Records. Failing such, or if those obtainable are proven incorrect, then the proof may be made otherwise.

34.

b. Indications of Death.

The death of a person can be assumed even if no one has seen the corpse, so soon as the person has disappeared under circumstances which may reliably indicate his death.

Sch. 43 to 45, B. G. B. 13 to 17.

35.

III. Declaration of Vanishment.
1. In General.

If the death of a person is most probable, because he disappeared in great peril of death, or has been absent for a long time without any word from him, a judge can then declare him absent, upon petition of those who deduce rights from his death.[1]

Competent for this purpose is the judge of the last Swiss residence, or, if the disappeared one has never resided in Switzerland, the judge of his domicile.

[1] v. Ger. Co. Civ. Proc., 960 to 971.

36.

2. Procedure.

The petition can be presented after the expiration of at least one year from the time of the peril of death, or of five years from the last word from him. The judge shall in a suitable way openly call upon every one who can give information as to the person disappeared or absent, to tell it within a stipulated time. This time shall be at least one year from the first announcement.

37.

3. Lapse of the Petition.

If within the appointed time the disappeared or absent person announces himself, or word comes in as to him, or the time of his death is proven, the petition falls.

38.

4. Effect.

If during the stipulated time no word is received, then the disappeared or absent person may be adjudged to be absent,

and all the rights which would result from his death thereupon become available as if his death were proven.

The effect of the declaration of vanishment relates back to the point of time of the peril of death, or the last word.

v. Sch. 47. B. G. B. 19.

SECOND SECTION — THE AUTHENTICATION OF CIVIL STATUS.

39.

A. In General.
I. Registers.

Registers shall be kept by the "civil status" officials for the authentication of the status of persons. The Federal Council shall prescribe the necessary regulations for the keeping of the registers and the duty to make reports therefor.

"Civil status" registry is not usually regulated in the Civil Codes. There is a regulation of the Federal Council in respect thereto. v. 25 Feb. 1910, §§ 1-100. In Germany it is governed by the Personal Status Law of Feb. 6, 1875, and a complete law on the subject will be found in the Mexican Civil Code, §§ 43 to 154.

40.

II. Regulations.

The limitation of the sphere of civil status, the appointment and compensation of the officials, and the order of inspections shall be carried out by the cantons.

The cantonal regulations require for their validity the approval of the Federal Council.

41.

III. Officials.

The civil status registers shall be kept by lay officials. These officials shall make the entries in the registers and furnish extracts therefrom.

The Federal Council can entrust to the representatives of Switzerland abroad the duties of civil status officials.

42.

IV. Responsibility.

The civil status officials and the supervisory authorities immediately over them are liable personally for all damages which they themselves cause or which officials appointed by them may cause. The provisions as to the responsibility of the Guardians' Courts apply as to the liability of the supervisory authorities.

If the damages are not met by the responsible officials, the canton must bear the loss.

43.

V. Supervision. 1. Complaints.

The official conduct of the civil status officials is subject to a regular supervision. The cantonal supervisory authority passes upon complaints of their official conduct, and, in the last instance, the Federal Council.

44.

2. Penalties.

Violation of official duty by the civil status officials shall be punished by the supervisory authority with disciplinary penalties. Criminal prosecution is excepted.

45.

VI. Corrections.

An entry can be corrected only upon order of a judge. If, however, the mistake is a patent oversight or error, the supervisory authority can order the correction.

46.

B. Register of Births. I. Report.

Every birth and every miscarriage after the sixth month of pregnancy shall be reported to the civil status officials within three days after its occurrence.

He who finds a child of unknown parentage shall announce this to the competent authority, who shall then make report of it to the civil status official.

47.

II. Entry of Changes.

If change in the rights of status occurs, as in consequence of the recognition and determination of illegitimate paternity, of declaration of legitimacy, of adoption of child, or the determination of the parentage of a foundling, this is to be entered as a marginal note either by official report thereof or upon request of those concerned.

48.

C. Register of Deaths. I. Report.

Every death and every corpse found shall be reported to the civil status officials within two days after the event.

49.

II. Non-Discovery of a Corpse.

If the death of a person who has disappeared can be safely assumed from the surrounding circumstances, the entry of a death is to be made under direction of the supervisory authority, even if no one has seen the corpse. Nevertheless every one who is interested therein can demand the judicial determination of the existence or death of a person.

50.

III. Declaration of Vanishment.

The declaration of the vanishment of any one shall be entered in the register of deaths upon the report of the judge.

51.

IV. Entry of Changes.

If the report proves incorrect after the entry, or the identity of an unknown dead person be determined, or a judicial declaration of absence be overthrown, the change shall be made as a marginal note.

SECOND TITLE — JURISTIC PERSONS.

FIRST SECTION — GENERAL PROVISIONS.

52.

A. Personality.

Associations of persons organized into corporations, and institutions devoted to a special purpose and independent, receive the right of personality, by entry in the Commercial Register. Public corporations and institutions, societies not for profit, religious foundations and family foundations require no such entry. Associations or institutions for immoral or unlawful purposes cannot acquire legal personality.

Sch. 48 to 51.

53.

B. Legal Capacity.

Juristic persons are capable of all rights and duties except those which arise from the natural characteristics of man, such as sex, old age, or relationship.

54.

C. Commercial Capacity.
I. Presumption.

Juristic persons possess commercial capacity, as soon as the organisms required by law and its articles are provided.

55.

II. Expression thereof.

The will of a juristic person is expressed through its organisms; these bind it as well through their juridical acts as otherwise.

The acting persons are personally liable for their unlawful acts.

56.

D. Residence.

The residence of a juristic person, unless otherwise provided by its articles, is the place where its business is carried on.

57.

E. Dissolution. I. Disposition of its Property.

On the dissolution of a juristic person its property falls to the community (federation, canton or parish) to which it belongs according to its purpose, unless the law, the articles, the deed of settlement, or the proper organisms provide otherwise.

Its property is to be devoted as nearly as possible to its original purpose.

If a juristic person is judicially dissolved because of its immoral or unlawful purposes, its property falls to the community, even if it has been otherwise arranged.

58.

II. Liquidation.

The procedure for the liquidation of the property of juristic persons is governed by the regulations provided for associations.

59.

F. Reservation of Public and Company and Association Law.

Public and religious corporations and institutions shall be subject to the public law of the federation and the cantons.

Associations of persons for profit shall be subject to the lawful provisions for companies and associations.

Communal property associations (allmends) and similar corporations shall be subject to cantonal law.

SECOND SECTION — SOCIETIES.

60.

A. Formation. I. Corporate Association of Persons.

Societies devoted to a political, religious, scientific, artistic, benevolent, social or other non-pecuniary end receive a personality as soon as their will to become a corporation is evidenced by their articles.

The articles shall be in written form, and give information as to the purpose of the society, its means and its organization.

v. Sch. §§ 53, 54. B. G. B. 21, 56 to 59.

61.

II. Entry, Registration.

If the articles of the society are adopted, and its board of directors chosen, then the society is entitled to have itself entered in the Commercial Register.

If the society has for its purpose a business conducted for profit, it must be registered.

The articles and list of its directors shall also be registered.

As to societies for commercial, etc., purposes, v. Sch. § 54. Registry in Germany is generally in the courts. (*Amtgericht*, the loca court of the first instance.)

v. B. G. B. 55, 60 to 68.

62.

III. Societies without Personality.

Societies which have no personality, or have not yet acquired it, are to be regarded as simple companies.

63.

IV. Relation of articles to the Law.

The following provisions apply in so far as the articles prescribe no regulation as to the organization or relation of the society to its members.

Provisions prescribed by law cannot be changed by the articles.

64.

B. Organization.
I. Meetings.
1. Meaning and Calls.

The meeting of its members constitutes the supreme organism of the society.

It is called by the directors. A call is to be made as prescribed by the articles and also by law whenever one-fifth of the members demand it.

As to constitution and conduct of business, Sch. § 55. B. G. B. 27, 32 to 40.

65.

2. Competency.

The society in meeting assembled decides upon the admission or expulsion of members, chooses its directors and passes upon all business matters which are not entrusted to other organisms of the society.

It has the supervision of the work of its organisms and can at any time depose them, without destruction of the claims arising out of existing contracts.

The right of deposition arises out of the statutory law whenever a sufficient reason justifies it.

66.

3. Acts of the Society.

Acts of the society are done through the meeting of the society.

a. Manner of Acting.

The written assent of all its members to a proposed action is equivalent to an act of the said meeting.

67.

b. Right to Vote and Majority.

All members have an equal right to vote in the society's meetings. Acts by the society are authorized by the majority of the votes of members present. Action can be had upon subjects which have not been properly announced, only when the articles expressly allow it.

68.

c. Deprivation of right to vote.

Each member is by law deprived of his right to vote upon an action as to a juridical act, or legal action, between him, his spouse, or one directly related to him in the direct line on the one side, and the society on the other.

69.

II. Directors.

The directors have the right and the duty to conduct the affairs of the society in accordance with the powers which the articles give him, and likewise to represent the society.

70.

C. Membership.
I. Entrance and Resignation.

The entrance of members is allowable at all times. Resignation is allowed by law whenever it is made with regard to a semi-annual term, at the end of the calendar year, or, when a fiscal year is contemplated, at the end of it.

Membership is neither assignable nor inheritable.

71.

II. Duty to contribute.

The contributions of members are to be fixed by the articles. So long as no such provision is made, the members shall contribute pro rata the necessary sums needed to carry out the society's purpose, and at the same time to pay the society's debts.

72.

III. Expulsion.

The articles may fix the reasons for which a member may be expelled, but they can allow expulsion without an assignment of the reasons.

Contest of the expulsion on account of its reason is not allowed in these cases. But if the articles have no regulation for such cases, expulsion may be made only by act of the society and for sufficient reasons.

73.

IV. Status of Ex-members.

Members resigned or expelled have no claim upon the society's property.

They are liable for contributions according to the period of their membership.

74.

V. Protection of Society's Purposes.

A change of purpose of the society cannot be forced upon any member.

75.

VI. Protection of Membership.

Any member who has not assented to it can by law complain before a judge of acts which offend against the law or the articles, within a month after he has received knowledge of such resolutions.

76.

D. Dissolution.
I. Methods.
1. By Act of the Society.

The dissolution of a society can be effected at any time by the act of the society.

Sch. 56. On dissolution generally, B. G. B. 41 to 53, 73 to 76; on this point, B. G. B. 41.

77.

2. By Law.

Dissolution follows by law when the society becomes insolvent, or when the directors cannot longer be elected in accordance with the articles.

B. G. B. 42.

78.

3. By Decree.

Dissolution follows by judicial action upon a complaint by competent authority, or one interested, if the purpose of the society is illegal or immoral.

B. G. B. 43, 73.

79.

II. Cancellation of Entry in Register.

If the society has been entered in the Commercial Register, its directors or the judge must report its dissolution to the register recorder for cancellation of the entry.

THIRD SECTION — FOUNDATIONS.

Incorporated foundations (*Stiftung*). v. Sch. § 57. B. G. B. 80 to 88.

80.

A. Erection.
I. In General.

The erection of a foundation is based on the dedication of property to a special purpose.

v. B. G. B. 80, 81.

81.

II. Form.

The erection is caused by a public dedication or testamentary provision.

The entry in the Commercial Register is based on the public dedication, and, when necessary, under the regulations of the supervisory authority, is to be accompanied by a list of the directors.

82.

III. Contest.

A foundation can be contested by the heirs or the creditors of the founder in the same manner as a donation.

83.

B. Organization.

The organisms of the foundation, and the manner of administration, are to be fixed by the deed of settlement.

If the organization provided is not sufficient, the supervisory authority shall make the necessary arrangements.

B. G. B. 87.

If these cannot be made to serve the purpose, then the supervisory authority has the power to devote the property to another foundation, with a purpose as similar as possible (*cy près*), provided the founder does not exclude this, or a provision of the deed of settlement expressly forbids it.

84.

C. Supervision.

Foundations stand under the supervision of the community (federation, canton or parish) to which they belong according to their purpose.

The supervisory authority shall see that the property of the foundation is not diverted from its purpose.

85.

D. Change of the Foundation.
I. Change of Organization.

The proper cantonal authority, or, where the foundation is under the federal supervision, the Federal Council, may, upon petition of the supervisory authority, and after a hearing granted to the supreme organism in the foundation, change the organization of the foundation, if the due care of the property, or the preservation of its purpose, urgently demands such a change.

86.

II. Change of Purpose.

The proper cantonal authority, or, where the foundation is under federal supervision, the Federal Council, may, upon petition of the supervisory authority, and after a hearing granted to the supreme organism in the foundation, change the purpose of the foundation if its original purpose has received quite a different meaning or effect, so that the foundation has openly become foreign to the will of the founder.

Under the same circumstances, burdens or conditions which are prejudicial to the purpose of the foundation can be modified or suppressed.

87.

E. Family and Religious Foundations.

Family and religious foundations are not subjected, unless by exception of the public law, to the supervisory authority. The judge shall pass upon questions in the nature of private law.

88.

F. Dissolution.
I. By Law and by Judicial Action.

The dissolution of a foundation is accomplished by law as soon as its purpose becomes unattainable. It is effected by judicial action, whenever its purpose has become illegal or immoral.

B. G. B. 87.

89.

II. Right of Complaint and Cancellation in Register.

The supervisory authority is competent to lay a complaint as may every one who has an interest therein.

A dissolution is to be reported to the register recorder for cancellation of the entry.

v. Art. 79.

SECOND PART.

FAMILY LAW.

FIRST DIVISION — THE LAW OF MARRIAGE.

THIRD TITLE — THE CONTRACT OF MARRIAGE.

FIRST SECTION — THE ENGAGEMENT.

[v. Sch. 407.]

90.

A. Engagement.

Engagements are founded upon promise of marriage. Minors or incapacitated persons cannot be bound in such engagement except with the consent of their legal representatives.

91.

B. Effect of the Engagement.
I. Bar of action to consummate the Marriage.

The engagement does not give the right to claim judicially the consummation of the marriage. A contractual penalty provided for the breach of the engagement cannot be sued for.

92.

II. Consequences of Breach of Engagement.
1. Compensation in Damages.

If an engaged person breaks his engagement without sufficient reasons, or if it is revoked for a reason for which he is himself responsible, he shall make proper amends to the other party and to the parents, or third persons who stand in the place of parents, for the preparations made in good faith in prospect of the marriage ceremony.

Sch. 407. B. G. B. 1297, 1298. The damage claim seems limited as in the German law to a compensation for a pecuniary loss and outlay. Exemplary damages to punish a dishonorable breach of the engagement are allowable, v. 93 *infra*.

93.

2. Satisfaction.

If an engaged person suffer, by breach of the engagement, a severe loss in his personal condition, the judge can decree to him a sum of money as compensation, the fault being found to be in the other betrothed alone.

This right of action is unassignable but devolves upon the heirs, if it is recognized or claimed at the time of succession.

94.

III. Return of Gifts.

Return of presents made to one another can be demanded on the revocation of the engagement. If the presents are no more at hand, then the settlement of the claim shall be made in accordance with the provisions as to unjustified benefits.[1]

If the engagement is dissolved by death (of one party), then the claim for return of gifts is barred.

[1] B. G. B. 1301. Unjustified benefit (*ungerechtfertige Bereicherung*), v. Sch. 298 to 301.

95.

IV. Limitation.

Claims arising out of the engagement are barred upon the lapse of one year after such dissolution.

Sch. 407. B. G. B. 1302. v. §§ 121, 455, 790, 663, 807, 112.

SECOND SECTION — MARITAL CAPACITY AND IMPEDIMENTS.

96.

A. Marital Capacity.
I. Age.

To enter upon marriage the groom must have passed his twentieth year and the bride her eighteenth year.

The government of the residential canton can (with consent of the parents or guardian), nevertheless, in extraordinary cases, if weighty consideration justify it, declare of marital age a bride who has passed her seventeenth year, and a groom his eighteenth year.

Sch. § 411, note 10. B. G. B. 1303, 1322. vide B. G. B. 1305 to 1308. v. §§ 100, 107, 118.

97.

II. Capacity of Judgment.

To enter upon marriage the engaged ones must be capable of judgment. Mentally deranged persons are in no case capable of marriage.

Sch. § 411, 1a, note 16. B. G. B. 1325.

98.

III. Consent of Representatives.
1. Minors.

Minors can enter into a marriage only with the consent of their father and mother or guardian. If at the time of the publication only one of the parents has the parental power, the consent of that one suffices.

Sch. § 411, note 11. B. G. B. 1305 to 1308.

99.

2. Incapacitated Persons.

Incapacitated persons can enter into a marriage only with the consent of the guardian. When the guardian is opposed, the incapacitated person may bring the matter for decision before the Guardians' Court.

The appeal to the Federal Court remains reserved.

v. last note above, § 98, and B. G. B. 1304, 1330, 1331.

100.

B. Marital Impediments.
I. Relationship.

Marriage is forbidden, (1) between blood relatives in the direct line, between brothers and sisters of the full or half blood and between uncle and niece, nephew and aunt, whether related to one another legitimately or illegitimately; (2) between relations by affinity in direct line (marriage) even if the marriage which fixed the relationship has been declared

v. Sch. § 411, note 2. B. G. B. 1310.

invalid, or been dissolved by death or divorce; (3) between an adopted child and the adopter, or between one of these and the spouse of the other.

v. Sch. § 411, note 14. B. G. B. 1311.

101.

II. Former Marriage.
1. Proof of Dissolution.
a. In General.

Whoever desires to enter upon a new marriage must prove that his former marriage has been declared invalid or is dissolved by death or divorce.

102.

b. Vanishment.

If a spouse has been (judicially) declared vanished the survivor may only remarry when the former marriage has been judicially dissolved.

He can demand the dissolution thereof at the time the absence is decreed, or in a special proceeding.

For this proceeding the same provisions obtain as in the case of a divorce.

103.

2. Time of Waiting.
a. For Women.

Widows or women whose marriage has been dissolved or declared invalid may not enter upon a new marriage before the lapse of three hundred days after the dissolution or declaring invalid of the previous marriage. If a birth intervenes, the time of waiting ends. Also the time may be shortened by judicial order, if pregnancy of the woman by the former marriage is disproved, as well as when divorced persons remarry.

v. §§ 103, 150.

104.

b. For Divorcées.

A divorced spouse may not enter upon a new marriage during the time of waiting prescribed for him.

The time may be shortened by judicial order as to divorced persons who intend to remarry.

THIRD SECTION — PUBLICATION AND MARRIAGE.

105.

A. Publication.
I. Form of Application.

To bring about the publication, the betrothed must announce their promise of marriage before a civil status official. This must be done by them personally, or by a written declaration in which the signatures are officially authenticated.

The application should contain the birth certificates of the engaged ones, as well as the written consent of parents or guardians in proper cases, and the death certificate of the spouse of a former marriage, or the judicial decree of its invalidity or of a divorce.

Sch. § 408. B. G. B. 13 6. v. German Personal Status Act, Feb. 6, 1875, §§ 44 to 50. v. §§ 159, 182, 193, 115.

106.

II. Place of Application and Publication.

The application for publication shall be made before the civil status official at the place of residence of the bridegroom. If, however, the bridegroom is a Swiss who lives

abroad, the application may be made before the civil status official of his place of domicile. The publication shall be made by the civil status officers at the residence and domicile of both the parties.

107.

III. Rejection of the Application.

The publication shall be refused if the announcement has not been properly made, if one of the parties is not capable of marriage, or when a legal impediment to the marriage exists.

108.

B. Objection.
I. Right of Objection.

During the period of publication any one with an interest therein can make objection to the marriage, by calling attention to a defect of marital capacity of one of the parties, or to a legal impediment. The objection shall be made in writing before one of the civil status officials proclaiming the marriage. An objection which concerns neither a lack of marital capacity nor a legal impediment shall be rejected at once.

109.

II. Objection by Officials.

If a ground of nullity against a contemplated marriage exists, the objection shall be interposed by the proper authority, by virtue of its office.

110.

III. Procedure.
1. Communication of Objection.

If an objection has been made, the civil status officials charged with the responsibility of publication must (at once), after the lapse of the time of publication, give notice thereof to the engaged parties.

If the objection is not admitted by the parties, then the objector shall be given notice thereof at once.

111.

2. Decision upon the Objection.

If the objector wishes to maintain his objection, he shall lay his complaint for the forbidding of the marriage before the judge of the place where the application for publication has been made.

112.

3. Limitation.

The periods for reporting an objection, for the refusal of its recognition, as well as for laying of the complaint for prohibition of the marriage, are ten days.

They begin with the day on which the publication is made, the objection is communicated to the engaged, or the refusal of recognition is made known to the objector.

v. §§ 15, 119, 136.

113.

C. Betrothal—Civil Marriage.
I. General.
1. Jurisdiction of Public Officials.

If no objection exists, or if, an objection being made, it has not been brought before the judge or has been dismissed by him, the civil status official of the place where the application for publication was presented, upon the request of the parties, shall perform the civil marriage or furnish the certificate of publication.

The certificate of publication authorizes the parties to have a civil marriage performed before any Swiss civil status official during the following six months.

v. § 111.

114.

2. Refusal of the Betrothal.

The civil status official shall refuse to perform the civil marriage as soon as ground exists for the refusal of the publication.

After a lapse of six months, the publication loses its validity.

115.

3. Betrothal without Publication.

If by reason of the illness of one of the engaged parties the danger arises that the marriage cannot be celebrated with due consideration for the publication period, then the supervisory authority may authorize the civil status official to perform the civil marriage by shortening the time for or even without publication.

116.

II. Betrothal (Civil Marriage) Ceremony.
1. Publicity.

The civil marriage shall be made publicly in the "Marriage Hall" in the presence of two witnesses of full age. It is allowable outside of the "Marriage Hall" only when it is proved by medical testimony that one of the persons to be married cannot appear at the public office on account of sickness.

117.

2. Form of the Betrothal.

The civil status official addresses to each of the parties the question whether they will enter into marriage with one another. After affirmation of this question the civil status official declares that by this mutual declaration of assent the marriage tie is bound by force of law.

118.

III. Certificate and Religious Celebration.

The married couple shall be given a marriage certificate by the civil status official immediately after the said ceremony. The religious celebration of the marriage shall not be performed without the production of the said certificates. Otherwise the religious marriage ceremony as such remains undisturbed by the provisions of this statute.

Sch. 6, § 408, and German legislation there cited.

119.

D. Regulations.

The Federal Council, and, within the limits of their competency, the cantonal officials, shall enact the detail regulations as to the publication, the civil marriage, and the keeping of the Marriage Register.

FOURTH SECTION — INVALIDITY OF THE MARRIAGE.

120.

A. Nullity.
I. Grounds Therefor.

A marriage is void, — (1) when at the time of contracting the marriage, one of the parties thereto is already married[1]; (2) when at the time of contracting the marriage one of the parties thereto is mentally infirm, or not capable of judgment for some continuing reason[2]; (3) when the contracting of the marriage is forbidden on account of relationship by blood or affinity between the parties thereto.[3]

[1] Sch. C. § 411, c. B. G. B. 1309, 1323, 1326.
[2] Sch. C. § 411, a. B. G. B. 1323, 1325.
[3] Sch. C. § 411, c. B. G. B. 1310, 1323, 1327.

121.

II. Duty and Right of Suit.

The suit for annulment of marriage may be brought by the proper authority by virtue of his office. Likewise, any one who has an interest therein may bring the suit.

Sch. C. § 409, 3. B. G. B. 1338, 1339, 1340, 1341, 1342.

122.

III. Bar and Limitation of Suit.

After a dissolution of the marriage, its nullity can no longer officially be questioned; but any one having an interest therein may bring suit to nullify the same.

If the incapacity of judgment or mental infirmity of one of the couple has passed its annulment may be demanded only by one of the couple.

If, in case of the marriage of a person already married, the other party thereto has acted in good faith, and the former marriage has since been sundered, its annulment is barred.

Notes to § 121.

123.

B. Impeachment.
I. Complaint of Spouse.
1. Lack of Capacity of Judgment.

A spouse can impeach the marriage when he at the betrothal was not capable of judgment by reason of some transitory cause.

Sch. C. § 411, a. B. G. B. 1325.

124.

2. Mistake.

A spouse can contest the marriage, — (1) when he by mistake has allowed himself to be betrothed whether because he did not desire the performance of the betrothal itself or because he did not wish the betrothal with the betrothed person[1]; (2) when he was led into the marriage by a mistake as to the characteristics of the other party to the marriage, which are of such significance that without their existence the marital relation could not be imputed to him.[2]

[1] Sch. C. § 411, 2 b and c. B. G. B. 1330, 1333, 1335.

[2] Sch. C. § 411, 2 d. B. G. B. 1334, 1335.

v. §§ 159, 216, 139, 141, 167, 169, 203, 206, 208, 221.

125.

3. Fraud.

A spouse can contest the marriage, — (1) when he has been craftily deceived as to the respectability of the other party to the marriage, either by that party or by a third person with that person's previous knowledge, and thereby been led into the marriage[1]; (2) disease of the other spouse which may greatly endanger the health of the complainant or of the offspring of the marriage.[2]

[1] v. last note above.

[2] Sch. C. § 411, 2 b and note. B. G. B. 1330, 1332.

126.

4. Duress.

A spouse can contest the marriage when he has consented to the marriage under duress of a near and appreciable danger to the life, the health, or the honor of the complainant himself or a person closely bound unto him.

Sch. C. § 411, 4. B. G. B. 1335. v. § 120.

127.

5. Limitation.

The right of impeachment lapses with the running of six months after the ground for impeachment has been discovered by the complainant, or the influence of the duress has ceased, and in every case with the running of five years after the celebration of the marriage.

Sch. C. § 409, 3. B. G. B. 1338, 1339.

128.

II. Complaint by Parents or Guardians.

If a person not capable of marriage, or under age, or incapacitated, has been betrothed without the consent of parents or guardians, then the marriage can be contested by father or mother or guardian.[1]

A declaration of invalidity may not, however, be entered if in the meanwhile the incapable spouse has become capable marriage, or of age, or if the wife has become pregnant.[2]

[1] Sch. § 411, 2. B. G. B. 1336.
[2] Sch. C. § 411, note 1. B. G. B. 1325, 1331.

129.

C. Bar of Invalidity.
I. In Cases of Adoption.

If a marriage has been contracted by persons between whom the entry upon marriage is forbidden with regard to the relation of adoption, it cannot be declared invalid for this reason.

Adoption is annulled by marriage (*Trauung*).

Sch. C. § 411, note 14. B. G. B. 1311.

130.

II. Neglect to Wait the Prescribed Time.

If a marriage is entered into before the lapse of the legal or judicially imposed time of waiting it cannot for this reason be declared invalid.

This point is not mentioned in Sch. or in B. G. B.

131.

Marriage celebrated before the civil status official cannot be declared invalid because of a breach of the formal regulations.

III. Neglect of the Formal Regulations.

As to the regulations deemed essential in the German law, v. Sch. § 410. B. G. B. 1319 to 1321.

132.

D. Declaration of Invalidity.

I. Effect of Judgment.

Invalid marriage becomes absolutely so upon final decree entering judgment thereon.

Until such decree the marriage, even if voidable, has the effect of a valid marriage.

v. Sch. § 409. B. G. B. 1329, 1343, as to divorce. Sch. § 422. B. G. B. 1564.

133.

II. Consequences.

1. As to children.

If a marriage is decreed invalid, the children remain legitimate without regard to the good or bad faith of the parents.

The relation between the children and parents shall be regulated by the same provisions as in the case of divorce.

v. Sch. § 409, 2. B. G. B. 1699.

134.

2. As to the Parties.

Upon a marriage being declared invalid, the wife, if she has acted in good faith therein, preserves the personal status acquired by the marriage, but reassumes the name which she before bore.

With regard to the settlement of the rights of property, as well as the claims of the parties to indemnification, maintenance, or compensation, the same regulations obtain as in divorce.

v. Sch. § 409. B. G. B. 1345, 1347.

135.

E. Inheritability.

The right to sue for a decree upon the invalidity of a marriage is not inheritable. The heirs of the complainant can nevertheless prosecute a suit already brought.

v. Sch. § 409, 3. B. G. B. 1342.

136.

F. Competency and Procedure.

An action to declare a marriage invalid is subject to the same regulations as divorce, as regards the competency of the judge and procedure.

FOURTH TITLE — DIVORCE.

137.

A. Grounds.
I. Adultery.

If a married person has committed adultery the other spouse may sue for a divorce.[1]

The right of complaint is barred by the lapse of six months from the time when the injured spouse has received knowledge of the cause for divorce, and in every case by the lapse of five years after the adultery.[2]

The right to complain is barred by the consent or forgiveness of the injured spouse.[3]

[1] Sch. § 421. B. G. B. 1565 to 1567.
[2] B. G. B. 1571, 1572.
[3] B. G. B. 1565, 1570 to 1573.

138.

II. Plot against Life; Abuse; Defamation.

If a married person has plotted against the life of the spouse, or greatly abused him, (or her) or offered him (or her) gross insult, the injured spouse may sue for divorce. The right of complaint is barred by the lapse of six months from the time when the injured spouse has received knowledge of the cause for divorce, and in every case by the lapse of six months.

Condonation by the injured spouse bars the right of complaint.

Sch. § 421. B. G. B. 1568.

139.

III. Crime and Dishonorable Life.

If a married person has committed some dishonorable crime, or if he lives a life so dishonorable that the marriage relation cannot fairly be expected to continue, the innocent spouse may sue for divorce.

v. note to § 138.

140.

IV. Desertion.

If a married person has maliciously deserted the spouse, or, without sufficient reason, has not returned to the marital residence, when this absence has lasted for at least two years, the injured spouse may sue for a divorce, the condition continuing.

The judge upon petition of the complainant, shall call upon the absent spouse — in case of necessity by publication — to return within six months.

The suit for divorce may be commenced after the lapse of this further time.

Sch. § 421 of note 1. B. G. B. 1567. Ger. C. Proc. 888.

141.

V. Mental Infirmity.

If a married person has fallen into such a condition of mental infirmity that the marriage relation cannot fairly be expected to continue, and the infirmity after the lapse of three years is pronounced incurable by experts, the other spouse may at any time sue for a divorce.

Sch. § 421. B. G. B. 1569.

142.

VI. Ruin of the Marital Relationship.

If so deep a destruction of the marital relationship has occurred that continuance thereof cannot fairly be expected from the spouses, either spouse may sue for a divorce.

v. §§ 139, 141.

If the deep destruction can overwhelmingly be ascribed to one, the other only of the couple can sue for divorce.

This provision is not in the German law. Its exact application might be extended to cover incurable and contagious disease, incompatibility of temper, habitual drunkenness, the morphine habit, or, as in the Chinese law, talkativeness; it could be indefinitely extended, or practically repealed by judicial construction.

143.

B. The Suit.
I. Form of the Suit.

The suit lies either for a divorce or a judicial separation.

Sch. § 423. B. G. B. 1575.

144.

II. Jurisdiction.

The judge of the residence of the complainant has jurisdiction.

145.

III. Precautionary Measures.

When the suit is brought the judge shall make the precautionary orders necessary during the pendency of the suit as, for instance, in reference to the home and maintenance of

the wife, the marital rights of property, and provision for the children of the marriage.

This is rather regulation of procedure *pendente lite* than of the civil obligation.

146.

C. Decree.
I. Divorce or Separation.

When lawful ground for a divorce has been shown, the judge shall decree a divorce or separation.

If separation is prayed for, divorce cannot be decreed.

If divorce is sued for, then a separation can be decreed only when there is a prospect of the parties reuniting.

As to the effects of judicial separation, v. Sch. § 423. B. G. B. 1576, 1586, 1587.

147.

II. Duration of Judicial Separation.

Separation is decreed, either for from one to three years, or for an indefinite time.

After the lapse of the decreed time the separation ends, and either party can, if they have not reunited, demand a divorce.

If the separation decreed for an indefinite period has lasted for three years, either party, if they have not reunited, may demand a divorce or a revocation of the separation.

Contra B. G. B. 1575, 1576.

148.

III. Judgment after the Period of Separation.

If, after the lapse of the decreed time of separation, or, when separation has been decreed for an indefinite time, after the lapse of three years, a divorce is demanded by one of the parties, it must be decreed, unless the facts on which the claim is based show that the claimant is solely the guilty party. The divorce is nevertheless to be decreed in such case when the innocent party refuses to be reunited.

These provisions excepted, the decree is based on the facts shown in the former proceeding and those developed since.

149.

IV. Status of the Divorced Wife.

Upon dissolution of the marriage the wife preserves her personal status, but resumes the name which she bore before the celebration of the marriage.

If she was a widow before the marriage, it may be granted her by the decree to resume her maiden name.

Sch. § 422, 4. B. G. B. 1577.

150.

V. Time for Waiting.

Upon the dissolution of the marriage the decree shall forbid the guilty party from remarriage within one to two years, and in case of divorce for adultery, within one to three years.

The duration of a former judicial separation will be taken into account.

151.

VI. Duties upon Divorce.
1. Indemnification, and Satisfaction.

If property rights or expectancies of the innocent party are impaired by the divorce, the guilty party shall furnish proper indemnification.

If the innocent party is severely injured in his or her personal condition by the circumstances leading to the divorce, the judge may decree him or her a sum of money as compensation.

152.

2. Maintenance.

If the innocent party falls into great want by reason of the divorce, the other party may be bound, even if he is not responsible for the divorce, to pay a sum for maintenance, according to his means.

As to alimony generally, Sch. § 422, 3. B. G. B. 1578 to 1583.

153.

4. Yearly Payments.

If a yearly sum is fixed by decree or agreement, as indemnification, compensation or contribution towards maintenance, the obligation to pay the same ceases when the obligee marries again.

Obligation to pay a yearly sum decreed by reason of poverty will be cancelled or reduced on petition of the obligor, when the want no longer exists, or has been substantially relieved, as well as when the property conditions of the obligor become disproportional to the obligation.

v. Note to § 152. Sch. § 430, 431. B. G. B. 1602 to 1608.
v. §§ 463, 530.

154.

VII. Separation of Property.
1. On Divorce.

Upon divorce the marital property reverts independently of the property status of the marriage, to the exclusive ownership of each party.

A profit will be apportioned to the couple according to their property status, a loss the husband has to bear, in so far as he does not prove that the wife caused it.

Separated couples have no right of inheritance from one another and can make no claims because of the marriage contract or testamentary dispositions, which they may have made before the separation.

155.

2. On Separation.

Upon a separation the judge decides as to revoking or continuing the existing property status with regard to the duration of the separation and the relation of the parties.

If either party demands a separation of the property, it shall be granted.

156.

VIII. Rights of Parents.
1. Judicial Discretion.

The judge shall hold the necessary hearings of parents, or the Guardians' Court, in divorce or separation proceedings, to determine the rights and the personal relations of parents. The party from whom his children are taken shall be bound to pay a sum corresponding to his circumstances toward their maintenance and education.

The consort from whom the children are taken, is obligated to the payment of a sum, corresponding to his circumstances, toward their maintenance and education.

He has the right of reasonable personal intercourse with the children.

Sch. § 422, 5. B. G. B. 1585,-1635, 1636.

157.

2. Change of Conditions.

If conditions change in consequence of marriage, removal, death of one of the parents or other grounds, the judge shall make the necessary orders upon petition of the Guardians' Court, or father or mother.

158.

D. Procedure.

Divorce procedure is governed by the cantonal law of process, with the exception of the following provisions,— (1) The judge can assume as proven facts which serve to found the complaint for divorce or separation only when he is convinced of their existence. (2) The oath or affirmation may neither be exacted or imposed upon the parties, as means of proof for the establishment of such facts. (3) Declarations of the parties of whatever kind are not binding upon the judge. (4) The judge shall have a free hand to weigh the proof. (5) Agreements as to the consequences of divorce or separation require for their validity the allowance of the judge.

FIFTH TITLE—THE CONSEQUENCES OF MARRIAGE IN GENERAL.

A. Rights and Duties.
I. Of Both Parties.

159.

By the marriage both parties are bound in marital community (*Eheliche Lebensgemeinschaft*).

They bind themselves, on either side, to preserve the weal of the common relationship, in harmonious working together, and to care for their children in common. They owe to each other fidelity and assistance.

Sch. § 412. B. G. B. 1353.

II. Of the Husband.

160.

The husband is the head of the conjugal union. He determines the marital residence and shall provide the support of wife and child in proper manner.

Sch. § 412, 2. B. G. B. 1354.

III. Of the Wife.

161.

The wife receives the family name and citizenship of her husband. She shall stand by his side with counsel and action, and support him with all her strength in his care for the union.

She shall conduct the household.

Sch. § 412, 3, 4. B. G. B. 1355, 1356.

B. Representation of the Union.
I. By the Husband.

162.

The husband is the representative of the union. His acts bind him personally whatever be the property status.

B. G. B. 1354 above.

II. By the Wife.
1. Ordinary Representation.
a. Definition.

163.

The wife has the representation of the union in the care for the current needs of the household along with her husband. Her acts bind the husband, in so far as they do not exceed this care in a way evident to third parties.

"Schlusselgewalt" Sch. 412. B. G. B. 1357.

164.

b. Deprivation.

If the wife misuses the right of representation as to the household allowed her by law, or if she shows herself incapable of exercising it, her husband may deprive her thereof in whole or in part.

This deprivation is, however, effective as to third parties acting in good faith only when it has been published by the proper authority.

v. note to 163.

165.

c. Revocation of Deprivation.

The deprivation, or limitation thereof, shall be judicially revoked upon petition of the wife as soon as it is shown that it is unjustified. The revocation shall be published if the deprivation was.

166.

2. Extraordinary Representation.

The wife has a wider right of representation only so far as it is expressly or tacitly granted to her by her husband.

167.

C. Profession or Occupation of Wife.

With the express or tacit consent of the husband, the wife is entitled, in whatever status of marital property, to pursue a profession or occupation.

If the husband refuses his consent, the wife may be so authorized by the judge, provided she shows that this is offered in the interest of the marital union or the family.

The refusal of the husband is effective as to third parties acting in good faith only when it has been made public by the proper authority.

168.

D. Capacity of the Wife to Sue and be Sued.

The wife is, in whatever status of property, capable of suing and of being sued. In litigation with third parties as to contributed property the husband shall, nevertheless, represent the wife.

169.

E. Protection of the Marital Union.
I. In General.

If a married person neglects his marital duty, or by his conduct brings the spouse into danger, reproach or disgrace, the injured spouse may petition the judge for relief.

The judge shall warn the unfaithful spouse of his duty, and after fruitless warning shall order the requisite legal measures for the protection of the union.

170.

II. Sundering of the Marital Household.

If the health, good name, or economical subsistence of one of the spouses is seriously endangered by the living together, he is justified, so long as this danger exists, to sunder the common household.[1]

After bringing suit for divorce or separation, each spouse is entitled to discontinue life in common during the litigation.

The judge shall, upon petition of a spouse, when reasons for sundering the common household exist, determine the payment of one spouse toward the support of the other.[2]

[1] This provision does not appear in the German Code. Some hint of it will be found in the Danish Code of Christian V.

[2] As to alimony in divorce, Sch. § 422, 3. B. G. B. 1578 to 1580.

171.

III. Admonition of those in Fault.

If the husband neglects the care of the wife or child, the judge may direct the husband's debtors without consideration of the property status to make their payments to the wife in whole or in part.

Sch. § 412, 9. B. G. B. 1360.

172.

IV. Term of Judicial Orders.

Judicial orders, so soon as the cause therefor ends, shall be rescinded upon petition of a married person.

B. G. B. 1612.

173.

V. Execution. 1. Prohibited.

During marriage execution upon the respective demands between the spouses is allowable only in the cases provided by law. Privation of civic rights by reason of a seizure without results or a bankruptcy, is not incurred as a consequence of loss suffered by one consort through act of the other.

174.

2. Exceptions. *a.* The Spouse as Debtor.

If an execution has been levied upon a married person by a third party, then the other spouse is entitled to avail himself or herself of the attachment, or to share in the bankruptcy proceeding.

175.

b. The Spouse as Creditor.

If the creditors of one spouse suffer a loss in the prosecution of an attachment, their claims then become good as against the other spouse, and can be attached for. If bankruptcy proceedings be begun against a spouse, the claims of such spouse against the other party to the marriage are to be included therein.

176.

c. The Separation of Property and Obligation to Contribute.

For the accomplishment of the legal or judicially ordered separation of property, the compulsory performance thereof is permissible without any limitation.

The same obtains as to contributions which are judicially imposed upon one spouse in favor of the other.

177.

F. Juridical Acts (Rechtsgeschäfte) between Married Persons, and in Favor of the Husband.

Married persons shall have power to enter into juridical acts with each other.

Juridical acts between married persons concerning the contributed property by the wife, or the common property of the union, require for their validity the consent of the Courts of Guardianship.

The same consent is requisite for the obligations entered into by the wife in favor of the husband, so far as they concern third persons.

SIXTH TITLE — MATRIMONIAL REGIME.

Sch. § 413.

FIRST SECTION — GENERAL PROVISIONS.

178.

A. Ordinary Property Status.

Consorts are placed under the regulations as to union of property (*Güterverbindung*) save where by marriage contract another régime is adopted or they are subjected to the extraordinary property status.

179.

B. Property Status under Marriage Contract.
I. Effect of Contract.

A marriage contract can be entered into before, as well as after, the celebration of the marriage.[1]

The couple shall adopt, as their contract, one of the stati hereby provided.[2]

A marriage contract effected after the celebration of the marriage shall not impair any existing liability of the property as to third persons.

[1] Sch. § 413, 4, note 2. Intr. L. § 200.

[2] This seems to abolish the distinction in the German law between the statutory régime (*Gesetzliches Güterrechts*) and that of the marriage contract (*Vertragsmässiges Güterrecht*). Sch. § 413. All contracts must be within a statutory provision.

180.

II. Parties to have Legal Contractual Capacity.

For entering into, amending or rescinding a marriage contract, the contracting parties must have capacity of judgment.

If they are under age or legally incapacitated, the consent of their legal representative is requisite.

Sch. § 26.

181.

III. Form of Contract.

The entering into, amending or rescinding of the marriage contract require for their validity the public record thereof, as well as the signatures of the contracting parties or their legal representatives.

Marriage contracts made during marriage require in addition the consent of the Court of Guardianship.

The marriage contract becomes legally effective as to third persons upon compliance with the provisions as to the registry of property rights.

182.

C. Extraordinary Property Status.
I. Legal Separation of Property.

If the creditors in bankruptcy of a married person suffer a loss, separation of property (as to the spouse of the bankrupt) takes place by virtue of the statute.

If creditors exist at the time of the marriage, who have certificates of loss, either party can found a separation of property by entering that property status in the register of property rights, before the marriage.

Sch. § 415, 2 b, 4. B. G. B. 1418 to 1426.

183.

II. Judicial Separation of Property.
1. Upon Petition of Wife.

The judge, upon petition of the wife, shall order a separation of property, (*Gütertrennung*) — (1) when the husband does not provide properly for the support of wife and child; (2) when he does not enter lawful security for the wife's property contributed; (3) when the husband or the common property is overburdened with debt.

Sch. § 415, 2. B. G. B. 1418 to 1420.

184.

2. Upon Petition of the Husband.

The judge shall, upon petition of the husband, order a separation of property, — (1) when the wife is overburdened with debt; (2) when the wife unjustifiably refuses the consent required by statute or the property status, to the arrangements of the husband as to the marital property; (3) when the wife has demanded the securing of the property contributed by her.

As to cause 2, the German law provides that where the wife unreasonably refuses consent to the arrangements of the husband as to the marital property, lawful consent can be given thereto by the Court of Guardianship upon petition by the husband.

185.

3. Upon Petition of Creditors.

The judge shall order separation of property upon petition of a creditor who has suffered loss in the prosecution of an attachment against either spouse.

186.

III. Beginning of the Separation of Property.

The separation of property in consequence of bankruptcy begins with the furnishing of the certificates of loss, but will relate back to the time of acquisition, in relation to property acquired by the parties after the composition, by inheritance or otherwise.

Judicial separation of the marital property relates back to the time of presentation of the petition.

The petition for commencement of the separation of marital property shall be reported officially, in case of bankruptcy or judicial decree, for entry in the register of property rights.

187.

IV. Rescinding of the Separation of Property.

Separation of property caused by bankruptcy or loss in the prosecution of attachment will not be rescinded upon the satisfaction of the creditors; but the judge may in such case upon petition of the married person decree the restoration of the former property status. The restoration shall be officially reported for entry in the register of property rights.

188.

D. Change of Status.
I. Liability.

Property cannot be withdrawn by partition of marital property, or by a change of the property status, from the liability theretofore existing in favor of creditors of one of the married couple or of the community.

If such property be transferred to a married person, he shall pay the debts (charged thereon), but he can discharge himself from this liability so far as he can prove that the value of the property is less than the amount thereof. Whatever the wife receives back upon bankruptcy of her husband, or in an attachment proceeding, remains withdrawn from the creditors of the husband, unless they are also creditors of the wife.

189.

II. As to Method of Separation of Property.

Upon separation of property arising during the marriage, the marital property reverts to the particular property of the husband and of the wife, subject to the rights of creditors.

A profit is divided between the parties according to their former property status: diminution of the marital property shall be borne by the husband, so far as he does not prove that it was caused by the wife. If, in the separation, the husband receives property of the wife, with power to dispose of the same, he shall furnish security therefor upon demand of the wife.

190.

E. Separate Property.
I. Origin.
1. In General.

Separate property becomes such by marriage contract, by settlement of third persons, and by (force of) statute.

Whatever a consort receives from relatives as part of his compulsory share (*legitim*) cannot be allowed him as separate property.

Sch. § 412, 3. B. G. B. 1365 to 1370.

191.

2. By Statute.

By force of statute the following are separate property: — (1) Objects which serve one of the spouses for personal use exclusively. (2) Property belonging to the wife with which the wife pursues an occupation or profession. (3) The wife's earnings from her independent labor.

Sch. 412, 10. B. G. B. 1362. Comp. Ger. C. Genl. Com. of Goods, Sch. § 417. B. G. B. 1846, etc.

192.

II. Effect.

Separate property stands in general, and particularly with respect to the duty of the wife to contribute to the expenses of the marriage, under the rules of separation of property.

The wife shall apply her separate earnings, so far as necessary, to the necessities of the household.

193.

III. Burden of Proof.

If a married person claims property to be his, separately, the burden of proof is on such claimant.

SECOND SECTION — UNION OF PROPERTY.

194.

A. Property Relations.
I. Marital Property.

The union of property unites all property belonging to the spouses at the time of their marriage, or coming to them during the marriage, into marital property.

The separate property of the wife is excepted therefrom.

Sch. § 414. B. G. B. 1365 to 1370, 1376, 1381.

195.

II. Property of Man and Wife.

Whatever of the marital property at the time of the marriage belongs to the wife, or which comes to her gratuitously during marriage, by way of inheritance or otherwise, is her contributed property (dowry, *eingebrachte Gut*) and remains her own.[1]

The husband has the property in all that he contributes and in all the marital property that is not the wife's.[2]

The wife's income and the natural fruits of her property become the property of the husband at the time of their incidence, or separation, with the exception of the regulations as to separate property.[3]

[1] § 190, pr. 2. Sch. § 414, 3. B. G. B. 1363, 1373 to 1376, 1377, 1379, 1381.

[2] Sch. § 414, 1, note 1.

[3] Sch. § 414, 5. B. G. B. 1363, 1383 to 1389, 1390.

196.

III. Proof Thereof.

If a married person claims that property belongs to the wife, the burden of proof is on such claimant.

If, during the marriage, provisions are made by way of compensation for property of the wife, it will be presumed that they are part of the wife's property.

197.

IV. Inventory. 1. Taking Same and its Evidential Value.

Either husband or wife can at any time demand that an inventory be made of the property contributed to the marriage with public record thereof. If such inventory is made within six months after the contribution of the items thereof, it is presumed to be correct.

Sch. § 414, 2. B. G. B. 1372.

198.

2. Effect of Appraisement.

If an appraisement is attached to the inventory, and this is fixed by public record thereof, it determines the measure of compensation in accordance with such appraisement as between the spouses for marital property lost.

If objects are sold in good faith during the marriage for less than the appraised value, the proceeds of sale take the place of such appraised values.

199.

V. Ownership by Husband of Wife's Property.

Within six months after the contribution, and with proper observance of the provisions of the marriage contract, the stipulation can be added to the appraisement that the wife's property shall pass into the ownership of the husband at the appraised value and the wife's claim for her property shall remain unchanged.

200.

B. Management. Use and Power of Disposition.
I. Management.

The husband shall manage the marital property. He shall bear the expenses of its management.[1]

The wife shares in its control in so far as she has a legal right to represent the union.[2]

[1] B. G. B. 1354.
[2] Sch. § 414, 6.

201.

II. Use.

The husband has the use of the property contributed by the wife, and is responsible therefor as one who enjoys such use.

Sch. § 414, 5. B. G. B. 1363.

This responsibility is not increased by the appraisement of the wife's property in the inventory. Ready money, other representative things and title deeds, which are determined only by their species, pass into the property of the husband, and the wife receives a claim for compensation for the value thereof.

202.

III. Power of Disposition.
1. Of the Husband.

The husband requires, for the administration of the wife's marriage portion, the consent of the wife, as soon as it is a question of more than the usual control.

Third persons may, nevertheless, assume such consent in so far as they do not, or should know that it is lacking, or so far as the property is not distinctly recognizable as belonging to the wife.

203.

2. Of the Wife.
a. In General.

So far as the representation of the marital union justifies it, the wife has control over the marital property.

v. B. G. B. 1449 to 1455.

204.

b. Refusal of Inheritances.

The wife requires the consent of the husband for the refusal of an inheritance. If consent is refused the wife can invoke the decision of the Court of Guardians.

Sch. § 414, 4 B. G. B. 1401, 1402, 1405, 1406.

205.

C. Security of the Wife.

The husband must, upon demand at any time, furnish the wife information as to the status of the wife's marriage portion.

The wife can at any time demand security therefor.

The right of contest under the laws of attachment and bankruptcy is reserved.

B. G. B. 1391.

206.

D. Liability.
I. Liability of the Husband.

The husband is liable, — (1) for his antenuptial debts; (2) for debts which he incurred during the marriage; (3) for debts which arise out of the representation of the marital union by the wife.

As to liability for debts, Ger. Statutory Régime, Sch. § 414, 7. Ger. Community of Goods, Sch. § 417, 6. Ger. Community of Income, etc., Sch. § 418, 419.

207.

II. Liability of the Wife.
1. With all Her Property.

The wife is liable with all her property, without regard to the rights appertaining to the husband from the status of the properties, — (1) for her antenuptial debts; (2) for debts contracted by her with consent of her husband, or in undertakings to his advantage, with consent of the Court of Guardians; (3) for the debts which arise out of the regular pursuit of her profession or occupation; (4) for debts of inheritance which pass to her; (5) for debts arising from unpermitted acts.

For debts incurred by her or her husband for the common household she is liable in so far as the husband is unable to pay.

v. note to § 206.

208.

2. Liability as to her Separate Property.

The wife is liable during and after the marriage out of her separate property only, — (1) for debts which she has incurred on account of her separate property; (2) for debts incurred by her without consent of her husband; (3) for debts incurred by her, in overstepping of her right (*ultra vires*) of representing the marital union.

Claims on the ground of unjustified benefit are excepted.

209.

E. Claims for Compensation.
I. Maturity.

If debts for which the wife's contribution to the marital property is liable are collected out of the husband's property, or debts of the husband out of the wife's contribution of property, a claim for compensation arises which, nevertheless, under the reservation of the legal exceptions, is not demandable until the time when the union of the property is dissolved.

If separate property debts of the wife are collected out of the marital property, or debts for which the marital property is liable, out of the separate property, the balancing thereof may be demanded during the marriage.

Sch. § 414, 6, § 417, 6 d. v. B. G. B. 1463 to 1467.

210.

II. Bankruptcy of Husband. Attachment.
1. Claim of Wife.

In bankruptcy, or in attachment of property of the husband, the wife can make her claim for compensation for her contribution of property now no longer at hand. Counter-claims of the husband can be set off. The property still at hand the wife can take to herself as owner thereof.

Sch. § 415. B. G. B. 1419. Sch. § 417, 7a, (5) 7 b. B. G. B. 1469.

211.

2. Preference (Lien).

If the wife is not protected by the return of her property and the security therefor to the extent of half of her contribution of property, then her claim for compensation for the rest of this half is a preference over (an) attachment or bankruptcy.

The renunciation of the preference, as well as the waiver thereof in favor of single creditors, are invalid.

C. Dissolution of the Marital Property.
I. Death of Wife.

212.

If the wife dies then the wife's property contribution, saving the claims of inheritance of the husband, passes to the heirs of the wife.

The husband must make compensation for any loss so far as he is responsible, and with regard to what he has to claim from his wife.

Sch. C. § 415, 2, 3. B. G. B. 1482, 1484, 1510.

213.

II. Death of Husband.

If the husband die, then the wife takes back the remaining property contributed by her, and can make claim upon the heirs for compensation for any loss.

v. Art. 229 *infra*.

214.

III. Profit and Loss.

If, upon separation of the husband's and wife's property, a profit is shown, it belongs one-third part to the wife or her descendants and the balance to the husband or his heirs.

If the marital property shows a loss, then it is to be borne by the husband or his heirs, so far as it is not shown that the wife caused it.

By (a) marital contract a different division of the profit or loss can be stipulated.

v. Art. 225 *infra*.

THIRD SECTION — THE COMMUNITY OF PROPERTY.

215.

A. General Community of Property.
I. Marital Property.

The general community of property unites the property and the income of husband and wife into common property that belongs to them both undivided and in common.

Neither of the couple can dispose of his share in the common property.[1]

If a married person claims that a piece of property does not belong to the common property, the burden is on him of proving the same.[2]

[1] B. G. B. 1442.

[2] Sch. § 417. *Allgemeine Gütergemeinschaft.*

216.

II. Management or Disposition.
1. Management.

The husband shall manage the common property.[1]

[1] B. G. B. 1439, 1458.

The common property bears all the expenses of its management.[2]

The wife shares in the management in so far as she is empowered to represent the marital community.

[2] Sch. C. § 417, 4 a. B. G. B. 1449 to 1455, 1357.

217.

2. Disposition.
a. Disposition of the Common Property.

Disposition of parcels of the common property requires a declaration of both spouses or the consent of one to a disposition by the other, so soon as it is a question out of the ordinary management.

Third persons may assume this consent in so far as the pieces of property are not recognizable by every one as belonging to the common property.

Sch. C. § 417, 3. B. G. B. 1439, 1525, 1443 to 1447.

218.

b. Refusal of Inheritances.

The refusal of inheritances by the one requires the consent of the other during marriage.[1]

Decision by the Guardians' Court can be invoked in case of denial of this consent.[2]

[1] B. G. B. 1405, *contra*.

[2] This accords with the general rule of the German law where consent cannot be given, or is refused without sufficient reason.

219.

III. Liability.
1. Debts of Husband.

The husband is personally and with the common property responsible, — (1) for the antenuptial debts of both spouses; (2) for debts contracted by the wife in her representation of the marital union; (3) for all other debts contracted during the marriage by him or by the wife, charged upon the common property.

Sch. C. § 417, 3 a and notes. Id. 4a., Id. 6.

220.

2. Debts of Wife.
a. Of the Wife and the Common Property.

In addition to the common property the wife is personally liable, — (1) for her antenuptial debts; (2) for the debts incurred by her with her husband's consent, or in undertakings to his advantage, with consent of the Guardians' Court; (3) for the debts which arise out of the regular pursuit of her profession or

occupation; (4) for debts of inheritances which pass to her; (5) for debts arising from unpermitted acts.

For debts contracted by her or her husband for the common household, she is responsible so far as the common property does not reach.

She is not personally responsible for any other debts of the common property.

v. last note above.

221.

b. Debts of the Separate Property.

The wife is, during and after marriage, liable only to the extent of her separate property, — (1) for debts contracted on account of her separate property; (2) for debts contracted by her without her husband's consent; (3) for debts contracted by her in overstepping her right to represent the marital union.

Claims for unjustified benefit are excepted.

Sch. C. § 417, 6 b, c. B. G. B. 1441, 1459.

222.

3. Execution.

During the existence of the community of property execution lies against the husband for the debts for which the common property is liable.

223.

IV. Claims for Compensation.

1. In General.

If debts for which the common property is liable are satisfied out of it, no claim for compensation arises therefor as between the spouses. If debts against the common property have been satisfied out of separate property or separate debts out of common property, (then) there arises a claim for compensation which can be made effective even during the marriage.

Sch. C. § 417, 6 d. B. G. B. 1463 to 1467.

224.

2. Married Women's Property Claims.

In the case of the husband's bankruptcy and attachment of articles of the common property, the wife can claim for her property contribution and enjoys for her half a preference over (an) attachment or bankruptcy.

The waiver of this preference, as well as renunciation of the same in favor of individual creditors, is void.

V. Dissolution of Marital Property.
1. Proportion of Shares.
a. By Law.

225.

If a married person dies, half of the common property belongs to the surviving spouse. The other half, saving the claims of inheritance of the survivor, descends to the heirs of the deceased one.

If the surviving spouse be unworthy to inherit, (then) can he claim from the common property in no case more than would be coming to him in the case of a divorce.

Sch. C. § 417, 7 b, "unworthy to inherit" (*Erbenunwürdig*). Sch. C. § 480. B. G. B. 2339 to 2344.

b. By Contract.

226.

In place of a division by halves, any other division can be fixed upon by (a) marriage contract. The descendants of the deceased spouse cannot be deprived of one-fourth of the common property remaining at his death.

This clause fixes the amount or share and protects the *legitim* or compulsory portion of which the issue cannot generally be disinherited. Sch. C. §§ 510, 511.

2. Liability of Survivor.

227.

The surviving husband continues personally responsible for all claims against the common property.

The surviving wife can free herself from all liability for the debts of the common property, which are not likewise her personal debts, by refusal of the share coming to her.

If she accepts her portion she is yet responsible, but can free herself from such liability to the extent that she proves the property received by her to be insufficient to pay such indebtedness.

This section is in conformity with the general German law of inheritance. v. Sch. C. § 468, 2.

3. Charging.

228.

On division of the property the surviving spouse can demand that there shall be charged against his portion the pieces of property which he has contributed.

Sch. C. § 417, 7 b.

229.

B. Continuance of the Community of Property.
I. General Principle.

The surviving spouse can continue the community of property with the common children. The consent thereto of the Guardians' Court is requisite in the case of minor children. If the community of property is continued, then claims of inheritance cannot be set up until the end thereof.

This condition, which seems optional in the Swiss law (v. § 213) is the general rule in the German system. Sch. C. § 417, 8 a. B. G. B. 1483. It does not exist in the French law.

230.

II. Extent.

The continued community of property embraces the hitherto marital property as well as the income and wages of those sharing therein, with the exception of the separate property.

Whatever falls to the children or the spouse during this community of property, by way of inheritance or in any other gratuitous way, becomes the separate property in so far as it is not otherwise provided.[1]

Execution as between the sharers of the common property is restricted in like manner as between married persons.[2]

[1] v. contr. B. G. B. 1485.

[2] Sch. C. § 417, 8.

231.

III. Management and Representation.

If the children are minors, the management and representation of the continued community of property belongs to the surviving spouse.

Sch. C. § 417, 8 d. B. G. B. 1487.

If they are of age, then any other arrangement can be made by agreement.

232.

IV. Dissolution.
1. By Declaration.

The surviving spouse can dissolve the continued community of property at any time. Children of age can withdraw from the community at any time, one alone or all together.

The Guardians' Court can declare withdrawal for minors.

Sch. C. § 417, 8 f. B. G. B. 1492.

233.

2. By Force of Law.

The continued community of property is dissolved by force of law, — (1) upon the death or marriage of the surviving spouse; (2) upon the bankruptcy of the surviving spouse or the children.

If but one of the children goes into bankruptcy, then the others can demand his withdrawal. Upon the bankruptcy of the father, as well as upon the attachment of the common property, the children take the place of the deceased mother.

234.

3. By Judicial Action.

If a creditor in the prosecution of an attachment against the husband or against one of the children makes a loss, he can then demand before a judge the dissolution of the community of property. If this dissolution is demanded by a creditor of one of the children, the others in the community can then demand his withdrawal.

Sch. C. § 417, 8 f.

235.

4. By Marriage or Death of Child.

If one child marries, then the others in the community can demand his withdrawal. If one child dies leaving issue, then the others in the community can demand his withdrawal. If one child dies without issue, (then) his share remains in the common property saving the claims of heirs not sharing in the community.

236.

5. Mode of Division.

Upon the dissolution of the continued community of property, or the withdrawal of a child, the division or the settlement follows, in accordance with the property conditions at that time. The spouse retains the claims of inheritance against the portions which fall to the several children. The partition cannot be undertaken at an unreasonable time.

Sch. C. § 417, 8 f. B. G. B. 1503.

237.

C. Restricted Community of Property.
. With Separation of Property.

Married persons can by (a) marriage contract arrange a limited community of property, in that they can exclude from the community single pieces or certain kinds of property, as, for example, immovable property.

The excepted articles of property are subject to the rules of separation of property.

238.

II. With Union of Property.

Married women's property reserved out of the community can by (a) marriage contract be brought under the rules of union of property.

239.

III. Community Restricted to Acquired Property.
1. Scope.

The community of property can by a marriage contract be limited to acquired property.

Whatever during the marriage has been acquired, and not procured as compensation for pieces of property contributed, makes up the acquired property and comes under the rules of the community of property.

The rules of union of property obtain as to property contributed by husband or wife upon the contract of, or during marriage.

240.

2. Division of Increase or Loss.

If a profit occurs upon the dissolution of the community, then it is divided by halves between the spouses or their heirs.

Loss is borne by the husband or his heirs, unless it can be proved to have been caused by the wife.

Any other division of the profit or loss can be stipulated by (a) marriage contract.

FOURTH SECTION — SEPARATION OF PROPERTY.

241.

A. Extent.

The separation of property applies to the whole property of both spouses, if it is based upon the law or a decree of court.

If it is based upon a marriage contract, then it applies to the whole property in so far as special exceptions are not made in the contract.

Sch. C. § 415, 4. B. G. B. 1426 to 1430.

242.

B. Property, Management and Use.

Each spouse retains the property in his own estate as well as the management and use thereof. If the wife has transferred the management to her husband, then it is assumed that he need give no accounting to her during the marriage but can claim the income from the property so turned over as a contribution towards the marital expenses.

A waiver by the wife of the right to take back the management at any time is void.

243.

C. Liability. I. In General.

The husband is personally responsible for his antenuptial debts, as well as for those which are incurred by him during marriage, or by the wife in the exercise of her right of representation.

The wife is personally responsible for her antenuptial debts, and for her debts incurred during marriage.

The wife is responsible in case of financial irresponsibility of the husband for the debts incurred by either spouse for the common household.

244.

II. Bankruptcy of Husband and Attachment.

The wife has no right of preference in the case of bankruptcy or any attachment of the property of the husband, even if she has given her own property over to him to manage.

The regulations as to the marriage tax are excepted.

"Marriage Tax," v. § 247.

245.

D. Income and Earnings.

The income and earnings belong to that spouse from whose property, or by whose labor, they come.

246.

E. Burden of the Marital Expenses.

The husband can require that the wife shall furnish a proper contribution towards the burden of the marital expenses.

If the couple cannot agree upon the amount of the contribution, then it can be fixed by the proper tribunal upon petition of either part.

The husband is not liable for the return of the contribution.

247.

F. Marriage Tax.

It may be fixed by the marital contract what portion of the married woman's property she shall furnish to the husband towards the marital expenses as a marriage tax. Whatever is so furnished comes under the régime of union of property, unless it is otherwise stipulated.

FIFTH SECTION — THE REGISTER OF PROPERTY RIGHTS.

248.

A. Legal Effects.

The conditions as to property rights, based upon a marriage contract or judicial decree, as well as the juridical acts by the couple concerning the property contributed by the wife, or the common property, require for legal force as against third persons that they shall be entered upon the register of property rights and be published.

Heirs of the deceased spouse shall not be considered third persons.

This is also the law of Germany by which a similar public record is kept in each commune.

249.

B. Entry. I. Subject.

Only the provisions which shall be effective as against third persons shall be entered. When not otherwise provided by law, or expressly agreed in the marriage contract, the entry shall be made on the *ex-parte* application of either spouse.

250.

II. Place of Entry.

The entry shall be made in the register of the husband's domicile.

If the husband changes his domicile to another registration district, the entry shall be made within three months, at the new domicile also.

The entry in the register of the former domicile loses its legal effect after the lapse of three months dating from the change of domicile.

251.

C. Control and Right of Inspection.

The register of property rights is kept by the commercial register's office, so far as the cantons do not designate special districts and special registrars.

Every one is entitled to inspect the register of property rights, or to request extracts.

The publication of marriage contracts need only state what property status the married ones have chosen.

SECOND DIVISION — RELATIONSHIP.

SEVENTH TITLE — THE STATUS OF LEGITIMATE CHILDREN.

FIRST SECTION — LEGITIMATE DESCENT.

252.

A. Presumption of Legitimacy.

A child born during the marriage, or within a period of three hundred days after dissolution thereof, is presumed to be legitimate.

In case of a later birth, legitimacy is not presumed.

Sch. C. § 425. B. G. B. 1592, 1293.

253.

B. Contest of the Legitimacy.
I. By the Husband.
1. Limitation.

The legitimacy of a child can be contested before a judge by the husband within three months after he has received knowledge of its birth.

The bill of complaint lies against the child and its mother.

Sch. C. § 425, 4. B. G. B. 1594 to 1598.

254.

. Procreation during Marriage.

If a child is born at least one hundred and eighty days after termination of marriage relations, then the husband can support his complaint only by the proof that he could not possibly be the father of the child.

v. last note.

255.

2. Procreation before Marriage, or during Separation.

If a child is born before the one hundred and eightieth day after termination of marital relations, or the couple at the time of conception were judicially separated, then the husband can support his contest by that alone.

The presumption of legitimacy of the child arises, nevertheless, even in this case, when it becomes credible that the

husband has cohabited with the mother around the time of conception.

v. last note.

256.

II. Contest by Others.

If the husband dies before the lapse of the time for a contest, or has become incapable of judgment, or is of unknown abode, or it is impossible for any other reason to inform him of the birth, (then) any person entitled to inherit next or after the child can contest the legitimacy within three months after he has received knowledge of the birth.

In case of procreation before the termination of marital relations, the legitimacy of the child can be contested by the proper court of the domiciliary canton, even if it be recognized by the husband, in the event that it is proven that he cannot possibly be the father of the child.

German legislation does not seem to provide for the conditions here mentioned. The right of the next heir to contest might be his only protection against gross fraud. v. § 257.

257.

C. Forfeit of Right to Contest.

If the husband has expressly or tacitly recognized the legitimacy of the child, or if the period for contest has lapsed unused, then a contest can be raised only when it is demonstrated that the one having a right to contest it has been deceitfully influenced to recognize it, or to waive the contest.

The limitation of a contest in these cases runs anew for three months computed from the discovery of the deceit.

In addition, a contest will be allowed after the lapse of the three months, if the delay is condoned for sufficient reason.

SECOND SECTION — THE DECLARATION OF LEGITIMACY.

258.

A. By Subsequent Marriage.

I. Prefatory.

If the parents of an illegitimate child marry, it becomes legitimate by force of law.

Sch. C. § 427. B. G. B. 1719 to 1722.

259.

II. Declaration.

The parents are obligated to declare, upon or immediately after betrothal, the common illegitimate children before the civil status officials of the residence or place of marriage.

The omission of this declaration has no effect upon the legitimacy of the child.

260.

B. By Judicial Order.
I. Prefatory.

If the parents of a child have promised each other in marriage, and the betrothal has become impossible through the death or marital incapacity of one of the engaged parties, then the judge has, upon application of the other engaged one or of the child, to declare the legitimacy.

If the child is of age, then can the petition of the engaged one be presented only with the consent of the child.

After the death of this child its descendants can demand the declaration of legitimacy.

Sch. C. § 427, 2. B. G. B. 1723 to 1726; 1732 to 1740.

261.

II. Jurisdiction.

The judge of the residence of the petitioner is competent.

He must, however, give notice of the petition to the commune of the father's domicile to protect its interests.

262.

C. Contest.

The declaration of legitimacy can be contested by the inheriting relatives of the parents as well as by the proper court of the domiciliary canton of the father, within three months after it has come to their knowledge, upon proof, that the child does not spring from the parents in question.

The judge of the residence of the parents is competent, or the judge who has pronounced the declaration of legitimacy.

263.

D. Effect.

By the declaration of legitimacy the illegitimate child and its legitimate issue are placed on an equal footing with legitimate relatives in respect to the father and mother and their relationship.

The declaration of legitimacy shall be communicated to the civil status officials of the birthplace of the child and the domiciles of the father and mother.

THIRD SECTION — ADOPTION OF CHILDREN.

264.

A. Prefatory.
I. As to the Adopting Person.

Adoption of children is allowed such persons only as are at least forty years old and have no legitimate issue.

The adoptor must be at least eighteen years older than the child to be adopted.

Sch. C. § 428, 2 a. B. G. B. 1741, 1743, 1744.

265.

II. As to the Person to be Adopted.

If the person to be adopted is capable of judgment, then his consent to the adoption is necessary.

If he is a minor or incapacitated, then the adoption must have his parents' consent or that of the Supervising Orphan Council, even if he is capable of judgment.

Sch. C. § 428, 2 b, c. B. G. B. 1747, 1750, 1751.

266.

III. In Case of Married Persons.

A married person can neither adopt a child, nor be adopted as a child, without the consent of the spouse.

A child can be jointly adopted by a married couple only.

Sch. C. § 428, 2 b. B. G. B. 1746. Sch. C. § 428, 2, note 1.

267.

B. Form.

Adoption follows upon a public instrument with authority of the proper court of the residence of the adoptor, and shall be recorded in the register of births.

Even when the statutory requirements are met, the court can grant its authority only when the adoptor has shown the child care and support or other sound reasons are present and no disadvantage to the child results from the adoption.

Sch. C. § 428, 2 c. B. G. B. 1750 to 1754.

268.

C. Effect.

The adopted child receives the family name of the adoptor, and becomes entitled to inherit from him without losing any former right of inheritance.

The parental rights and obligations are transferred to the adoptor.[1]

As to parental rights of property and the right of inheritance, any desirable changes of the provisions as to the legal status of legitimate children can be agreed upon, before the adoption by a public instrument.[2]

[1] Sch. C. § 428, 3. B. G. B. 1757, 1758, 1762, 1763.

[2] B. G. B. 1767.

269.

D. Dissolution.

The adoption can be dissolved at any time by mutual consent and compliance with the regulations to be followed at its confirmation.

It can be dissolved judicially upon petition of the child, when sufficient reasons exist, and upon petition of the adoptor, when he has a lawful reason for disinheriting the child. Dissolution terminates all future effect of the adoption and is irrevocable.

Sch. C. § 428, 4. B. G. B. 1768 to 1771.

FOURTH SECTION — THE COMMUNITY OF PARENTS AND CHILDREN.

270.

A. Name and Domicile.

The legitimate children receive the family name and the citizenship of the father.

Sch. C. § 440. B. G. B. 1616.

271.

B. Aid and Community.

Parents and children owe one another every aid and consideration which the welfare of the community demands.

272.

C. Expenses of Support and Education.

The parents shall bear the expenses of the support and education of their children according to their marital means.[1]

If the parents are in want, or the expenses become unusually high, or other extraordinary circumstances arise, then the Guar-

dians' Court can permit the parents to draw, to a definite extent, upon the principal property of their minor children, for their support and education.

[1] Sch. C. § 445. B. G. B. 1631.

FIFTH SECTION — THE PARENTAL POWER.

273.

A. In General.
I. Prefatory.

The children remain, so long as they are minors, under the parental power and cannot unlawfully be taken from their parents.

Incapacitated children, of age, remain under the parental power unless the proper court appoints a guardian for them.

Sch. C. § 445. B. G. B. 1631, 1632. As to the control of the Guardians' Court, Sch. C. § 445. B. G. B. 1666, 1673, Intr. L. § 135. As to control of young criminals, Sch. C. § 445; Penal Code, § 56.

274.

II. Right to Exercise.

During marriage parental power shall be exercised jointly. If the parents are not of one mind, the will of the father shall prevail.

In case of the death of one of the spouses the parental power continues in the survivor, and in case of divorce, it is vested in the spouse to whom the children have been granted.

Under the German law the parental power is vested in the father unless forfeited or suspended. As to that control of the person necessarily exercised jointly, the father's will prevails in case of any difference of opinion. Sch. C. § 442. B. G. B. 1626 to 1628, 1634, 1638. As to causes of forfeiture, B. G. B. 1680. Suspension, B. G. B. 1676, 1677. If the father dies, the power vests in the mother. Sch. C. § 443. B. G. B. 1684, and also temporarily in certain cases. B. G. B. 1684, 1773. As to the exercise of power by divorced parents, Sch. C. § 422, 5. B. G. B. 1635, 1636.

275.

B. Definition.
I. In General.

Children owe obedience and respect to their parents.[1]

Parents must educate their children according to their cir-

[1] In cases of extreme outrage by the child, the German law declares him unworthy to inherit, but otherwise the moral law, "Honor thy Father and Mother," is not included in the German Code, as it is here, and also in the Spanish Code of 1889.

cumstances and especially provide appropriate training for the bodily or mentally deficient.[2]

They give the child the Christian name (*Personenname*).

[2] Compulsory education is the subject of special law in Germany and not referred to in the B. G. B.

276.

II. Training of Children for a Calling.

The training of children for a calling is controlled by the directions of the parents.

Parents should, so far as possible, regard the physical and intellectual capacities and the bent of the children.

277.

III. Religious Training.

Parents shall provide for the religious training of the child. A contract which restricts this power is void.

Independent decision as to their religious faith shall not be forbidden to children who have reached their sixteenth year.

The German law leaves the regulation of the religious training of children to the several states. Intr. L. § 134.

278.

IV. Power of Correction.

Parents are empowered to apply the means of correction necessary for the proper education of children.

Sch. C. § 445, note 1. B. G. B. 1631.

279.

V. Representation.
1. As to Third Persons.
a. By Parents.

Parents by force of law shall represent the child as against third persons within the scope of their parental power.

Co-operation of the Guardians' Courts does not apply.

Sch. C. §§ 116, 444, 446.

280.

b. Commercial Capacity of Child.

The child under the parental power has the same limited commercial capacity as a person under a guardian.

The provisions as to representation by the guardian correspondingly apply, with the exception of the provision relating to the co-operation of the person under guardianship in the management of his property.

The property of the child is liable for its debts without regard to the parental property rights.

Sch. C. §§ 444, 441.

281.

2. Within the Community.
a. Acts of Children.

Children under parental power, if they are capable of judgment, can, with the consent of father or mother, act for the community, and do not thereby obligate themselves, but their parents, according to their property status.

v. Sch. C. § 117.

282.

b. Transactions between Parents and Children.

If a child becomes obligated in a juridical act with father or mother, or (in such) with a third person in the interest of father or mother, then it must have a curator and the Guardians' Court ratify the transaction.

283.

C. Official Intervention.
I. Proper Provisions.

In case of improper action by parents, the guardianship officials must make proper provisions for the protection of the child.

Sch. C. § 446, 4, 5. B. G. B. 1666 to 1668, 1670 to 1672.

284.

II. Care of Children.

If a child is continually neglected as to its bodily or spiritual welfare, or if it is spoiled, the Guardians' Court must take it away from its parents and place it in a proper way in a family or institution.[1]

The same arrangement is made by the Guardians' Court upon application of parents, when a child offers them malicious or obstinate opposition, and nothing else can avail under the circumstances.

The public law provides, with reservation of the duty of support by relatives, who must bear the expenses of support, if neither the parents nor the child can meet them.[2]

[1] Sch. C. § 445. B. G. B. 1666, 1673.
[2] Sch. C. §§ 429, 430, and citations.

285.

III. Deprivation of Parental Power.
1. In case of Neglectful Exercise.

If parents are not in a position to exercise the parental power, or if they themselves are under guardianship, or if they have shown themselves guilty of a great misuse of their authority, or gross neglect of their duties, the proper court must deprive them of the parental power.

If the power is taken away from both parents, a guardian shall be appointed for the children.[1]

This deprivation is effective also as to later born children.

[1] Sch. C. § 445. B. G. B. 1666, 1673.

286.

2. In Case of Remarriage.

In case of the remarriage of father or mother, a guardian shall be appointed for the children under their parental authority, if the circumstances require it.[1]

One of the spouses can be appointed guardian.

[1] Sch. C. § 446, 3. B. G. B. 1640, 1669, 1686, 1697.

287.

IV. Restoration of the Parental Power.

If the reason fails upon which the parental power has been withdrawn, the proper court can then of its own motion, or on application of the father or mother, restore the same.

The restoration can in no case be ordered before the lapse of one year after the deprivation of the power.

288.

V. Procedure.

Cantons may prescribe the procedure to be followed for the deprivation and restoration of the parental authority.

The (right of) appeal to the Federal Court remains reserved.

289.

D. Duty of Parents When Power is Withdrawn.

Parents shall not be relieved of the duty of bearing the expenses of the support and education of their children by the deprivation of their parental power.

The public law regulates, with reservation of the duty of relatives to support, who must bear these expenses if neither parents or child can do so.

SIXTH SECTION — PARENTAL PROPERTY RIGHTS.

290.

A. Management.
I. In General.

So long as the parental power remains in them, parents have the right and duty to manage the child's property.

They are not, as a rule, obliged either to render account or give security therefor. The right remains reserved to the

guardianship officials to intervene upon improper conduct by the parents.

Sch. C. § 446. B. G. B. 1639 to 1645. As to the parents' right of usufruct, Sch. C. § 447. B. G. B. 1649 to 1663, 1666.

291.

II. After Dissolution of Marriage.

After the dissolution of marriage, the spouse retaining the parental power must furnish an inventory of the child's property to the Guardians' Court, and report every substantial change in its condition or disposition.

Sch. C. § 446, 3. B. G. B. 1640.

292.

B. Use of the Child's Property.
I. Prefatory.

Parents have the right to use the child's property during its minority, and while they are not deprived of the parental power by reason of their misconduct.

Sch. C. § 447. B. G. B. 1649 to 1663, 1666.

293.

II. (Meaning) — Extent of Use.

The income from the child's property is in the first instance to be used for the support and education of the child, and the surplus belongs to the parents in the proportions in which they bear the burdens of the marital community.

v. note to 292.

294.

C. Free Property.
I. Free from Use.

Whatever is given the child either under condition that it be invested for it, or as a savings fund or with express freedom from parental use, is excepted from this use.

The management by the parents is denied only when it is expressly so stipulated in the gift.

Sch. C. §§ 442, 447. B. G. B. 1649 to 1654.

295.

II. Free from Use and Management.
1. Wages.

What the child earns by its own labor, belongs to the parents so long as it is a minor and lives with them in household community.

If the child, with the consent of the parents, lives outside of the household community, it can control its own wages, subject to its duties to its parents.

296.

Whatever a child receives from its parents to pursue its own trade or profession remains under its control and use.

2. Property in Profession or Trade.

297.

In the case of improper conduct of parents in the exercise of their property rights, the Guardians' Court must take the proper steps to protect the child. If a danger to the child's property is imminent, then the Guardian's Court can subject the parents to the control under which a guardian is placed, or demand of them the furnishing of security or nominate a curator for the preservation of the child's interests.

D. Official Intervention.
I. Preservative Measures.

Sch. C. § 446, 4. B. G. B. 1666, 1667, 1668, 1670, 1671, 1672.

298.

The withdrawal of the parental property rights follows only in consequence of the withdrawal of the parental power. If the parental power has been taken away from the parents without any fault of theirs, then the use of the child's property remains in them, so far as the income is not required for the support and education of the child.

II. Withdrawal of the Property Rights.

Sch. C. § 447, note 3. B. G. B. 1656, 1882.

299.

When the parental power ceases, then they must return the property with an account therefor to the child of age or to its guardian.

E. Liability of Parents.
I. Restitution.

Sch. C. § 446, 6. B. G. B. 1681.

300.

Parents are responsible, like any other user, for the restoration of the property. For whatever in good faith they may have sold, compensation is to be made. For expenditures which they properly made for the child itself, they are in no way responsible.

II. Measure of Responsibility.

301.

In case of an attachment against, or bankruptcy of, the father or mother, the claim to compensation for a child's property has a preference conformably to the law of executions and bankruptcy.

III. Preference of the Claim for Compensation.

EIGHTH TITLE — THE STATUS OF ILLEGITIMATE CHILDREN.

302.

A. Foundation in General.

The relation of illegitimacy arises between the child and its mother at its birth. Between the child and its father it is established by recognition or judicially.

Sch. C. § 426. B. G. B. 1717, 1718.

303.

B. Recognition.
I. Admissibility and Form.

The recognition of an illegitimate child can be made by the father or, if he is dead or permanently incapable of judgment, by the paternal grandfather. It is accomplished by a public authentication or by a disposition *mortis causa* and is to be communicated to the civil status official of the domicile of the father.

Sch. C. § 427, 2. B. G. B. 1723 to 1725.

304.

II. When Prohibited.

The recognition of a child begotten in breach of marriage or in incest is forbidden.

305.

III. Revocation.
1. Protest of Mother and Child.

Both the mother and child, and after its death, its offspring, can, within three months after they have received notice thereof, protest against any act of recognition before the proper civil status officials and declare that the recognizor is not the father or grandfather or that the act of recognition would be detrimental to the child.

That official is to notify the recognizor or his heirs of the protest, whereupon complaint can within three months be laid before the judge of the proper civil status office to reject the protest.

The B. G. B. does not legislate on this point, seeming to assume that recognition and legitimation are necessarily advantageous to the child.

306.

2. Contest by Third Persons.

The recognition can be contested by the proper official of the father's domiciliary canton, or by any one with an in-

terest therein, within three months after they have received knowledge thereof, before the judge of the proper civil status office, with the proof that the recognizor is not the father or grandfather of the child, or that the recognition is barred.

307.

C. Suit for Paternity.
I. Right of Action.

The mother of an illegitimate child has the right to demand the judicial determination of the paternity. A like right of action belongs to the child. The action lies against the father or his heirs.

Sch. C. § 426, 1, and note 1, § 435.

308.

II. Limitation.

The action can be brought before or after the confinement, but is to be laid before the lapse of a year after the birth of the child.

309.

III. Relief Sought.

The suit for paternity seeks the contributions towards maintenance of mother and child and in addition, when the special legal conditions are present, the assurance of a civil status for the child.

Contributions towards maintenance for the mother can also be demanded when the child has been recognized by the father, or when it was born dead or has died before judgment. The performance of the parental duty takes the place of contributions towards maintenance for the child when it obtains the civil status of the father.

Sch. C. § 436. B. G. B. 1715.

310.

IV. Procedure.
1. Regulations as to Process.

The procedure in paternity causes can be regulated by the cantonal law of process, subject to the provisions of this code. The cantons, nevertheless, cannot prescribe any regulations as to evidence, which are stricter than those of the ordinary process procedure.

Sch. C. § 437. Intr. Law 21.

311.

2. Appointment of a Curator.

Whenever the Guardians' Court has received knowledge of the illegitimate birth, or the unmarried mother has given it

notice of her pregnancy, a curator is appointed in all cases for the child, to protect its interests.

The curator is supplanted by a guardian after conclusion of the procedure or after the lapse of the time of limitation, if the Guardians' Court deems it inadvisable to place the child under the parental power of the mother or father.

312.

3. Jurisdiction.
a. General.

The suit for paternity shall be brought before the court of the Swiss residence of the complainant at the time of the birth or of the residence of the respondent at time of suit.

If the complaint calls for the assurance of the father's civil status for the child, then the domiciliary commune of the father shall be officially notified of the suit, for the protection of its interests.

313.

b. Domiciliary Jurisdiction.

A complaint lies before the court of the place of domicile of a Swiss citizen, residing abroad, if the mother and child likewise reside abroad.

314.

4. Presumption.

If the respondent, by the proof, has cohabited with the mother in the period from the 300th to the 180th day[1] before the birth of the child, his paternity will be presumed.

This presumption falls, however, as soon as facts are shown which justify a serious doubt as to the paternity of the respondent.

[1] "The period of possible conception" (*Empfängniszeit*), B. G. B. 1592. Sch. C. § 426, 1. B. G. B. 1717.

315.

5. Guilt of Mother.

If the mother has led a dissolute life at about the time of conception, the complaint shall be refused.

The *Exceptio plurium concubentum.*

316.

6. Complaint in Event of Mother's Marriage.

If the mother was married at the time of conception, then a suit for paternity can be brought only after the child has been judicially decreed to be illegitimate.

In such a case the time of limitation runs first from the day on which the child has been decreed an illegitimate.

Sch. C. § 425, 4. B. G. B. 1593 to 1598.

317.

V. Decree of Contributions Towards Maintenance.
1. For the Mother.
a. Indemnity.

The court shall, if the complaint is well grounded, decree to the mother compensation, — (1) for the expenses of confinement; (2) for maintenance during at least four weeks before and after the birth; (3) for other necessary expenditures in consequence of the pregnancy and delivery.

Sch. C. § 436. B. G. B. 1715.

318.

b. Compensation.

If the father promised marriage to the mother before cohabitation, if he is guilty of a misdemeanor as to her by the cohabitation, or if he has abused his power over her, or if she is not yet of age at the time of the cohabitation, then the court may decree the payment of a sum of money as compensation.

319.

2. For the Child.
a. Maintenance.

The court shall, if the complaint is well founded, decree to the child a sum of money towards its maintenance, corresponding to the station in life of the mother and father, but in each case this shall be of an amount sufficient to form a proper contribution towards the expenses of maintenance and education of the child.

The sum of money towards its maintenance is to be paid to the end of the child's 18th year, and that, too, for each period in advance at the times ordered by the court.

The right of action in the child cannot be barred by any agreement made by the mother, or by any renunciation by her, which clearly compromises the child's claims.

Sch. C. § 435. B. G. B. 1708, 1714.

320.

b. Change of Circumstances.

In the event of a substantial change of circumstances the contribution towards the maintenance can be modified upon petition of the complainant or respondent, and be declared as

limited up to the time when the child attains a competent independent income according to his station in life.

321.

3. Entering Security.

If the paternity is reasonably established and the mother is in want, the court may before final decree order the father to enter security for the probable expenses of delivery and the maintenance of the child for the first three months, even without positive proof that her claim is endangered.

322.

4. Claims against Heirs.

These claims run against the heirs also of the father. Such claims, however, are limited to the extent that the child could claim if it were recognized a lawful heir.

Sch. C. § 435. B. G. B. 1708 to 1714.

323.

VI. Decree of Civil Status.

Upon petition of the complainant the child may be decreed the civil status of the respondent, if he has promised marriage to the mother or has been guilty of a misdemeanor as to her at cohabitation, or has abused his power over her. As against a married man such a decree is barred, if, at the time of cohabitation, he was already married.

324.

D. Effect.
I. Relation of Mother and Child.

If the child remains with the mother, it receives her family name and her domicile[1] and on the mother's side enjoys the rights and obligations of illegitimate relationship.

The mother shall care for the child as for a legitimate one.[2]

The Guardians' Court may place the child under the parental power of the mother.

[1] Sch. C. § 42. B. G. B. 11. Sch. C. § 440. B. G. B. 1616, 1706.

[2] Sch. C. § 440, note 1. B. G. B. 1705. But a guardian must be appointed; so the full paternal control seems denied to the mother. Sch. C. § 443. B. G. B. 1707.

325.

II. Relation of Father and Child.

If the child has been voluntarily recognized, or has been decreed the civil status of the father, then it receives his

family name and his domicile, and, on the father's as well as mother's side, enjoys the rights and obligations of illegitimate relationship.

The father must care for the child as for a legitimate one. The Guardians' Court may place the child under the parental power of the father or the mother.

326.

III. Relation of Father and Mother.

If an illegitimate child is placed under the power of the father, then the mother as well has a right of reasonable personal access to her child.

The Guardians' Court may, upon petition of the mother, or of its own motion, grant the parental power over the child, up to a certain age, to the mother and then over to the father.

327.

VI. Rights in Child's Property.

If the Guardian's Court places the child under the parental power of the father or mother, it determines at the same time what rights they may have in the child's property.

The parent of the legitimate child charged with the duty of managing the child's estate has an absolute right to the income therefrom, subject to the expense of the child's support and education. This is the right regulated by the above section.

NINTH TITLE—THE FAMILY COMMUNITY.

FIRST SECTION—THE DUTY TO SUPPORT.

328.

A. Those Obligated to Support.

Blood relatives in ascending or descending line and brothers and sisters are obligated mutually to support one another as soon as without this aid they would fall into need.

329.

B. Assertion and Scope of the Claim.

The claim for support is to be made effective against those under the obligation, in the order of their right to inherit and goes to the rendering of what is requisite for the bare support of the needy one and is proportioned to the circumstances of the one obligated thereto.

Brothers and sisters can be brought under this obligation to support only when they are situated in comfortable circumstances.

The claim is made effective before the proper official of the residence of the one obligated and that, either by the one entitled thereto or if he is supported by the public poor authorities, by the poor officials charged with his support.

330.

C. Support of Foundlings.

Foundlings are to be supported by the community in which they have obtained citizenship.

If the descent of a foundling is ascertained, then this community can demand compensation for its expenditures from the relatives subject to such obligation of support, and in the last instance from the district subject to such obligation.

SECOND SECTION—THE POWER OVER THE HOUSEHOLD.

331.

A. Prefatory.

If persons, who live in a common household, have a family head by virtue of law or by agreement or custom, he possesses the power over the household.

This power extends to all persons who, as blood relatives and related in law, or by virtue of a contractual relation as servants, pupils, apprentices or in similar positions, live in the common household.

332.

B. Effect.
I. Regulation and Care of Household.

The regulation under which the household members are placed, must reasonably consider the interests of all such members.

In particular must be preserved to such members the necessary freedom for their education, pursuit of a calling, and observance of religious requirements.

The family head must with like care protect the property contributed by its members and secure it from damage as he would his own.

333.

II. Responsibility.

If a minor or an incapacitated person, a mentally weak or infirm member of the household, does any damage, then the family head is liable therefor, unless it can be shown that he used the usual, and, under the circumstances, requisite measure of care in supervision. The family head is obliged to take care that danger or damage does not ensue to one of the household mentally weak or infirm, or to others by reason of such condition.

In case of necessity notice must be given to the proper court with a view to having proper provisions made.

"House power," head of the household, §§ 331 to 333. This authority with its duties, is not regulated by the German Code or mentioned by Schuster in his Commentary. As it seems to be in the nature of parental power, it seems a necessary inference that any one assuming or becoming invested with, by agreement or otherwise, parental power would thereupon become liable to perform the duties incident to the position. So that this section is probably an express regulation of a condition which, being rather exceptional, was omitted only for that reason.

334.

III. Claim of Children.

Adult children who have given their service or their income to their parents in the common household can maintain a claim therefor if they have not expressly waived a proper

compensation for same, in the event of an attachment against, or bankruptcy of, the father or mother.

In event of a disagreement the court can pass upon the matter and determine the amount of the lien according to his judgment.

This point does not seem to be expressly regulated in the German Code.

THIRD SECTION — THE FAMILY PROPERTY.

335.

A. Family Endowments.

A fund may be limited to a family so that a family endowment is created according to the rules of the law of persons or of inheritance for the purpose of defraying the expenses of education, wedding advancement,[1] maintenance of family members or similar purposes.

The creation of family *fideicommissa* is no longer allowed.[2]

[1] *Ausstattung*, advancement on marriage. Sch. C. § 440, note 2. B. G. B. 1624.

[2] *Fideicommissa*, trust-estate. It seems the fund is limited directly to the persons interested, who hold as joint owners. Next section as to ownership, Sch. C. § 325. This family endowment is not regulated by the B. G. B. but as to "Foundation" (*Stiftung*) Sch. C. § 57. B. G. B. 81.

336.

B. Communities.
I. Creation.
1. Authority.

A fund can be limited to a family by relatives allowing an inheritance, in whole or in part, to continue as community property, or by putting funds into a community.

337.

2. Form.

An agreement for the formation of a community requires for its validity the public authentication and the signatures of all the members thereof or their representatives.

338.

II. Duration.

The Community can be fixed for a definite or indefinite time.

If it is of indefinite duration, it may be determined upon six months' notice by any member.

In the case of an agricultural use of the common property, a determination is permissible only at the customary (in the place) periods in the spring or autumn.

339.

III. Effect.
1. Kind of Common Ownership.

The community binds all its members to a common industrial activity. In default of other provision they are entitled to equal rights in such ownership.

During such ownership they can neither demand a partition nor dispose of their separate shares therein.

340.

2. Management and Representation.
a. In General.

The affairs of the community are managed by all its members in common.

Each one of them can, without co-operation of the others, undertake ordinary matters of administration.

341.

b. Authority of the Head.

The members of such a community may designate one of their number as its head. The head of such community represents it in the scope of its business matters, and directs its industrial activity. The exclusion of the others from representation is, however, good as against third persons in good faith only when the representative is duly entered in the commercial register.

342.

3. Community Goods and Personal Property.

The articles of property of such a community are joint property of all its members. The members are jointly and severally liable for its debts.[1]

Whatever any single member thereof possesses in the way of property separate from the common goods or, during the existence of such community, acquired by succession or in any other way gratuitously, belongs to him personally unless it is otherwise agreed.[2]

[1] As to liability for debts, Sch. C. § 182. B. G. B. 431.

[2] The nature of this ownership seems to be akin to the German non-mercantile partnership, the common object, however, being the maintenance of the home and family. As to the rules of German law, as to this species of association (*Gemeinschaft zu Gesamten Hand*) v. Sch. C. §§ 6, 67, and B. G. B. as therein cited.

343.

IV. Dissolution.
1. Grounds.

The dissolution of such a community is effected, — (1) by agreement or by notice;[1] (2) by lapse of the time for which the community was formed, in so far as it is not tacitly continued; (3) when an attachment of a member's share in the community property is ripe for execution;[2] (4) by a member's becoming bankrupt; (5) by petition of member for sufficient reasons.

[1] Notice, B. G. B. 723.
[2] B. G. B. 725, 728. Sch. C. § 67.

344.

2. Notice, Insolvency, Marriage.

If any member so notifies the community, or if any member has become bankrupt, or an attachment of the share of anyone has ripened for execution, the other members of the community can continue it by agreement, by paying out the withdrawing member or his creditors.

If any member marries, he can demand payment of his share without notice.

345.

3. Death of a Member.

If a member dies, the heirs not in the community can demand only a payment of his share. If he leaves inheriting offspring, these may enter the community in place of the deceased, with consent of the others of the community.

Sch. C. § 67. B. G. B. 727.

346.

4. Rule of Division.

The division of the common property, or the payment of the share of a retiring member, is governed by the condition of property at the time when the cause for dissolution arises.

Its accomplishment cannot be demanded at an unreasonable time.

347.

V. Profit-sharing Community.
1. Definition.

The members of a community can commit the control of the common property and representation thereof to any one member, with the stipulation that he shall yearly pay each

one a share of the net profits. This share, in the absence of any other stipulation, is to be fixed in a reasonable way, by the average income of the common property for a commensurately longer period, due regard being had to the work done by the receiver (*Übernehmer*).

In the German non-mercantile partnership the partners may appoint one or more of their members as managers.

Sch. C. § 67. B. G. B. 709, but the particular form of management here provided for does not seem to be mentioned.

348.

2. Special Grounds for Dissolution.

If the community property is not properly managed by the receiver, or he does not fulfill his obligations to the members thereof, the community can be dissolved. Upon petition of any member the court can, on sufficient ground shown, direct his joining in the management by the receiver, due regard being had to the provisions as to the intestate partition.

Otherwise profit-sharing communities come under the regulations of communities with a common management.

v. last note above. The system of an endowment or community of property created and regulated in the foregoing sections seems to take the place of trusts for purposes of family settlements, which are forbidden; but the endowment is itself a legal entity, subject to lawful management and judicial supervision.

349.

C. Homesteads.
I. Power of Cantons.

The cantons are permitted to allow the establishment of family homesteads and specially regulate them, subject to the following regulations.

350.

II. Establishment.
1. Prefatory as to Subject.

An agricultural estate, or one serving any other industry, or a dwelling with its appurtenances, can be declared a homestead under the following conditions. The estate or house cannot be larger than is necessary to furnish reasonable support to a family, without regard to the encumbrances upon it or the other property of the owner, or to serve it as a residence.

The owner or his family must manage the estate, pursue the trade, or occupy the house, except the proper official for sufficient reasons allow otherwise temporarily.

351.

2. Procedure and Form.
a. Publication.

An official publication must precede the establishment thereof, by means of which creditors and other persons, who may deem their rights invaded by the erection of a homestead, are called upon to declare their claims. Special notice of the publication must be given all lien creditors of the land.

Similar procedure was requisite under the ancient Danish law before an estate tail could be created. Dan. C. of Chr. V. (1683).

352.

b. Protection of Rights of Third Persons.

If the estate or house meets the requirements of homesteads, and if no rights of third persons are injured by their establishment, the court may allow such establishment.

If a creditor raises an objection, the homestead may not be created.

The debtor may, however, satisfy objecting creditors by payment without being bound to a limitation of notice.

353.

c. Entry in Land Register.

The creation of a homestead becomes effective by entry in the land register, which is to be published officially.

354.

III. Effect.
1. Limitations on Disposition.

No new burdens can be laid upon an estate or house which has become a homestead. The owner may neither alienate it nor rent or demise it.[1]

Execution against the homestead and its appurtenances is barred, subject to the right of a receivership.

[1] "Rent or demise" (*mieten oder pachten*). *Mieten* gives the use of a property for the term granted. *i.e.*, a dwelling house. *Pachten* gives the right of the fruit of the leased property as well as the use, *i.e.*, a farm lease.

355.

2. Maintenance of Blood Relatives.

The proper official can lay upon the owner the duty to take into the homestead his blood relatives in ascending or descending line, and his brothers and sisters so far as they are in urgent need of support and are not unworthy of it.

The Japanese law gives the family estate to the head of the family, charging him with the duty of maintaining the needy members.
Jap. C. of 1898.

356.

3. In Event of Insolvency.

If the owner becomes insolvent, the estate or house is put into the hands of a special receiver, who must protect the interests of creditors in the preservation of the homestead.

The satisfaction of the creditors shall be made in the order of the dates of their certificates of loss and in accordance with the order of priority in bankruptcy.

357.

IV. Dissolution.
1. By Death.

If the owner dies, the homestead can continue longer only on condition that a binding direction for its assumption by the heirs in event of death be given in a disposition *causa mortis*. If no such direction exists, the entry in the land register is cancelled after the death of the owner.

358.

2. During his Lifetime.

The owner can dissolve the homestead during his lifetime.

To this end he must present his petition to the proper official to have the entry in the land register cancelled, which petition is to be published.

If no valid objection is raised, the cancellation is to be allowed.

359.

V. Cantonal Administrative Regulations.

Regulations established by cantons for homesteads require the approval of the Federal Council before becoming effective.

THIRD DIVISION. — GUARDIANSHIP.

TENTH TITLE — THE GENERAL LAW OF GUARDIANSHIP.

FIRST SECTION. — INSTRUMENTALITIES OF GUARDIANSHIP.

360.

A. In General.

The instrumentalities of guardianship are the Guardians' Court, the guardian and the curator (*Beistand*).

v. Sch. C. 449, 450.

361.

B. Guardians' Courts and Officials.
I. State Instrumentalities.

The guardianship officials are the Guardians' Court and the Supervising Orphan Council.

The cantons select these officials and regulate the jurisdiction of the courts, where two courts of supervisory character are established.

v. Sch. C. §§ 451, 452.

362.

II. Family Guardianship.
1. When Permissible, and Meaning.

A family guardianship can be ordered, especially for the cases where the interests of the ward justify it, on account of the pursuit of a trade or an association and the like. It consists in the fact that the powers and duties and the responsibility of the Guardians' Court are transferred to a family council.

In the German law a "family council" is appointed in the direction of either lawful parent. Sch. C. § 451. B. G. B. 1858, 1860.

363.

2. Appointment.

The family guardianship is created by order of the supervisory council, upon request of two near relatives of commercial capacity, or upon request of a near relative and the spouse of the ward.

Sch. C. § 451, note 1. B. G. B. 1859.

364.

3. Family Council.

The family council shall be made up every four years by the supervising orphan council, of at least three relatives of the ward, who may be fitted for the charge of a guardianship. The spouse of the ward can belong to the family council.

Sch. C. § 452. B. G. B. 1849. As to the composition and regulation of the family council, v. B. G. B. 1861 to 1881, 1905.

365.

4. Security.

The members of the family council must give security for the faithful performance of their duties. Without this security no family guardianship can be created.

366.

5. Dissolution.

The supervising orphan council can dissolve the family guardianship at any time that the family council does not do its duty or the interests of the ward demand it.

Sch. C. § 451, note 1.

367.

C. Guardian and Curator.

The guardian must protect the collective personal and property interests of the minor or the ward under legal disability, and is his representative.[1]

The curator is appointed for special matters of business or entrusted with the administration of a property.

For the curator the provisions of this law as to the guardian control, in so far as no special regulations are set up.[2]

[1] Sch. C. § 460. B. G. B. 1793, 1794.

[2] Sch. C. § 454 and citations.

SECOND SECTION — CASES FOR GUARDIANSHIP.

368.

A. Minority.

Every person not of age, and not under parental power, comes under a guardianship. The civil status officials, the administrative officials and courts, must give notice to the proper official as soon as they receive in the course of their duties knowledge of the occurence of such a case for guardianship.

Sch. C. § 449. B. G. B. 1773.

369.

B. Incapacity of Adults.
I. Mentally Infirm or Weak.

Every person of full age, who by reason of diseased mind or mental weakness is incapable of managing his affairs, or requires permanently for his protection and care a curator, or endangers the safety of others, is subject to guardianship. Administrative officials and courts must give notice to the proper official as soon as in the course of their duties they obtain knowledge of the occurrence of such a case for guardianship.

B. G. B. 1896. Sch. C. § 281, 31. B. G. B. 6, 104, 114.

370.

II. Prodigality, Drunkenness, Dissipated Life or Mismanagement.

Every person of full age, who through prodigality, drunkenness, dissipated life, or by the manner and method of management of his property, exposes himself or his family to the danger of want or poverty, permanently requires for his protection and care a curator, or endangers the safety of others, is subject to guardianship.

Sch. C. §§ 30, 31. B. G. B. 6, 114.

371.

III. Restraint of Liberty.

Every person of full age, who has been condemned to a loss of his liberty for a year or more, is subject to guardianship. The imprisoning official has to give notice thereof to the proper court, as soon as the prisoner enters upon his sentence.

The German law contains no such provision. The English law agrees with the Swiss. v. Forfeiture Act 1870, § 8.

372.

V. Own Petition.

A guardian can be appointed for an adult person upon his petition, if he proves that on account of weakness due to age, or other infirmity, or inexperience, he cannot properly care for his property.

373.

C. Procedure.
I. In General.

The cantons choose the proper courts for the deprivation of legal capacity and its procedure.

The right of appeal to the Federal Court is reserved.

374.

II. Hearing and Expert Testimony.

No person can be deprived of his legal capacity on account of prodigality, drunkenness or dissipated life, or the manner

and method of his property management, without being first granted a hearing. The deprivation of one's legal capacity on account of mental infirmity or weakness may be decreed only after securing the opinion of experts, which opinion is also to pass upon the advisability of a proposed hearing of the one to be deprived of his legal capacity.

This and the following section regulate matters of procedure only.

375.

III. Publication.

If an adult is placed under a guardian's care, the guardianship must be advertised at least once in an official paper of his residence and his domicile, as soon as the guardianship has gone into effect. The supervising orphan council can allow a postponement of the advertisement by way of an exception, so long as the mentally infirm or weak one, or the drunkard, is kept in an institution. Before publication the guardianship has no effect as against any one acting in good faith.

THIRD SECTION — JURISDICTION.

376.

A. Guardian Appointed at Residence.

The appointment of a guardian is made at the residence of the person to be put under guardianship. The cantons are permitted to declare as competent the guardianship officials of the domicile, for the citizens dwelling in the canton, in so far as the support of the poor wholly or partially falls upon the domiciliary district.

377.

B. Change of Residence.

A change of residence can take place only with the consent of the Guardians' Court.

If it follows, the guardianship goes over to the court of the new residence.

The fact of guardianship is in this case to be published at the new residence.

378.

C. Rights of the Domiciliary Canton.

The Guardians' Court of the domicile is authorized to commit the appointment of guardians for its citizens, who may

have a residence in another canton, to the court of the residence.

It can, in the protection of the interests of one of its citizens, who shall have been put under a guardian in another canton or is under a guardian, lay complaints before the proper court.

If any provision is to be made as to the religious training of a minor, under a guardian, the court of the residence shall seek the advice of the domiciliary Guardians' Court and follow it.

As to the religious training of wards, v. Sch. C. § 462. B. G. B. 1838, 1915.

FOURTH SECTION — THE APPOINTMENT OF THE GUARDIAN.

379.

A. Prefatory.
1. General.

The Guardians' Court shall choose as guardian an adult person who may appear fitted for this office.

Under special circumstances several persons can be chosen, who may fulfill the office in common or in an official division of the powers. The joint conduct of the guardianship can, nevertheless, be transferred to several persons only with their consent.

v. Sch. C. § 456 and citations.

380.

II. Priority of the Relatives and the Spouse.

If no good reasons speak against it, the court shall prefer in the choice of a guardian a fit near relative or the spouse of the one to be put under a guardian, with due consideration given to their personal situation and the nearness of their residence.

381.

III. Wishes of the Ward and the Parents.

If the person to be put under a guardian, or his father or mother named anyone as the guardian of their choice, this selection shall be followed, if no serious objections thereto exist.

Sch. C. § 456. B. G. B. 1897 to 1899, 1776, 1777, 1779.

382.

IV. The General Duty of Assumption.

The male relatives and the husband of the person to be put under a guardian, as well as all the men in good standing as citizens who live in the district of the guardianship, are obligated to assume the office.

The obligation to assume the office does not exist when the guardian is named by the family council.

Sch. C. § 458. B. G. B. 1785 to 1788.

383.

V. Grounds for Declination.

The following can decline appointment to the office: — (1) He who is sixty years old or more. (2) He who on account of physical disability could fulfill the office with difficulty only. (3) He who exercises the parental power over more than four children. (4) He who already is charged with a specially time-consuming, or two other, guardianships. (5) The members of the Federal Council, the Chancellor of the Federation and the members of the Federal Court. (6) The cantonal officials and members of cantonal courts exempted by the cantons.

Sch. C. § 458. B. G. B. 1785 to 1788.

384.

VI. Grounds for Exclusion.

The following are not eligible to the office: — (1) He who himself is under a guardian. (2) He who does not enjoy the honors and rights of citizenship or leads a dissolute life. (3) He who has interests which are in a marked degree antagonistic to those of the one to be put under a guardian or who may be antagonistic to him. (4) The members of the designated guardianship officials, so long as other fit persons are at hand.

Sch. C. § 457. B. G. B. 1780 to 1784.

385.

B. Order of Choice.
I. Nomination of the Guardian.

The Guardians' Court must choose the guardian with all dispatch.

The procedure to deprive one of legal capacity can in case of necessity be begun even before the one to be put under a guardian has reached his majority.

If adult children are deprived of their legal capacity, as a rule the parental power takes the place of guardianship.

386.

II. Preliminary Provisions.

If it becomes necessary before the nomination to care for a guardian's matters of business, the Guardians' Court of its own motion adopts the necessary measures therefor. It can in particular order the preliminary deprivation of commercial capacity and appoint a representative.

Such a measure is to be published.

Sch. C. § 459, note 1.

387.

III. Notice and Publication.

Written notice shall at once be given to the one chosen.

Likewise shall the choice, in case of the publication of the appointment of a guardian, be published in an official paper of the residence and domicile.

388.

IV. Declination and Contest.

1. Assertion Thereof.

The guardian appointed can, within ten days after notice of his choice, avail himself of a ground for declination.

In addition everyone who is interested therein can, within ten days after he has received notice of such a choice, contest it as against the law.

If the declination or contest be found well established by the Guardians' Court it makes a new choice, otherwise it transmits the matter with its report to the supervising orphan council for action.

389.

2. Preliminary Duty of the Appointee.

The appointee is, despite his declination or contest, at his responsibility obligated to fulfill the duties of guardian, until he has been relieved from the office.

390.

3. The Decision.

The supervising orphan council shall give notice of its decision to the appointee as well as the Guardians' Court. If the appointee is released, the Guardians' Court shall make a new choice at once.

391.

V. Transfer of the Office.

If the choice is finally made, the transfer of the office to the guardian is effected by the Guardians' Court.

FIFTH SECTION — THE CURATORSHIP.

392.

A. Cases for Curatorship.
I. Representation.

Upon petition of an interested party, or of its own motion, the Guardians' Court shall appoint a curator, wherever the law specially provides it, as well as in the following cases:— (1) Whenever an adult person can neither transact the business himself, nor appoint a representative, in an urgent matter of business, by reason of sickness, absence or the like.[1] (2) Whenever the legal representative of a minor or legally incapacitated person, in a business matter, has interests which may be antagonistic to those of the principal.[2] (3) Whenever the legal representative is prevented from representing him.[3]

[1] Sch. C. § 454 a. B. G. B. 1909.
[2] Sch. C. § 543. B. G. B. 1906.
[3] v. last note.

393.

II. Property Management.
1. By Virtue of Law.

If a property lacks the necessary care the Guardians' Court shall take the necessary step and in the following cases appoint a curator:— (1) Upon an extended absence of a person without a known place of sojourn. (2) Upon incapacity of a person to manage his own property or appoint a representative, in case the guardianship is not to be ordered. (3) Upon uncertainty as to the hereditary succession and to protect the interests of the child before birth. (4) For an incorporation (*körperschaft*) or endowment, whenever the proper officers are wanting and the administration is not otherwise provided for. (5) For public collections of money for benevolent or other public weal serving purposes, whenever no provision is made for their management or expenditure.

v. Sch. C. § 454. B. G. B. 1909 to 1914.

394.

2. Upon his Own Petition.

A curator can be appointed for an adult person upon his petition whenever the conditions for the appointment of a guardian upon his request are present.

v. Sch. C. § 454, par. a.

395.

III. Limitation of the Commercial Capacity.

If no sufficient reason is present for the deprivation of legal capacity of any person, but nevertheless for his protection a limitation upon his commercial capacity appears to be necessary, then an advisor (*Beirat*) can be appointed for him, whose co-operation is requisite in the following cases:—(1) For litigation and conclusion of settlements. (2) Purchase, sale, pledging and otherwise burdening real estate. (3) Purchase, sale and pledge of securities. (4) Buildings, which exceed those in the usual course of administration. (5) The granting and acceptance of loans. (6) Meeting payments on account of principal. (7) Gifts. (8) Acceptance of commercial obligations. (9) The entry of security.

Under like conditions the management of property can be taken from one in need of it, while he may retain the free disposition of the income.

The *Beirat*, official counsellor or advisor, with limited duties as to control and management, is not known to the laws of Europe and America generally.

396.

B. Jurisdiction.

Representation by a curator shall be ordered by the Guardians' Court of his residence, for a person requiring a curator.

The appointment of an administration of his property shall be made by the Guardians' Court of the place where the most of the property is administered or has come to the person represented.

The domiciliary community has the like powers to protect the interests of its citizens as in the case of a guardianship.

397.

C. Appointment of the Curator.

The same regulations obtain for the procedure, as in the case of appointment of a guardian. The appointment shall only be published when it appears advisable to the Guardians' Court.

ELEVENTH TITLE — DUTIES OF THE GUARDIAN.

FIRST SECTION — THE OFFICE OF GUARDIAN.

398.

A. Acceptance of the Office.
I. Inventory.

Upon acceptance of a guardianship, an inventory shall be made by the guardian and a representative of the Guardians' Court, of the property to be managed.

If the ward is capable of judgment, he shall take part in the taking of the inventory, so far as practicable.

Wherever the circumstances justify it, the supervisory council, upon request of the guardian and Guardians' Court, may direct the taking of a public inventory, which serves the same purpose for creditors as the public inventory in the law of inheritance.

v. Sch. C. § 464, par. 1. B. G. B. 1802, 1897.

399.

II. Care of Valuables.

Valuable papers, jewelry, important documents and the like, so far as the care of the ward's property permits it, are to be placed in a secure place under the supervision of the Guardians' Court.

v. Sch. C. § 463, par. 4. B. G. B. 1814 to 1820.

400.

III. Alienation of Movables.

Other movables, so far as the interests of the ward demand it, and under direction of the Guardians' Court, are to be disposed of at public auction or private sale. Objects of special personal value to the family or the ward shall not be alienated, if at all avoidable.

401.

IV. Investment of Money.
1. Duty to Invest.

The guardian shall, so far as he does not require it for his ward, promptly deposit all money on interest in a depository named by the Guardians' Court or by cantonal ordinance, or invest it in interest-bearing securities, approved by the Guardians' Court after investigation of their security.

If the guardian neglects this investment for longer than a month, he becomes liable himself for interest.

In the German law the duty of parents and guardians as to management of property are generally similar. Sch. C. § 463. As to the parents' duty to invest, v. Sch. C. § 446, par. 2. B. G. B. 1642.

402.

2. Change of Capital Investments.

Investments of capital that do not offer sufficient security shall be replaced by safer investments. The change, however, shall not be made inopportunely, but with due regard to the interests of the ward.

As to selection of investment by guardians, v. Sch. C. §. 463. B. G. B. 1810, 1821, 1897.

403.

V. Business and Trade.

If there is among the property a business or a trade or the like, the Guardians' Court shall take the necessary steps for liquidation or continuance thereof.

404.

VI. Realty.

The alienation of realty shall be made under the direction of the Guardians' Court, and is to be directed only in those cases where the interests of the ward require it. Alienation shall be made by public auction, with reservation of the approval of the bid by the Guardians' Court that shall give its decision with all dispatch. A private sale, however, may be made with the consent of the supervisory council.

In the German law the parent requires leave of the proper court to alienate the realty of his child. Sch. C. § 446, par. 2. And the guardian would be equally bound. Sch. C. § 463, par. 1.

405.

B. Care and Representation.
I. Care for the Person.
1. Of Minors.

If the ward is a minor the guardian must provide for his proper support and education. For this purpose he has the same rights as parents, with reservation of the co-operation of the guardianship officials.

v. Sch. C. § 462, and B. G. B. 1800, 1801, 1838, 1915.

406.

2. Of Persons Deprived of Legal Capacity.

If the ward is of the age of majority, the care extends also

to protection and counsel in all personal business matters, as well as, in case of necessity, placing him in an institution.

v. B. G. B. 1773, 1896.

407.

II. Representation.
1. In General.

The guardian represents the ward in all legal matters, with reservation of the co-operation of the guardianship officials.

v. Sch. C. § 461. B. G. B. 1795, 1796, 1897, 1915.

408.

2. Forbidden Transactions.

No security can be entered, no considerable donations assumed, and no endowments created to the detriment of the ward.

As to gifts, Sch. C. § 446, par. 2. B. G. B. 1641, 1643. As to the other prohibitions under the general rule of German law, the court would decline permission to the guardian to enter into any transaction "to the detriment of the ward."

409.

3. Co-operation of the Ward.

If the ward is capable of judgment, and at least sixteen years old, the guardian must question him as to his desire, as far as practicable, in all important matters before action thereon.

The assent of the ward does not free the guardian from his responsibility.

410.

4. Independent Action.
a. Consent of Guardian.

If the ward is capable of judgment, he can incur obligations or renounce rights, so soon as the guardian has given his consent, expressly or tacitly at first, or afterwards approves the matter. The other party is free if the consent is not given within a reasonable time, which he himself has fixed or caused to be judicially fixed.

411.

b. Consent not Given.

If the approval of the guardian is not given, either party can demand back what has been given; nevertheless, the ward is responsible only so far as the contract has enured to his benefit, or as he at the time of rescission has been enriched or has wilfully disposed of the property gained.

If the ward has misled the other party in the erroneous assumption of his commercial capacity, he is responsible for all damage caused thereby.

412.

5. Profession or Trade.

The ward whom the Guardians' Court has allowed the independent pursuit of a profession or trade, expressly or tacitly, can do everything pertaining to the regular pursuit thereof, and is liable with his whole property therein.

v. Sch. C. § 27.

413.

C. Property Management.
I. Duty to Manage and Give Account.

The guardian must carefully manage the ward's property.[1] He must give account of his administration and to report this to the Guardians' Court at the times prescribed by it, but not less than every two years for its approval.

If the ward is capable of judgment and at least sixteen years of age, he shall, so far as practicable, be consulted in the accounting.[2]

[1] v. Sch. C. § 463.
[2] v. Sch. C. § 464. B. G. B. 1839 to 1843, 1857, 1897.

414.

II. Free Property.

Whatever is granted a ward for his free use, or whatever he acquires by his own labor with consent of the guardian, he can freely dispose of.

Sch. C. § 447. B. G. B. 1649 to 1654.

415.

D. Length of Term.

The guardianship as a rule lasts for two years. After the lapse of this term, the guardian can be continued for two years longer by a simple conformation in office. After lapse of four years, he can decline further responsibility as guardian.

This differs from the German law and from the law of most countries. For the general rule of termination of guardianship, v. Sch. C. § 465. B. G. B. 1882, 1884.

416.

E. Compensation of Guardian.

The guardian has a claim for a compensation, to be paid out of the ward's property, and to be determined by the Guar-

dians' Court for each period of accounting, according to the labor involved in the management and the income of the property.

This section agrees with the general English and American laws as to renumeration. The German law is *contra*. v. Sch. C. § 460, par. 4. B. G. B.

SECOND SECTION — THE OFFICE OF CURATOR.

417.

A. Position of Curator.

A curatorship has no influence over the commercial capacity of the person under its charge, saving the provisions as to the co-operation of the advisor (*Beirat*).[1]

The term of office and compensation are fixed by the Guardians' Court.[2]

[1] v. Sch. C. § 462. B. G. B. 1901, 1915.

[2] As to compensation, v. note to § 416.

418.

B. Meaning of Curatorship.
I. For a Special Purpose.

If the execution of a single matter of business is entrusted to the curator, he must carefully follow the instructions of the Guardians' Court.

v. Sch. C. § 460, pars. 3, 4.

419.

II. For Management of Property.

If the administration or oversight of a property is entrusted to the curator, he must confine himself to the management thereof and the care for its preservation.

He can take measures which exceed these purposes only with special authority granted him by the principal or, if he is not competent thereto, by the Guardians' Court.

v. Sch. C. § 460, par. 3. B. G. B. 1915.

THIRD SECTION — CO-OPERATION OF GUARDIANSHIP OFFICIALS.

420.

A. Complaints.

The ward, who is capable of judgment as well as everyone interested therein, can lay before the Guardians' Court complaints against the conduct of the guardian.

An appeal to the supervisory council lies against decrees of the Guardians' Court within ten days after notice thereof.

421.

B. Consent.
I. Of Guardians' Court.

Consent of the Guardians' Court is requisite in the following cases: — (1) Purchase, sale, mortgaging and otherwise burdening real estate. (2) Purchase, sale and pledging other kinds of property, so soon as these transactions exceed the usual course of administration or management. (3) Buildings beyond the requirements of administration. (4) Making and accepting of loans. (5) Incurrance of commercial obligations. (6) Leases for a year or longer, rentals of apartments for at least three years. (7) Authorization of the ward to independently pursue a profession or trade. (8) Carrying on litigation, conclusion of a settlement, a contract of arbitration or of composition subject to the provisional dispositions of the guardian in urgent cases. (9) Marital contracts and contracts for partition of estates. (10) Declaration of insolvency. (11) Insurance contracts upon the life of the ward. (12) Contracts for the trade education of the ward. (13) Placing the ward in institution for his education, care or nursing. (14) Change of residence of the ward.

v. Sch. C. §§ 462, 463 and citations.

422.

II. Of the Supervising Orphan Council.

The consent of the Supervising Orphan Council is, after action by the Guardians' Court has preceded it, required in the following instances: — (1) Adoption of a ward as a child, or adoption of child by a ward. (2) Acquisition of citizenship or renunciation of such. (3) Assumption or liquidation of a business, entering an association with personal responsibility or any considerable investment of capital. (4) Settlements, life annuities or contracts for a *prebend*. (5) Acceptance or refusal of an inheritance and consummation of a contract of inheritance. (6) Declaration of majority. (7) Contracts between ward and guardian.

This supervision is not mentioned in the German law.

423.

C. Audit of Reports and Accounts.

The Guardians' Court shall audit the periodic reports and accounts of the guardian, and shall require, wherever it appears necessary, their completion and correction. It grants or refuses the approval of the reports and accounts, and wherever necessary adopts measures that are required for the care of the interests of the ward. The cantons can confer upon the supervising orphan council a right of audit and approval.

v. Sch. C. 464, par. 3. Id. 467, par. 2 and citations.

424.

D. Meaning of Consent.

If any matter is determined upon for the ward, without the legally required consent of the Guardians' Court, it has for him only the effect of matter determined upon by himself without the consent of his representative.

425.

E. Cantonal Ordinances.

The cantons shall regulate in detail the co-operation of the officials in the way of an ordinance. They shall, for example, make regulations for the investment and preservation of the ward's property, as well as the manner of keeping and rendering accounts and making reports. These provisions require the approval of the Federal Council to be valid.

FOURTH SECTION — THE RESPONSIBILITY OF THE GUARDIANSHIP OFFICIALS.

426.

A. In General. I. Guardian and Officials.

The guardian and the members of the Guardians' Court shall in the exercise of their office observe the rules of a careful administration, and are responsible for any damage purposely or negligently caused by them.

v. Sch. C. § 460, par. 4. B. G. B. 1833, 1834.

427.

II. Community, District and Canton.

If the damage is not made good by the guardian or the members of the guardianship officials, the canton shall be re-

sponsible for the loss. It is reserved to the cantons, however, to hold responsible the interested communities or districts, after the guardian and the Guardians' Court.

428.

B. Prefatory.
I. Concerning the Members of a Court.

If the Guardian's Court becomes responsible by reason of the administration of a guardianship, every member is responsible so far as it cannot be shown that he is in no wise at fault.

Each one of the responsible members must bear the damages for his part.

v. Sch. C. § 441, 446, 451. B. G. B. 1837, 1848, 1897.

429.

II. Relation of the Instrumentalities to one Another.

If the guardian and members of the Guardians' Court are alike responsible, the latter respond only for that which cannot be recovered from the guardian. If the members of the supervising orphan council and those of the Guardians' Court are alike responsible, the former respond only for that which cannot be recovered from the latter. For wilfulness all persons liable respond directly and jointly.

v. Sch. C. § 290. B. G. B. 839.

430.

C. Assertion Thereof.

The judge passes upon claims for damages against the guardian and the members of the guardianship officials, as well as against communities or districts and the canton. The claim for damages cannot be made dependent upon the preliminary investigation by any administrative official.

TWELFTH TITLE — THE END OF THE GUARDIANSHIP.

FIRST SECTION — THE END OF THE WARDSHIP.

431.

A. Minors.

The guardianship over a minor ends at the time when his majority arrives.

Upon the declaration of majority the proper official fixes at the same time the point of time when the age of majority is reached and directs its publication in an official paper.

v. Sch. C. § 465, par. 2. B. G. B. 1882, 1884.

432.

B. Convicts.

The guardianship over a person condemned to a loss of his freedom ends with the ending of his imprisonment. The temporary or conditional dismissal does not terminate the guardianship.

433.

C. Other Wards.
I. Prefatory of the Termination.

The guardianship over other persons ends with its termination by action of the proper court. The court is bound to make this so soon as the reason for a guardianship no longer exists. The ward, as well as everyone interested therein, can claim the ending of the guardianship.

v. Sch. C. § 465, par. 2. B. G. B. 1897.

434.

II. Procedure.
1. In General.

The ordinance of procedure is in the power of the cantons. The appeal to the Federal Court is reserved.

435.

2. Publication.

If the deprivation of capacity has been published, its termination must likewise be published. The regaining of the commercial capacity is not dependent upon the publication.

436.

3. In Case of Mental Infirmity.

The termination of a guardianship, appointed by reason of mental infirmity or weakness, can be effected only after the opinion of experts has been secured and it is found that the reason for the wardship no longer exists.

This seems rather to regulate the law of evidence of restored capacity than the civil right.

437.

4. In Case of Prodigality, Drunkenness, Dissolute Life, or Mismanagement.

The termination of a guardianship, appointed by reason of prodigality, drunkenness, dissolute life or of the way and method of management of property, can be claimed by the ward only when he for at least one year has given no cause for complaint in respect to the reason for such wardship.

438.

5. Upon Own Petition.

The termination of a guardianship, appointed upon petition of the ward, can follow only when the reason for the request has ceased.

439.

D. In Case of a Curatorship.
I. In General.

Representation through a curator terminates with the ceasing of the occasion for its appointment. The administration of the property ends as soon as the reason for its creation ceases and the curator is discharged. The office of the curator terminates with its dissolution by the proper court, in accordance with the provisions for dissolving a guardianship.

440.

II. Publication.

The ending of the curator's appointment is to be published in an official paper, if its creation was advertised or the Guardians' Court otherwise considers it advisable.

SECOND SECTION — THE END OF THE GUARDIAN'S OFFICE.

441.

A. Commercial Incapacity, Death.

The office of guardian ends at that time when he becomes commercially incapacitated or dies.

v. Sch C. § 466. B. G. B. 1885.

442.

The guardian's office ends with the lapse of the time for which it is ordered, provided he be not reinstated.

B. Discharge, Non-Reappointment.
I. Running of the Time of Office.

443.

If a reason for exclusion from office arises during its existence, the guardian shall resign.

If a ground for refusal of it arises, the guardian as a rule cannot ask a discharge before the lapse of his official term.

II. Entry of Grounds for Exclusion or Refusal.

444.

The guardian must continue to do the necessary business of the guardianship until his successor has qualified.

v. Sch. C. § 467, par. 3. B. G. B. 1897.

III. Duty to Act Longer.

445.

If the guardian exhibits great negligence, or is guilty of a misuse of his official powers, or undertakes a matter which causes him to be unworthy of the position of confidence, or if he becomes insolvent, he shall be dismissed from his office by the Guardians' Court. If he does not fulfill his guardian's duties, the Guardians' Court can dismiss him from office, even if no guilt attaches to him, so soon as the interests of the ward are jeopardized.

v. Sch. C. § 466, par. 1. B. G. B. 1886 to 1889.

C. Dismissal from Office.
I. Grounds Therefor.

446.

The dismissal from office can be requested not only by the ward, who is capable of judgment, but also by anyone interested therein. If any reason for dismissal otherwise becomes known to the Guardians' Court, it shall of its own motion proceed to a dismissal.

II. Procedure.
1. Upon Petition and by Official Act.

447.

Before a dismissal the Guardians' Court shall investigate the circumstances of the case and hear the guardian.

For slight irregularities the dismissal can only be threatened and a fine up to one hundred francs be imposed upon the guardian.

2. Investigation and Punishment.

448.

3. Preliminary Measures.

If delay is dangerous, the Guardians' Court can *pendente lite* suspend the guardian from his office, and in case of necessity cause his arrest and a seizure of his property.

449.

4. Further Measures.

In addition to dismissal from office and the imposing of punishment, the Guardians' Court shall adopt the measures necessary for the security of the ward.

450.

5. Appeals.

Appeal lies from the decrees of the Guardians' Court to the supervising orphan council.

THIRD SECTION—THE CONSEQUENCES OF ITS TERMINATION.

451.

A. Final Account and Transfer of Property.

If the office of guardian comes to an end, the guardian must make a final report to the Guardians' Court and render a final account, as well as hold himself ready to transfer the property to the wards, their heirs, or to the successors in office.

v. Sch. C. § 467, pars. 1, 2. B. G. B. 1890 to 1895.

452.

B. Audit of the Final Report and Account.

The final report and account shall be audited and approved by the guardianship officials in like manner as the periodic reports and accounts.

v. last note.

453.

C. Discharge of Guardian.

If the final report and account be approved, and the ward's property be placed at the disposition of the ward or his heirs or the successor in office, the Guardians' Court shall order the discharge of the guardian.

The final account is to be exhibited to the wards, his heirs, or the new guardian, with a reference to regulations as to the responsibility. At the same time notice is to be given them

of the discharge of the guardian, or the refusal of approval of the final account.

In the German law the guardian is discharged by the courts' acceptance of the surrender of his certificate (*Bestallung*). Sch C. § 467, par. 3.

454.

D. Claim for Damages.
I. Ordinary Limitation.

A claim for damages against the guardian, and the directly responsible members of the guardianship officials, lapses with the running of one year after the rendering of a final account.

As against the members of guardianship officials not directly responsible, as well as against communities or districts, and the canton, a claim falls with the lapse of one year from the time when it could have been brought.

The prescription of claims against the members of guardianship officials, against the communities or districts or the canton, begins in no event before the termination of the guardianship.

455.

II. Extraordinary Limitation.

If an error in computation exists, or some ground for a damage claim is first discovered after the beginning of the ordinary period of prescription, the right of action for damages falls with the lapse of one year after the error or ground for a claim has been discovered, but in any event with the lapse of ten years from the beginning of the ordinary period of limitation.

If the right of action for damages arises out of a criminal act, it can be brought even after the lapse of these periods, so long as criminal process has not been barred by statute.

456.

E. Preference of Claim for Compensation.

In case of attachment or bankruptcy of the guardian or the members of the guardianship officials, the claim for compensation by the ward has a preference conformably to the law of executions or bankruptcy.

THIRD PART.

THE LAW OF INHERITANCE.

FIRST DIVISION—HEIRS.

THIRTEENTH TITLE — LEGAL HEIRS.

457.

A. Heirs of the Blood.
I. Descendants.

The next heirs of a decedent are his descendants. Children inherit in equal shares. Descendants take the place of predeceased children, and in all degrees *per stirpes* (nach Stämmen).

As to the general principles of the German law of inheritance, v. Sch. C. §§468 to 471. As to the statutory heirs, v. Sch C. §§ 475, 476. B. G. B. 1924 to 1933, 1936.

458.

II. Parental Stem.

If the decedent leaves no issue, the inheritance passes to the parents.

Father and mother inherit equally. Descendants take the place of father or mother, who have predeceased, and in all degrees *per stirpes*. If descendants fail on one side, the whole inheritance passes to the heirs of the other side.

v. note to §457.

459.

III. Grandparental Stem.

If the decedent leaves neither descendants nor heirs of the parental stem, the inheritance passes to the grandparents. If the grandparents on the paternal side and those on the maternal side survive the decedent, they inherit on both sides in equal parts.

Their descendants take the place of a predeceased grandfather or grandmother, and *per stirpes* in all degrees.

If the grandfather or grandmother on the paternal side or maternal is predeceased, and descendants of the predeceased one fail, the entire half passes to the nearest heirs of that side. If heirs fail on the paternal or maternal side, the whole inheritance passes to the heirs of the other side.

v. note to §457.

460.

IV. Great-grandparents.

The right of inheritance of blood relatives ceases with grandparents. Greatgrandparents have, however, during life, the right to use the share which would have come to their offspring if they had survived the decedent.

In place of predeceased great-grandparents the right of usufruct for life goes to the brothers and sisters of the decedents' grandparents.

The German law is otherwise.

461.

V. Illegitimate Relatives.

Blood relatives outside the bonds of matrimony stand in the maternal relationship on a like footing of inheritance with the legitimates.

In the paternal relationship a right of inheritance exists only when the illegitimate child has received the status of the father by recognition or judicial action. If an illegitimate heir or his issue has to share with legitimate descendants of his father, then such illegitimate or his issue receives only half so much as falls to a legitimate child or his issue.

v. Sch. C. §§ 424, 426. B. G. B. 1589, 1590.

462.

B. Surviving Spouse.
I. Claim of Inheritance.

The surviving spouse receives, if the decedent leaves issue, according to his choice, the half of the inheritance for his usufruct or the fourth absolutely. If there are surviving heirs of the parental stem, he receives a fourth absolutely and three-fourths for his usufruct. If there are surviving heirs of the grandparental stem, the half absolutely and the other half for usufruct, and when no heirs of the grandparental stem exist, the whole absolutely.

v. Sch. C. § 477. B. G. B. 1931, 1932.

463.

II. Substitution and Security.

The surviving spouse can, when the usufruct falls to him, demand in its place at any time a yearly income of corresponding amount. If such a substitution has been made, the spouse can demand security from his co-heirs for any impairment of his rights.

464.

III. Security for the Co-heirs.

The surviving spouse must, in the event of remarriage, as well as impairment of the estate, furnish at their request security for his co-heirs.

Sch. C. § 446, par. 3, 464, par. 4. B. G. B. 1640, 1669, 1845.

465.

C. Adopted Children.

The adopted child and its issue have a like right of inheritance from its adopting parent, as legitimate issue. The adopting parent and his blood relatives have no right of inheritance from the adopted child.

v. Sch. C. § 428, par. 3. B. G. B. 1757, 1758.

466.

D. Commonwealth.

If the decedent leaves no heirs at law, then the inheritance, subject to the rights of usufruct by great-grandparents and the brothers and sisters of grandparents, goes to the canton in which the decedent had his last residence, or to the community which is appointed by the law of this canton.

v. Sch. C. § 475. B. G. B. 1936.

FOURTEENTH TITLE — DISPOSITIONS *MORTIS CAUSA*.

FIRST SECTION — THE DISPOSING CAPACITY.

467.

A. Last Will.

Whoever is capable of judgment, and is eighteen years old, is empowered to dispose of his property by last will, with due observance of the legal restrictions and forms.

v. Sch. C. § 486. B. G. B. 2229, 2238, 2247.

468.

B. Contract of Inheritance.

The decedent must be of age to make a contract of inheritance.

v. Sch. C. § 505. B. G. B. 2275. As to the Contract of Inheritance (*Erbvertrag*) of the German and Swiss law v. Sch. C. §§ 504 to 509.

469.

C. Imperfect Will.

Dispositions made by the decedent under the influence of mistake, fraud, threats or duress are invalid. They attain validity, however, if the decedent does not revoke them within the period of one year after he has received knowledge of the error or fraud, or the influence of duress or threats has ceased. If a disposition contains an evident mistake in respect to persons or things, and the true will of the decedent can be with certainty determined, then the disposition is to be corrected in this respect.

v. Sch. C. § 484, par. 3. B. G. B. 2078 to 2080 2082.

SECOND SECTION — FREEDOM OF DISPOSITION.

470.

A. Disposable Portion.
I. Extent of the Disposing Capacity.

Whoever leaves issue, parents or brothers and sisters or a spouse, as his next heirs, can make a disposition *mortis causa* of his property saving the (compulsory) statutory share (*Pflichtteil*).

If he leaves none of the mentioned heirs, he can dispose of his whole property.

v. Sch. C. §§ 510, 511. B. G. B. 2303, 2317.

As to the *Legitim* — the compulsory portion of the German and Swiss laws, the réserve of the French law, recognized in nearly all the present civilized legal systems, but unknown to the English law and those of the United States, except Louisiana — v. Sch. C. §§ 510 to 518.

471.

II. Statutory Share.

The statutory share consists of, (1) for a descendant, three-fourths of the legal claim of inheritance; (2) for each of the parents the half; (3) for each one of brothers and sisters a fourth; (4) for a surviving spouse the whole claim of property if legal heirs survive in addition to him, and the half if he is the sole legal heir.

v. Sch. C. § 511. B. G. B. 2303.

472.

III. Cantonal Rights Reserved.

Cantons are authorized, as far as inheritances of their citizens, who had their last residence in their borders, are concerned, either to abolish the claim of brothers and sisters to the statutory share or to extend it to the issue of the brothers and sisters.

This is probably a regulation to preserve ancient local customs in certain cantons.

473.

IV. Exception in Favor of the Spouse.

The decedent can give the surviving spouse by disposition *mortis causa* the usufruct of the whole of the share of the inheritance, coming to the common descendants, as opposed to them. This usufruct takes the place of the legal right of inheritance in the spouse, with common issue surviving. In case of remarriage the surviving spouse, however, loses the half of this usufruct.

The testamentary dispositions authorized by §§ 472, 473, are not permitted in the German law.

V. Computation of the Disposable Share.

1. Deduction of Debts.

474.

The disposable share is determined by the condition of the property at the time of the death of the decedent. In the

computation, the debts of the decedent, the expenses for the burial, for the sealing and taking of an inventory, as well as the claims of the household members for support during a month, are to be deducted from the inheritance.

For the method of computing the *Legitim* of the German Law, v. Sch. C. § 513. B. G. B. 2310 to 2314. As to advancements, Sch. C. § 514. B. G. B. 2315, 2316; and as to gifts of decedent to persons not compulsory heirs in derogation of their rights, v. Sch. C. § 515. B. G. B. 2325 to 2330.

475.

2. Donations *Inter Vivos.*

Donations *inter vivos* are to be added to the estate in so far as they come under a complaint for a reduction.

v. last note.

476.

3. Insurance Claims.

If an insurance claim based upon the death of the testator is by a donation *inter vivos* or by a disposition *mortis causa*, made in favor of a third person or during the lifetime of the testator, has been gratuitously transferred to a third party, then the surrender value of the insurance claim at the time of the testator's death is to be added to his estate.

v. last note.

477.

B. Disinherison.
I. Reasons.

The decedent is empowered, by a disposition *mortis causa* to deprive an heir of his statutory share, — (1) when the heir has done some grievous wrong to the decedent or a person closely connected to him; (2) when he has seriously violated the family duties incumbent upon him, as against the decedent or one of his kinsmen.

As to the German law of "unworthiness to inherit," v. Sch. C. § 480. B. G. B. 2339 to 2344. As to the right of a testator to disinherit or deprive the heir of the *Legitim*, v. Sch. C. § 516. B. G. B. 2333 to 2337. As to the legal position of an unworthy legatee, v. Sch. C. § 485, par. 2, C. and citations. Cf. Art. 540 Swiss Code.

478.

II. Effect.

The disinherited one can neither share in the estate nor lay claim to a reduction.

The share of the disinherited one falls, when not otherwise disposed of by the decedent, to the legal heirs of the decedent, as if the disinherited one had not survived the succession.

The descendants of the disinherited one keep their right to a statutory share as if the disinherited one had not survived the succession.

v. last note, also B. G. B. 2344.

479.

III. Burden of Proof.

A disinherison is valid only when the decedent has assigned his reason therefor in his disposition. If the disinherited one contests the disinherison on account of the incorrectness of this assignment, then the heir or legatee who gains an advantage by the disinherison must prove its correctness. If this proof cannot be produced, nor is a reason for disinherison assigned, then the disposition is to be sustained in so far as it is possible without injury to his claim to a statutory share if it be that the decedent has made the disposition in evident error as to the ground for disinherison.

v. note to 477.

480.

IV. Disinherison of an Insolvent One.

If certificates of losses are outstanding against a descendant of the decedent, then the decedent can take from him the half of his statutory share, if he gives it to his then living or later born children. This disinherison falls, moreover, upon request of the disinherited, if certificates of loss no longer exist at the time of the succession, or if their amount does not exceed one-fourth of the share inherited.

v. Sch. C. § 547. B. G. B. 2338.

THIRD SECTION — METHODS OF DISPOSITION.

481.

A. Generally.

The decedent can dispose of his property, wholly or in part, within the restrictions upon the freedom of disposition, by last will or by contract for inheritance. The part of which he has not disposed passes to the legal heirs.

v. Sch. C. § 480. B. G. B. 1937, 1941.

482.

B. Burdens and Conditions.

The decedent can impose burdens or conditions upon his dispositions, whose fulfilment can be demanded by anyone interested therein, as soon as the disposition becomes effective.[1]

Immoral or illegal burdens or conditions make the disposition invalid.

If they are simply burdensome for other persons, or if they are unreasonable, they will be considered as not made.[2]

[1] v. Sch. C. § 495. B. G. B. 2147, 2174, 2176, 2177.

[2] B. G. B. 138, 2171.

483.

C. Appointment of Heirs.

The decedent can, for the whole inheritance, or for a portion, appoint one or more heirs. Every disposition by which an appointee shall receive the inheritance as a whole or in part shall be considered as an appointment of heirs.

v. Sch. C. §§ 490, 491. B. G. B. 2066, 2067, 2087 to 2093.

484.

D. Bequest. I. Meaning.

The decedent can give a property preference as a bequest to any specified person without appointing him as an heir.

He can devise or bequeath to him any single piece of the inheritance or the usufruct of the inheritance in whole or in part, or can charge the heirs or legatees to give him returns out of the value of the inheritance or to free him from obligations. If the decedent bequeaths a certain article, the aggrieved party will not be obligated, if this article is not found in the estate and no other direction of the decedent appears in the disposition.

As to legacies, v. Sch. C. §§ 495 to 500, and citations. Testamentary burdens, v. Sch. C. § 501. B. G. B. 1940, 2192 to 2196.

485.

II. Obligation of the One Charged.

The article is to be delivered to the appointee in the condition and state with loss or increase, free or encumbered, as it may be at the time of the casting of the inheritance.

For expenditures, which the one charged may have made after the casting of the inheritance upon the article, as well

as for deteriorations since then suffered, he stands in the rights and duties of an agent without orders.

v. Sch. C. § 498, par. 3. B. G. B. 2164, 2165. As to profits, etc., v. B. G. B. 2184; as to claims for expenditures, v. B. G. B. 2185.

486.

III. Relation to the Inheritance.

If the bequests exceed the value of the estate or of the legacy to the person charged or the disposable part, then a proportional abatement can be demanded. If those charged do not survive the decedent or are unworthy to inherit, or they announce their refusal, the bequests remain, however, in force. If the decedent has made a bequest in favor of one of the legal or appointed heirs, then he can demand it even if he rejects the inheritance.

v. note to § 484.

487.

E. Disposition by Way of Substitution.

The decedent can in his disposition indicate one or more persons to whom the inheritance or bequest shall go in the event of the predecease or refusal of the heir or legatee.

v. Sch. C. § 493. B. G. B. 2096, 2097, 2102, 2098.

488.

F. Appointment of a Reversionary Heir.
I. Naming the Reversionary Heir.

The decedent may, in his disposition, bind the appointed heir as first taker, to deliver the inheritance to another as reversionary heir. The reversionary heir cannot be so charged. The same provisions obtain for the bequest.

As to the German reversionary heirship (*Nacherben*) taking the place of successive legal and equitable interests in English and American wills and settlements, v. Sch. C. § 494 and citations. As to reversionary legacies, Sch. C. § 500, par. 3; B. G. B. 2191.

489.

II. Time for the Delivery.

The time for the delivery over shall be considered as of the death of the first taker when it is not otherwise provided. If another point of time is named, and this has not come at the time of the death of the first taker, then the inheritance passes to the heirs of such first taker, upon security being given. If the time for any reason cannot come, then the inheritance passes unreservedly to the heirs of the first taker.

v. note to § 488.

490.

In all cases of reversionary heirship the proper official shall direct the taking of an inventory. The delivery of the inheritance to the first taker follows, if the decedent has not expressly relieved him of this duty, only upon security being given, which in the case of real estate can be done by entry of the duty to transfer in the Land Register.

III. Means of Security.

If the first taker cannot furnish this security, or if he imperils the expectancy of the reversionary heir, then an administration of the inheritance shall be appointed.

491.

IV. Legal Status.
1. Of the First Taker.

The first taker acquires the inheritance as another appointed heir.

He becomes the owner of the inheritance subject to the obligation to transfer.

v. note to § 488.

492.

2. Of the Reversionary Heir.

The reversionary heir acquires the inheritance of the decedent, if he survives the point of time fixed for the transfer. If he does not survive this point of time, the inheritance continues in the first taker, if the decedent has not otherwise directed.

If the first taker does not survive the decedent, or if he is unworthy to inherit or renounces the inheritance, then it passes to the reversionary heir.

v. note to § 488.

493.

G. Endowments.

The decedent may devote the disposable share of his estate, wholly or in part, for any purpose as an endowment.

The endowment, however, is good only when it complies with the legal requirements.

494.

H. Contracts of Inheritance.
I. Contracts for Appointment of Heirs or for Bequests.

The decedent can obligate himself to another by a contract of inheritance to leave him or a third person his estate or a legacy. Such a contract does not deprive him of the free disposition of his property. Dispositions *mortis causa*

or gifts which are not compatible with his obligations under such a contract, are open to contest.

As to contractual inheritance, v. Sch. C. §§ 504 to 509 and citations.

495.

II. Renunciation of an Inheritance.
1. Meaning.

The decedent can make a contract with an heir for his renunciation or anticipation of an inheritance. The person renouncing is not considered as an heir upon the passing of the inheritance.

Where the contract does not otherwise provide, the renunciation holds good also as against issue of the renouncer.

v. last note. As to renunciation of right to inherit (*Erbversicht*), v. Sch. C. § 479. B. G. B. 2346 to 2351.

496.

2. Free Inheritance.

If in the contract of inheritance certain heirs are appointed in place of the renouncing one, the renunciation falls whenever these do not acquire the inheritance for any reason.

If the renunciation is made in favor of co-heirs, it will be presumed that it was made only in favor of the heirs of the stem which springs from the next common ancestors and does not redound to remoter heirs.

v. last note.

497.

3. Rights of Creditors of Heirs.

If the decedent at the time of the passing of the inheritance is insolvent, and his creditors are not satisfied by the heirs, then the person renouncing and his heirs can be called to account in so far as they have received counter indemnity from his estate for the renunciation of the inheritance within the last five years before his death, and at the time of the succession still are enriched thereout.

FOURTH SECTION—TESTAMENTARY FORMS.

498.

A. Last Will.
I. Execution.
1. Generally.

The decedent can make a disposition by last will, either by public authentication or by his own writing or by oral declaration.

As to the German law of the execution of holographic wills, v. Sch. C. § 487, par. 1. B. G. B. 2231, 2248, 2259, 2267, of publicly declared wills. Sch. C. § 487, par. 2. B. G. B. 2231 to 2242, 2246, 2259. Will by oral declaration, Sch. C. § 488. B. G. B. 2249 to 2252, Intr. L. 44, Imp. C. Military Law of 1874, § 44.

499.

2. Public Disposition.
a. Form Thereof.

The public disposition by last will is accomplished with the co-operation of two witnesses before the official, notary public, or another person of record, who may be charged by cantonal law with these matters.

v. last note.

500.

b. Co-operation of the Official.

The decedent shall communicate his will to the official, whereupon he makes or causes to be made the record thereof, and gives it to the decedent to read. This record shall be subscribed by the decedent. The official shall date the record and likewise subscribe it.

v. last note.

501.

c. Co-operation of the Witnesses.

The decedent shall, immediately after the dating and subscribing, declare to the two witnesses, in the presence of the official, that he has read the record and that it contains his last will and testament.

The witnesses shall, upon the document, confirm by their subscriptions that the decedent has made to them this declaration, and that he was of sound and disposing mind at the time, in their estimation. It is not essential that the witness shall know the contents of the document.

v. last note.

502.

d. Execution without Reading and Subscribing by the Decedent.

If the decedent does not himself read or subscribe the document, then the official shall read it to him in the presence of both witnesses, and the decedent shall thereupon declare that the document contains his last disposition. The witnesses in this case shall certify not only to the declaration of

the decedent and their opinion as to his disposing capacity, but also confirm by their subscriptions that the document was read to the decedent by the official in their presence.

v. last note.

503.

e. Co-operating Persons.

Persons not of commercial capacity, or who are in consequence of a criminal sentence not in possession of a citizen's honors and rights, or who cannot write and read, as well as blood relatives in direct line and brothers and sisters of the decedent and their spouses and the spouse of the decedent, can join in the execution of the public disposition neither as the official nor as witnesses.

The recording official and the witnesses, as well as blood relatives in direct line and brothers and sisters or spouses of these persons, may not be remembered in the disposition.

v. last note.

504.

f. Custody of the Document.

The cantons shall provide that the officials charged with the records shall either themselves preserve the testamentary documents in the original or a copy, or deliver them to an official place of deposit.

505.

3. Holographic Writings.

The holographic last will and testament must be written by hand by the testator, from beginning to end, including the place, year, month and day of execution, as well as be subscribed by him.

The will must be in all cases excepted by the testator in person. B. G. B. 2064. v. note to § 498.

The cantons shall provide that such writings, open or closed, can be placed in some official place for preservation.

506.

4. Nuncupative Disposition.
a. The Disposition.

If the decedent, by reason of extraordinary circumstances, as imminent peril of death, quarantine, epidemics or chances of war, is prevented from using one of the other forms of execution, then he may make an oral testamentary disposi-

tion. To this end he must declare his last will before two witnesses and charge them to make the necessary publication of his disposition.

The same disabling provisions obtain for witnesses as in the case of a public testament.

v. note to § 498.

507.

b. Publication.

The nuncupative will shall forthwith be reduced to writing by one of the witnesses, with the addition of the place, year, month and day of the declaration, by both witnesses subscribed, and thereupon without delay delivered to a court officer, with the explanation that the decedent declared this to them to be his last will, under the special controlling circumstances, but in a condition of testamentary capacity. Both witnesses can instead of this give the disposition to a court official for record with a like explanation. If the decedent makes a nuncupative will while in military service, an officer of a captain's rank or higher can take the place of the court official.

v. note to § 498.

508.

c. Loss of Validity.

If it becomes possible later to use one of the other forms for wills, then after fourteen days, reckoned from this point of time on, the nuncupative will will lose its validity.

v. note to § 498.

509.

II. Revocation and Destruction.
1. Revocation.

The decedent can revoke his last will and testament at any time in one of the forms prescribed for the execution. The revocation can destroy the disposition in whole or part.

v. Sch. C. § 489. B. G. B. 2253 to 2258, 2272, 2290.

510.

2. Destruction.

The testator can revoke his last will and testament by canceling the publication. If the publication is canceled either by chance or by the fault of others, then the disposition loses its validity likewise, the claims for compensation being reserved,

in so far as its meaning cannot be determined fully or completely.

v. last note.

511.

3. Later Disposition.

If the decedent executes a last will and testament without expressly revoking an earlier one, then it takes the place of the earlier will and testament, in so far as it is not without doubt merely a completion thereof.

Just so will a testamentary disposition as to a definite article be canceled by the fact that the decedent later made a disposition as to the object, which was contradictory of the former.

v. Sch. C. § 489, par. 1 and note 2. B. G. B. 2254, 2258.

512.

B. Contracts of Inheritance.
I. Execution.

A contract of inheritance requires for its validity the form of a public will. The parties to the contract must declare their will at the same time to the official and subscribe the record before him and the two witnesses.

v. Sch. C. § 506. B. G. B. 2274 to 2277.

513.

II. Dissolution.
1. Between the Living.
a. By Contract and Last Will.

A contract of inheritance can be dissolved at any time by the parties thereto by a written agreement.

The testator can on the one side dissolve a contract for appointment of an heir or a legacy, if after execution of the contract the heir or legatee has acted in such a way towards the decedent as to give him a ground for disinherison. This dissolution must be made in one of the ways prescribed for the execution of testamentary dispositions.

v. Sch. C. §§ 508, 509. B. G. B. 2290 to 2297.

514.

b. By Withdrawal from Contract.

Whoever by reason of a contract of inheritance has a right to payment *inter vivos*, can declare his withdrawal according to the regulations of the law of obligations, if they are not made according to contract or security is not given to him.

v. last note.

515.

If the heir or legatee does not survive the death of the testator, the contract falls. If the testator at the time of the heir's death has received a benefit from the contract, then the heirs of the deceased can demand the return of this enrichment if it is not otherwise agreed.

2. Predecease of Heir.

v. Sch. C. § 507.

516.

If a limitation upon the right of disposition by the testator occurs after execution of a disposition *mortis causa*, the disposition is not rescinded, but it becomes subject to the claim for abatement.

C. Restriction of Disposition.

v. last note. B. G. B. 2286 to 2288.

FIFTH SECTION — EXECUTORS.

517.

The decedent can in a testamentary disposition charge one or more commercially capable persons with the execution of his will. This commission is to be officially communicated to them and they must, within fourteen days after notice thereof, declare themselves as to the acceptance of the commission. Their silence will be equivalent to an acceptance.

A. Conferring the Commission.

They have a claim for proper compensation for their services.

v. Sch C. § 502. B. G. B.

518.

Executors stand, in so far as the decedent has not otherwise provided, under the rights and duties of the official administrator of an estate. They shall carry out the will of the decedent and stand especially charged to administer the estate, to pay the decedent's debts and the legacies, and to make the distribution according to the provisions of the testator or the prescription of law. If several executors are appointed, these powers belong to them in common, subject to any other provision by the testator.

B. Meaning of the Commission.

As to executors' rights and duties, v. Sch. C. §§ 526, 527. B. G. B. 2202 to 2224.

SIXTH SECTION — INVALIDITY AND REDUCTION OF DISPOSITIONS.

A. Complaint of Invalidity.

I. For Lack of Testamentary Capacity, Imperfect Will, Illegality and Immorality.

519.

A disposition *mortis causa* will be declared invalid upon complaint brought: — (1) If it was made at a time when the testator was not of testamentary capacity.[1] (2) If it arises out of an imperfect will. (3) If a subject matter or a condition attached to it is immoral or illegal.

The complaint of invalidity can be brought by anyone, who as heir or legatee has an interest therein, to have the disposition declared invalid.[2]

[1] v. Sch. C. § 484, par. 1a, 486. B. G. B 2229, 2238, 2247.

[2] Sch. C. § 484, pars. 3. B. G. B. 2078 to 2080, 2082.

II. For Imperfect Form.

520.

If the disposition suffers from an imperfect form, then it can, upon complaint brought, be declared invalid.

If the imperfection of form lies in the co-operation of persons, who are themselves or whose relatives are remembered in the disposition, then only these legacies can be declared invalid. The same provisions obtain as to the right of complaint, as in the case of testamentary incapacity.

v. Sch. C. § 484, par. 1, 6.

III. Limitation.

521.

The right to a complaint for invalidity ceases with the lapse of a year, from the point of time when the complainant received notice of the disposition and the ground of invalidity, and in any event with the lapse of ten years from the day of the vesting of the disposition.

As against a beneficiary by fraud, it falls in case of the testator's lack of testamentary capacity or of illegality or immorality only after the lapse of thirty years.

The invalidity of a disposition can be made effective at any time, as matter of defense.

B. Complaint for Reduction.

I. Prefatory.

1. General.

522.

If the testator has exceeded his right of disposition, then

the heirs, who do not receive in value their *statutory share*, may demand a reduction of the disposition to the allowed measure.

If the disposition contains provisions as to the portions of legal heirs, then they are to be considered as mere directions for distribution, if no other intention of the testator can be gathered from the disposition.

Sch. C. § 510. B. G. B. 23, 6.

523.

2. Favoring those Entitled to Prescribed Shares.

If a disposition *mortis causa* contains bequests to heirs entitled to statutory shares, preferring them to other like heirs, a reduction of them shall be made, proportionally to the sums only by which they exceed their statutory shares.

v. last note.

524.

3. Rights of Creditors.

The bankruptcy trustee of an heir or his creditors, in possession of certificates of loss at the time of the succession, can, within the time allowed the heir, demand the reduction, so far as it is necessary for their protection, if the testator has exceeded the disposable part to the disadvantage of an heir, and he has not laid a complaint for a reduction upon demand of his creditors. The same right obtains as against a disinherison, which the disinherited one does not contest.

v. last note.

525.

II. Effect.
1. Reduction in General.

The reduction falls upon all appointed heirs and legatees in like measure, in so far as no other intention of the testator can be gathered from the disposition.

If a bequest to a beneficiary, who at the same time is burdened with legacies, is reduced, then he can demand, subject to the same reservation, that these legacies shall be also proportionately abated.

v. last note.

526.

2. Bequest of a Single Article.

If a reduction is to be made on the bequest of a specific article, not divisible without damage to its value, the legatee

can either demand the article itself upon making good the excess value, or the disposable share instead of the article.

527.

3. Donations *Inter Vivos.*
a. Cases.

The following are subject to abatement the same as dispositions *mortis causa:* — (1) Donations to be charged against an heir's portion, such as the marriage portion, dowry, or property cession, if they are not subject to adjustment. (2) Settlements between heirs, and settlements between a decedent and heirs. (3) Gifts which the testator could freely revoke, or which he has made during the last five years prior to his death, with exception of the usual occasional presents. (4) Alienation of pieces of property, which the testator has attempted with the evident purpose of evading the limitation of his right of disposition.

528.

b. Return.

Whoever acts in good faith is bound to make a return only so far as he at the time of the vesting of the inheritance has been enriched out of the juridical act with the testator. If a beneficiary under a contract of inheritance must suffer a reduction, then he may demand back a corresponding part of what he gave the decedent.

529.

4. Insurance Claims.

Insurance claims upon the death of the decedent, which by a donation *inter vivos* or by disposition *mortis causa* are made in favor of a third person, or during the lifetime of the decedent are gratuitously transferred to a third person, are subject to abatement up to their present surrender values.

530.

5. Life Estate and Annuities.

If the testator has charged his estate with claims of use, enjoyment and annuities of such a kind that their present worth according to their probable duration would exceed the disposable portion of the estate, then the heirs can either demand a proportionate reduction of the claims or their discharge, upon transfer of the disposable part of the estate to the beneficiaries.

531.

A limitation to reversionary heirs is invalid as against an heir entitled to a statutory share, in respect thereto.

6. Reversionary Heirship.

532.

Subject to abatement in the first place are dispositions *mortis causa*, and then donations *inter vivos*, and these in such a way that the later are abated before the earlier ones, until the statutory share is restored.

III. Procedure.

533.

The complaint for reduction ceases with the lapse of a year from the point of time when the heirs obtain knowledge of the injury to their rights, and in any event with the lapse of ten years, in the case of testamentary dispositions to be reckoned from the time of vesting, but in other dispositions from the death of the testator.

IV. Limitation.

If an earlier disposition becomes effective by reason of a later being declared invalid, then the limitations begin at this point of time.

The claim for an abatement may be interposed as a defense at any time.

SEVENTH SECTION — CLAIMS ARISING OUT OF CONTRACTS OF INHERITANCE.

534.

If the decedent transfers his property during his lifetime to the contractual heir, then this latter can have a public inventory taken. If the decedent has not transferred all his property, or has acquired property subsequent to the transfer, then the contract relates only to the property transferred, subject to any other provision. In so far as the transfer has been made during his lifetime, the rights and obligations under the contract pass to the heirs of the appointed heir, subject to any other provision.

A. Claims in Case of Transfers in Lifetime of Testator.

Sch. C. § 504. B. G. B. 2299, 2301.

535.

B. Adjustment in Case of Renunciation by Heir.
I. Abatement.

If the decedent during his lifetime has made gifts to a renouncing heir in excess of the disposable share of his estate the co-heirs can demand an abatement. The disposition is, however, subject to abatement only for the amount by which it exceeds the statutory share of the renouncing heir. The computation of the gifts is made according to the provisions for an adjustment.

536.

II. Refunding.

If the renouncing heir becomes liable to refund to the estate by reason of an abatement, he has the choice either to assume himself this refund or to throw the whole account against him into the distribution and share in it, as if he had not renounced

SECOND DIVISION — SUCCESSION.

FIFTEENTH TITLE — THE OPENING OF THE SUCCESSION. (*Devolution.*)

[v. Sch. C. § 468.]

537.

A. Prefatory, from Decedent's Side.

The succession is opened by the death of the decedent.[1]

In so far as donations and divisions made during the lifetime of the decedent acquire any hereditary significance, they will be considered according to the status of the estate, as it exists at the decedent's death.

[1] v. Sch. C. § 472. B. G. B. 1922, 1923.

538.

B. Place of Opening and Judicial Competence.

The opening of the succession takes effect upon the whole estate as of the last domicile of the decedent. Actions to declare invalid or to abate a disposition of the decedent, as well as for payment out of, or partition of, the estate, shall be brought before the judge of this domicile.

v. last note.

539.

C. Prefatory, from Heir's Side.
I. Capacity.
1. Legal Capacity.

Everyone is capable of being an heir and of acquiring by disposition *mortis causa* so long as he is not by prescript of law incapacitated.

Donations to a number of persons collectively with the purpose defined shall be acquired by all the donees under the appointment of the decedent, if such body of persons is not a legal entity, or shall become an endowment, if the former condition does not obtain.

540.

2. Unworthiness to Inherit.
a. Grounds.

He is unworthy to be an heir or to acquire anything by disposition *mortis causa*, — (1) who wilfully and illegally has caused the death of the decedent or has attempted it; (2) who

wilfully and illegally has brought the decedent to a condition of permanent testamentary incapacity; (3) who by fraud, duress or threats has brought the decedent to, or hindered him from making a testamentary disposition or revoking it; (4) who wilfully and illegally has set aside or made invalid any disposition *mortis causa* under circumstances which no longer allow the decedent to renew it.

Unworthiness to inherit is removed by the condonation of the decedent.

Sch. C. § 480. B. G. B. 2339 to 2344.

541.

b. Effect upon Issue.

The incapacity holds only for the one unworthy. His issue inherit from the decedent as if he had predeceased the testator.

v. last note.

542.

IV. Surviving the Succession.

1. As Heir.

To acquire the inheritance, the heir must live to receive it in a condition of inheritable capacity.

If an heir dies, after he has lived to see the succession, his right in the inheritance passes to his heirs.

543.

2. As Legatee.

The legatee acquires the claim to a legacy if he survives the succession with an inheritable capacity.

If he dies before the decedent, his legacy falls to the person charged with payment thereof if no other disposition can be shown in the will.

v. Sch. C. § 468, par. 5. Sch. C. § 495. B. G. B. 1939.

544.

3. The Child before Birth.

The child is, from the time of conception, capable of inheriting, conditioned upon its being born alive. If it be born dead, then it shall not be considered in the succession.

Sch. C. §§ 24, 472. B. G. B. 1923.

545.

4. Reversionary Heirs.

The inheritance or a parcel thereof may be devised in the way of a limitation over to an heir or legatee, who is unborn at the time of the succession.

If no first taker is named, then the legal heirs take the place thereof.

v. last note.

546.

D. Vanishment.
I. Inheritance from One Vanished.
1. Succession upon Security Given.

If one is judicially found to be vanished, the heirs or legatees shall, before transfer of the inheritance, furnish security for the return of the property to those better entitled thereto, or to the presumed decedent. This security is, in the case of one disappearing in imminent danger of death, to be for five years, and in case of absence without any word, for fifteen years, but in no case longer than till the day on which the presumed decedent would be one hundred years old. The five years shall be reckoned from the time of the transfer of the inheritance and the fifteen years from the last news of the absentee.

v. Sch. C. §§ 45 to 47 and citations. The person being judicially decreed to be "vanished" for the statutory period by the German law is considered dead, and his estate administered on that of any other decedent, subject, however, to the duty of the heirs to restore it to the absentee if he returns.

547.

2. End of Vanishment and Restoration.

If the vanished one returns, or those better entitled make good their claims, those installed in the inheritance must restore it in accordance with the rules of possession.

They are liable to those better entitled only during the period of limitation for claims of inheritance, provided they act in good faith.

v. last note.

548.

II. Right of Inheritance of the Vanished One.

If at the time of a succession the life or death of an heir cannot be proven because he has disappeared, then his share shall be placed in official custody. Persons to whom his share would go upon the non-existence of one lost have the right to petition for a judicial decree of disappearance one year after the disappearance in peril of death, or five years after the last news from absentee and petition for the transfer of the share. This transfer shall be effected in accordance with the regulations for the transfer to the heirs of the lost one.

v. last note.

549.

III. Relation of the Two Cases to One Another.

If the heirs of the vanished one have already secured the acquisition of his property, then his co-heirs, if an inheritance falls to him, can rely upon this and demand thereout the value of the property in such inheritance, without necessity of a new decree of disappearance.

Likewise the heirs of the vanished one can rely upon the decree of vanishment obtained by his co-heirs.

v. last note.

550.

IV. Official Action.

If the property or the portion of one disappeared remains in official custody for ten years, or if such an one would have reached the age of one hundred years, then the decree of disappearance shall be officially obtained by petition of the proper official.

If then no persons announce themselves as entitled thereto with the time set in the notice, the estate falls to the commonwealth entitled thereto, or if the lost one has never resided in Switzerland, to the domiciliary canton.

The same duty to restore exists as to the lost one and those better entitled, as against a supposed heir put in possession.

As to German procedure in the case of persons lost and untraceable (*Verschollen*), v. Code of Civil Procedure, §§ 946 to 971.

SIXTEENTH TITLE — THE EFFECTS OF SUCCESSION.

FIRST SECTION — REGULATIONS FOR SECURITY.

551.

A. Generally.

The proper official of the last residence of the decedent shall of his own motion take the proper measures for securing the inheritance. Such measures are peculiar to the legally prescribed cases, the sealing of the inheritance, the taking of an inventory, the provision of an administration for the inheritance, and the vesting of testamentary dispositions. If a decedent does not die at his residence, then the official of the place of death shall give notice thereof to the official of his residence and take the necessary measures to protect the property, which the decedent has left in the place of decease.

As to the Inventory, Sch. C. § 533, 534 and citations. As to appointment of an administrator, Sch. C. § 533, 535 and citations. As to the opening of wills and contracts of inheritance, Sch. C. § 520. B. G. B. 2259 to 2264, 2273, 2300.

552.

B. Sealing of the Inheritance.

The sealing of the inheritance shall be ordered in the cases for which the cantonal law has provided it.

553.

C. Inventory.

The taking an inventory is ordered: —(1) If an heir is to be put under a guardian or already is under such. (2) If an heir is permanently absent and without representation. (3) If one of the heirs demands it.

It is taken in accordance with the regulations of the cantonal law, and as a rule is to be completed within two months after the decedent's death.

The taking of an inventory may be ordered by the cantonal law in other cases.

554.

D. Administration.
I. Generally.

An administrator will be appointed: — (1) If an heir is permanently absent and without representation, so far as his interests require it. (2) If none of the claimants can prove his claim sufficiently, or the existence of any heir is uncertain. (3) If all the heirs of the decedent are not known. (4) Wherever the law prescribes it for special cases.

If the decedent has appointed an executor, then the administration is to be handed over to him.

If a person under a guardian dies, the administration of the inheritance falls upon the guardian if no other provision is made.

Under German law an administrator is appointed on the joint petition of the heirs. Sch. C. § 535. B. G. B. 1981, 2013, 2062.

555.

II. In Case of Heirs Unknown.

If the court is uncertain whether the decedent has left heirs or not, or whether all the heirs are known, those interested shall be in a proper way publicly notified to come forward within a year's time from the succession.

If no claim is made in this time, and no heirs are known to the court, the inheritance passes to the commonwealth entitled thereto, subject to the right of claim of inheritance.

B. G. B. 1942. Sch. C. § 522, note 1. Id. § 519. B. G. B. 1964 to 1966.

556.

E. Opening of Will.
I. Duty to Present It.

If a last will is found upon the death of a decedent, it is at once to be delivered to the court, even though it may be considered invalid. The official before whom the will has been protocolled or deposited, as well as everyone who has received a will for safe-keeping, or found one among the decedent's effects, is personally responsible to comply with this obligation, so soon as he receives notice of the decedent's death.

After its delivery the court, so far as possible after a hearing of the parties interested, shall either deliver the inheritance for the time being to the legal heirs or appoint an administration.

If there is an executor he will be appointed administrator. § 555. v. Sch. C. § 520. B. G. B. 2259 to 2264.

557.

The will of the decedent must, within the period of a month after its delivery, be opened by the proper court.

II. Opening.

The heirs shall be invited to the opening, so far as they are known to the courts. If the decedent leave more than one will, then all are to be delivered to the court and opened by it.

v. last note.

558.

All interested in the inheritance shall receive at the cost of the estate written notice of the opened will so far as it concerns them. Notice shall be given beneficiaries of unknown sojourn by proper publication.

III. Notice to the Parties.

v. last note.

559.

After the lapse of a month after notice to the beneficiaries, the appointed heirs shall receive upon their demand from the court a certificate that they are recognized as heirs, subject to the suit for invalidity or for the inheritance, provided the legal heirs or those named in an earlier will have not expressly contested their right thereto.

IV. Transfer of the Inheritance.

At the same time in the case assured the administrator will be directed to hand over to them the inheritance.

Sch. C. § 521. As to the procedure on application for a certificate of inheritance, B. G. B. 2354 to 2360. Its legal effect, Id. 2353, 2361 to 2369.

SECOND SECTION — THE ACQUISITION OF THE INHERITANCE.

560.

Heirs acquire the inheritance as a whole upon the death of the decedent, by force of law.

A. Acquisition.
I. Heirs.

Subject to the legal exceptions, the claims, property, restricted real rights and possession of the decedent pass immediately to them, and the debts of the decedent become the personal debts of the heirs. The acquisition by appointed heirs will relate back to the time of devolution of the succession, and the legal heirs must deliver to them the inheritance in accordance with the rules of possession.

561.

II. Those Entitled to Usufruct.

The legal usufruct of the surviving spouse, as well as great-grandparents and brothers and sisters of grandparents, shall be disposed of in accordance with the principles prescribed for legacies. The usufruct becomes really effective, however, at the opening of the succession, subject to the claim of the decedent's creditors.

As to the German law of the burden of legacies, v. Sch. C. § 497 and citations. v. also the note to § 562.

562.

III. Legatees. 1. Acquisition.

Legatees have a personal claim against those charged therewith, or if such are not specially named, against the legal or appointed heirs.

If it does not otherwise appear in the will, the claim arises, as soon as the one charged therewith has received the inheritance or can no longer refuse it. If the heirs do not fulfil their obligation, they can be held to deliver the legacies, or if any action forms the subject of the disposition, to make compensation.

Sch. C. § 495. B. G. B. 2147, 2174, 2176, 2177.

563.

2. Object.

If an usufruct or an annuity or any other periodically recurring service be given the beneficiary, a claim arises, where it is not otherwise stipulated under the provisions of the laws of things and obligations.

If an insurance claim upon the life of the decedent be given, the beneficiary can make it effective at once.

564.

3. Relation of Creditors and Legatees.

The claims of creditors take precedence of legatees.

Creditors of an heir stand, if he has acquired the inheritance unreservedly, on an equal footing with creditors of the decedent.

565.

4. Abatement.

If the heirs pay debts of the inheritance after payment of the legacies, of which debts they had no knowledge before,

they may call upon the legatees for a proportionate restitution in so far as they could have demanded an abatement of the legacies. Legatees can, however, be called upon at the most to the extent of their enrichment at the time of demand of restitution.

566.

B. Renunciation.
I. Declaration.
1. Right.

Legal and appointed heirs have the right to renounce an inheritance come to them.

If the insolvency of the decedent at the time of his death is officially determined, or publicly known, the renunciation will be presumed.

v. as to the right of heirs and legatees to accept or renounce, v. Sch. C. §§ 522 to 525 and citations.

567.

2. Limitation.
a. Generally.

The time for renunciation is three months. It begins as to legal heirs, in so far as they are not shown to have received notice of the inheritance until later, at the point of time when the death of the decedent becomes known to them, and as to appointed heirs, with the point of time when official notice of the decedent's will comes to them.

v. B. G. B. 1943 to 1946.

568.

b. In Case of an Inventory Taken.

If an inventory has been taken as a measure of security, then the time for renunciation begins to run for all heirs with the day on which the court has given them notice of the closing of the inventory.

As to the limitation of the heirs' liability by having an inventory taken, v. Sch. C. §§ 533, 534 and citation.

569.

3. Transfer of the Right to Renounce.

If an heir dies before the renunciation or acceptance of the inheritance, the right to renounce passes to his heirs. The time for renouncing begins to run for these heirs with the point of time when they receive notice of the falling in of the inheritance to their decedent, and ends at the earliest with the lapse of the time allowed them for renunciation as against their

own decedent. If the heirs renounce, and the inheritance passes to other heirs not before entitled thereto, the time then begins for them at the point of time when they received notice of the renunciation.

B. G. B. 1952.

570.

4. Form.

The renunciation shall be made orally before the proper court by the heir, or in writing. It must be unconditionally and unreservedly made.

The court shall make a minute of the renunciations.

v. Sch. C. § 522. B. G. B. 1943 to 1953.

571.

II. Forfeiture of Right to Renounce.

If the heir does not make the renunciation during the prescribed time, he acquires the inheritance unreservedly. If an heir has before the lapse of the time intermeddled in the affairs of the inheritance, or undertaken matters not required by the simple administration of the inheritance or by the march of affairs of the inheritance, or if he has appropriated property of the inheritance or concealed the same, he can no longer renounce the inheritance.

Sch. C. § 534, par. 7. B. G. B. 2005.

572.

III. Renunciation by a Co-heir.

If the decedent leaves no disposition *mortis causa*, and one of several heirs renounces his inheritance, his share is forfeited as if he had not survived the heritage.

If the decedent leaves a disposition *mortis causa*, the share which an appointed heir renounces (no other intention of the testator appearing in the will) passes to the next legal heirs of the testator.

Sch. C. § 479. B. G. B. 2346 to 2351.

573.

IV. Renunciation by all Next Heirs.
1. Generally.

If the inheritance is renounced by all the next legal heirs, it passes into liquidation through the bankruptcy office. If there results in liquidation a surplus after payment of the debts, this will be distributed among those entitled as if no renunciation had been made.

574.

If the issue have renounced the inheritance, notice thereof shall be given by the court to the surviving spouse and he can declare his acceptance within the period of a month.

2. Right of the Surviving Spouse.

Sch. C. § 522, par. 7.

575.

The heirs in renouncing can demand that the heirs next following them shall be interrogated before the inheritance shall be liquidated.

3. Renunciation in Favor of Next Heirs.

In this case the court shall give notice to these next heirs of the renunciation by their predecessors, and if thereupon these heirs do not declare their acceptance of the inheritance within a month's time, then it is renounced by them also.

576.

For sufficient reasons the proper court can allow the legal or appointed heirs an extension of the time or fix a new period of time.

V. Extension of Time.

577.

If a legatee renounces a legacy, then it falls in favor of the person charged with it, if no other intention of the testator appears in the will.

VI. Renunciation of a Legacy.

v. Sch. C. § 525. B. G. B. 2180.

578.

If an heir heavily in debt has renounced the inheritance to the end that it remain withdrawn from his creditors, they or the trustee in bankruptcy can within six months contest the renunciation, if their claims are not secured. If their contest is upheld, the inheritance goes into official liquidation. A surplus serves in the first place for satisfaction of contesting creditors, and, after payment of the remaining debts, goes to the heirs in whose favor the renunciation was made.

VII. Security for the Creditors ofan Heir.

579.

If the heirs of an insolvent decedent renounce the inheritance, they are liable to his creditors nevertheless, in so far

VIII. Responsibility in Case of Renunciation.

as they may have received property from the decedent within the last five years before his death, which property would, in the distribution of the inheritance, have been subject to adjustment.

The local customary outfit at marriage, as well as cost of education and instruction, are not subject to this liability. Heirs who are in good faith are liable only in so far as they have been enriched.

As to the German law of liabilities of heirs, etc., v. Sch. C. § 532 and citations.

THIRD SECTION — PUBLIC INVENTORY.

580.

A. Prefatory.

Every heir who has the right to renounce an inheritance is entitled to demand a public inventory. The petition must be brought within the period of a month, in form similar to an enunication, before the proper court.

If it is required by one of the heirs, it avails the others also.

v. Sch. C. § 533, par. 1.

581.

B. Procedure.
I. Inventory.

The public inventory shall be taken by the proper court in accordance with the regulations of the cantonal law, and consists of a schedule of the articles of property and debts of the inheritance, and each item shall have a value attached.

Whoever can give information as to the property matters of the decedent is obliged, upon his own responsibility, to make every disclosure required of him by the magistrate. In particular the heirs must notify the court of decedent's debts known to them.

582.

II. Call to Account.

To the inventory the court shall join a call to account, by which, in the way of an appropriate public advertisement, creditors and debtors of the decedent, including creditors, by reason of surety contracts, shall be called upon to present their claims and debts within a certain period of time. Creditors

are therein to be notified of the consequences of non-presentation. The period of time shall be at the least one month from the day of the first publication.

v. § 590 and Sch. C. § 537. B. G. B. 1970 to 1974.

583.

III. Taking upon Official Motion.

Claims and indebtednesses, which appear in public records or in papers of the decedent, shall be included in the inventory upon official suggestion.

The inclusion thereof shall be announced to those debtors and creditors.

584.

IV. Result.

After the lapse of the time of publication, the inventory shall be closed and thereupon for at least a month opened to the inspection of interested parties.

The costs are to be borne by the estate, and, when it does not suffice, by the heirs who have demanded the inventory.

585.

C. Relation of the Heirs During the Inventory.
I. Administration.

During the time of the inventory, only the necessary acts of administration may be undertaken.

If the court allows the continuance of the decedent's business by an heir, his co-heirs have the right to demand security.

586.

II. Collection, Process and Limitation.

The collection of debts of the decedent is excluded during the continuance of the inventory.

A limitation does not run. Process of law can neither be pursued nor discontinued save in urgent cases.

587.

D. Effect.
I. Time for Declaration.

After conclusion of the inventory, every heir shall be summoned to declare himself within a month's time as to the acquisition of the inheritance. Where the circumstances justify it, the proper court can grant a longer time for presenting appraisements, for settlement of doubtful claims and the like.

588.

II. Declaration.

The heir can, during the appointed time, renounce or demand the official liquidation, or accept the inheritance under a public inventory or unreservedly.

If he makes no declaration, he has accepted the inheritance under the public inventory.

Sch. C. § 522 and citations.

589.

III. Consequences of Acceptance under a Public Inventory.
1. Liability According to Inventory.

If an heir takes the inheritance under a public inventory, the debts of the decedent scheduled in the inventory, and the articles of property, pass to him. The acquisition of the inheritance, with its rights and obligations, relates back to the time of devolution of the succession.

For debts scheduled in the inventory the heir is liable, not only with the inheritance, but his own property.

590.

2. Liability Outside of Inventory.

The heirs are not liable, either personally or with the inheritance, to creditors whose claims have not been included in the inventory, for the reason that they have neglected presenting them.

If creditors have overlooked the presentation for inventory purposes, without any fault of their own, or if their claims, despite their presentation, are not included in the schedule, the heir is liable so far as he is enriched out of the inheritance.

In all cases creditors can made good their claims, so far as they are protected by right of pledge of articles of inheritance.

v. § 582.

591.

E. Liability for Security Debts.

Decedent's debts on security entered shall be specially noted in the inventory, and can be made good against the heir, even when he accepts the inheritance, only to the amount that, upon a bankruptcy, satisfaction of all the debts out of the inheritance would fall upon secured debts.

592.

F. Acquisition by the Commonwealth.

If an inheritance fall to the commonwealth by official action, a citation to account will be sent out and the commonwealth

is liable for the debts of the inheritance only to the extent of the estate which it has acquired in the inheritance.

v. B. G. B. 1942.

FOURTH SECTION — THE OFFICIAL LIQUIDATION.

593.

A. Prefatory.
I. Petition of an Heir.

Every heir has the right, instead of renouncing the inheritance or accepting it under a public inventory, to petition for an official liquidation. So long, however, as a co-heir declares his acceptance, no relief can be given under such petition.

In case of the official liquidation the heirs are not responsible for the debts of the inheritance.[2]

[1] Sch. C. § 535. B. G. B. 1981, 2013, 2062, 1984.
[2] B. G. B. 1975.

594.

II. Petition of Creditors of the Decedent.

If the decedent's creditors have good reason to believe that their claims will not be paid, and if they are not satisfied or given security upon their petition brought, they can, within three months from the death of the decedent, or the vesting of the disposition, demand an official liquidation of the inheritance.

Legatees can under similar conditions demand proper measures for their security.

595.

B. Procedure.
I. Administration.

The official liquidation shall be carried out by the proper court or under their direction by one or more administrators of the inheritance. It begins with the taking of an inventory to which is joined a citation to account. The administrator stands under the supervision of the court, and the heirs have the right to raise objections before it, to the measures contemplated or taken by him.

Sch. C. § 535, par. 6. B. G. B. 1985, 1986.

596.

II. Ordinary Liquidation.

For the purpose of the liquidation, the current business of the decedent is to be wound up, his obligations to be met,

his claims to be collected, legacies to be paid as far as possible, the rights and duties of the decedent, so far as necessary, judicially to be determined, and his estate to be converted into money. The alienation of parcels of real estate of the decedent has to be made by public sale, and may be effected by private sale only with the free consent of all the heirs.

The heirs can demand that the things and moneys in the inheritance, not necessary for the liquidation, shall be transferred to them wholly or in part even during that process.

597.

III. Liquidation in Bankruptcy.

If the inheritance is overburdened with debts, the liquidation is accomplished through the bankruptcy office, according to the provisions of the bankruptcy law.

Sch. C. § 536. B. G. B. 1975, 1980, 1985, 2013.

FIFTH SECTION.—ACTION FOR AN INHERITANCE.

598.

A. Prefatory.

Whoever, as a legal or an appointed heir, thinks he has a better right to an inheritance or things in an inheritance than the possessor, has the right to assert his claim in an action for the inheritance. The judge, upon petition of the complainant, takes the necessary measures for his protection, such as requiring security, or authorization of an entry in the Land Register.

v. Sch. C. § 528 and citations.

599.

B. Effect.

If the complaint be sustained, the possessor must surrender the inheritance or things in it to the complainant according to the rules of possession.

The respondent cannot set up the defense of prescriptive title to the things as against such a complaint.

v. last note and B. G. B. 2018 to 2021.

600.

C. Limitation.

The action for an inheritance lapses with the running of a year, as against a respondent in good faith, computed from the time when the complainant has received knowledge of the possession by the respondent, and of his own better right, but in all cases with the running of ten years from the death of the decedent or the time of vesting of his last testamentary disposition.

The period of limitation is always thirty years, as against a respondent guilty of bad faith.

601.

D. Complaint of the Legatees.

The right of complaint of a legatee lapses with the running of ten years from the notice of the disposition, or from the time at which the legacy later becomes due.

SEVENTEENTH TITLE — DIVISION OF THE INHERITANCE.

FIRST SECTION — THE COMMUNITY BEFORE DIVISION.

602.

A. Effect of the Succession.
I. Community of Heirs.

If several heirs inherit from the decedent, there exists between them, until the inheritance is divided, by reason of the succession, a community of all the rights and obligations of inheritance.

They become joint owners of the objects of inheritance and exercise the rights of inheritance jointly, subject to contractual or legal powers of representation and administration. Upon petition of one co-heir, the proper court can direct a representation for the community of heirs until the division.

v. Sch. C. § 529. B. G. B. 2032.

603.

II. Liability of Heirs.

The heirs become jointly liable for the decedent's debts.

604.

B. Claim for Division.

Every heir can, at a reasonable time, demand the division of the inheritance in so far as he is not obligated to the community by contract or provision of law. Upon request of one heir, the judge can for the time direct the postponement of the division of the inheritance, or separate things of inheritance, if the immediate undertaking thereof would seriously damage the inheritance in its value. The co-heirs of an insolvent heir have the right to demand proper measures for the security of their claims at once after the succession.

Sch. § 530. B. G. B. 2042 to 2046.

605.

C. Postponement of the Division.

If in any succession regard must be had for a yet unborn child, the division must be postponed until the time of its birth. For that length of time the mother has a claim upon the enjoyment of the common property, in so far as it is necessary for her support.

Sch. C. § 530, par. 1.

606.

Heirs, who at the time of decedent's death have received their support in his household, can demand that after his death the support shall be continued to them for at least one month, at the cost of the estate.

D. Claims of Household Companions.

SECOND SECTION — METHOD OF DIVISION.

607.

Legal heirs must share not only among themselves, but also with the appointed heirs, according to the same principles.

A. In General.

They can, where it is not otherwise directed, freely agree upon the division.

Co-heirs who are in possession of objects of inheritance, or are debtors of the decedent, must make full and exact disclosure thereof in a division.

v. Sch. C. B. G. B. 2046, 2047.

608.

The decedent may by a disposition *mortis causa* give directions to his heirs as to the division and the makeup of the shares.

B. Order of Division. I. Disposition by Decedent.

Subject to the adjustment in case of inequality of the shares not contemplated by the testator, these directions are binding upon the heirs.

If no other intention of the decedent is apparent in the will, the bequest of any specific property to an heir holds only as a direction for division and not as a legacy.

Sch. C. § 531.

609.

Upon demand of a creditor, who has acquired an heir's claim to an inherited estate or has attached it, or who possesses certificates of loss against him, the court must co-operate in the division in place of this heir.

II. Co-operation of Courts.

It is reserved to the cantonal law to provide for still other cases an official co-operation in the division of an estate.

610.

C. Procedure in Division. I. Heirs' Equal Rights.

The heirs all have an equal claim to the objects of the inheritance in a division thereof, if no other regulations should control. They must communicate to one another everything as to their relations with the decedent, which pertains to the equal and just division of the inheritance.

Every co-heir can demand that the debts of the decedent be satisfied or secured before a division of the estate.

Sch. C. § 531, 3, 5. B. G. B. 2046, 2047.

611.

II. Making up of Lots.

The heirs shall make as many lots or portions out of the property of the estate as there are heirs or stems of heirs.

If they cannot agree, the proper court, with due regard to local custom, the personal relations and the wishes of the majority of the co-heirs, shall, upon demand of any one of the heirs, make up the lots. The division of the lots shall be made by agreement or by drawing lots among the heirs.

This and the following to § 625 regulate details as to the division of decedent's estates, which the German civil law does not seem to legislate upon.

612.

III. Donation and Sale of Single Things.

An article of inheritance that might lose substantially in value by division shall be given to one of the heirs undivided. If the heirs cannot agree upon the division or disposition of any article, then it shall be sold and the proceeds divided.

Upon demand of any heir the sale must be held by auction, and if the heirs cannot agree, the proper court shall determine whether the auction shall be public or only among the heirs.

613.

D. Special Articles. I. Things Belonging Together; Family Documents.

Articles by nature belonging together shall not be separated from one another, if one of the heirs objects to the severance.

Family documents and articles of special value as souvenirs to the family shall not be alienated if an heir objects thereto. If the heirs cannot agree thereon, the proper court shall decide upon the sale or donation with or without a charge

therefor, with regard to local custom, and wherever no such custom exists, to the personal relations of the heirs.

614.

II. Claims of Decedent against Heirs.

Claims which the decedent has had against one of the heirs must be charged against such heir in the division.

615.

III. Pledged Articles of Inheritance.

If an heir receives in the division an article of inheritance which is pledged for debts of the decedent, the debt of the pledge is also charged upon him.

616.

IV. Realty.
1. Parceling.

The cantons may designate in reference to the various agricultural practices, the minimum surface measures for the division of realty.

617.

2. Acceptance.
a. Charge Value.

Realty shall be charged to the heirs at the value thereof at the time of the division. Agricultural realty is to be valued at the rental value, other realty at the market value.

618.

b. Method of Appraising Value.

If the heirs cannot reach an understanding as to the charge value, this shall be finally fixed by officially appointed experts.

If the rental value is not sufficiently known, it will be presumed that it is three-fourths of the market value.

619.

3. Share of the Co-heirs in the Increase.

If an heir has received realty under the market value, the co-heirs have a right, upon a sale thereof or a portion of the same within the following ten years, to claim a proportional part of the increase in value, provided this claim has been entered in the Land Register at the division.

This share shall not exceed what the co-heir would have received if the realty had been charged at the market value in the division. The co-heirs have no claim for the increased value arising through betterments, buildings, increment of timber, or the like.

620.

V. Agricultural Trade. 1. Exclusion from Division.

If in the estate there is an agricultural trade, and if one of the heirs declares himself ready to take it over, and appears to be adapted therefor, it shall be given, undivided, to this heir at the charge of the rental value, provided it makes a unit for the economical pursuit thereof. The one taking over a trade can also demand the tools, stock, and cattle used in its pursuit.

The determination of its charge value is made for the whole, according to the regulations for appraising realty.

621.

2. Designation of the One to Take It.

If one of the co-heirs makes objection, or several declare themselves ready to take it over, the proper court shall decide upon the transfer, sale or division of the trade, with regard to local custom, and where none such exists, to the personal relations of the heirs.

Heirs who desire themselves to follow the trade have a first claim for the undivided transfer. If none of the sons will take over the property for his own trade, the daughters also have the right to take it over, provided they themselves or their husbands appear fitted to pursue it.

622.

3. The Community of Heirs. *a.* Claim.

If the taker of the trade is so burdened by the shares of the co-heirs that he must for their security charge his immovables, the liens already upon them reckoned in, to more than three-fourths of the charge value, he can demand that the division in relation to the trade taken over shall be postponed.

In such case the co-heirs together make a profit-sharing community.

623.

b. Dissolution.

If the taker comes to the position of making a settlement without excessive burden of debt, any co-heir can notify the community and demand his share. The taker, when it is not otherwise agreed upon, may at any time demand the dissolution of the community.

624.

4. Settlement with Hereditary Rents.

If the taker has made use of the right to postpone the division, any co-heir has the right, instead of remaining in the community of heirs for the profits, to demand his share thereof in the form of a claim secured by a lien upon the common property. This settlement, however, the taker shall furnish in the form of a hereditary rent, for the part by which he would thereby burden the common property in excess of the three-fourths of the charge value, and that in a rent which shall be irrevocable for at least ten years, and to bear interest at the highest according to the prevailing rate for rents. The provisions of the law of rents as to the limits of the burden and the liability of the state have no application to the hereditary rents.

625.

VI. Other Trades.

If another trade is joined to the agricultural trade as a "by-occupation," (*nebenbetrieb*), the whole shall be transferred undivided at the charge of the market value to the heir, who declares himself ready to take it over and appears fitted for it. If one of the co-heirs makes objection, or if several declare themselves ready to take it over, the proper court shall decide upon the transfer, sale or division of the trade with regard to the personal relations of the heirs.

THIRD SECTION — THE ADJUSTMENT.

626.

A. Duty of Heirs to Adjust.

The legal heirs are mutually bound to bring into the adjustment everything which the testator in his lifetime has given them by advancement against their shares.

Whatever the testator has given his issue as marriage portion, marriage outfit, or by property cession, release of debt or the like, comes under this duty to adjust, so far as the testator has not expressly directed the contrary.

v. Sch. C. § 478, note 1. B. G. B. 2051, 2053.

627.

B. Adjustment upon Decease of Heirs.

If an heir die before or after the succession, his duty to adjust passes to the heirs who take his place. Issue of an

heir are, in reference to the gifts which he has received, bound by the duty to adjust even when the gifts have not come to them.

628.

C. Method of Computation.
I. Throwing in or Charging against.

The heirs have the choice to undertake the adjustment by restoring in kind or by charging against according to the value, and that, too, when the gifts exceed the amount of the heirs' portion. Contrary directions of the testator are reserved, as well as the claims of co-heirs, for abatement of the gifts.

629.

II. Relation to the Heirs' Portion.

If the gifts exceed the amount of the heirs' portion, the excess need not be adjusted, subject to the claim of co-heirs for an abatement, when the testator evidently desired to prefer the heir therewith. This preference is presumed in case of outfits given to children upon their marriages in a customary amount.

630.

III. Adjustment Value.

The adjustment is made according to the value of the gifts, as of the time of the succession, or, if the property has already been alienated, according to the value received therefor.

Money spent for improvements and damages, as well as fruits received, are to be brought into the account between heirs according to the rules of possession.

631.

D. Costs of Education.

The outlays of the decedent for the education and instruction of the several children are to be subject to adjustment only in so far as they exceed ordinary measure — if no other intention of the decedent is shown. Uneducated and frail children are to be allowed a reasonable preference in the division.

v. Sch. C. § 440, note 2, as to marriage outfit. As to other gifts, Sch. C. § 478.

632.

E. Occasional Gifts.

Customary occasional gifts do not need to be considered in an adjustment.

This conforms with the German law. v. last note.

633.

F. Adjustment of Contributions to the Household Community.

Adult children who have contributed their labors or their income to their parents in a common household can claim a reasonable adjustment therefor in the division, if they have not expressly renounced a proportionate compensation.

The B. G. B. does not regulate on this point.

FOURTH SECTION — CONCLUSION AND EFFECT OF THE DIVISION.

634.

A. Conclusion of the Conclusion of the Contract.

I. Contract for Division.

The division becomes binding upon the heirs with the separation and acceptance of the lots or with the conclusion of the contract for division. This latter requires a written form for validity.

635.

II. Contract as to the Hereditary Shares.

Contracts between the heirs as to the transfer of hereditary shares, as well as contracts of the father or mother with the children as to the heirs' portion which may fall to them from the other spouse, require a written form for validity.

If they are made between an heir and a third person, they give this third person no right to join in a division, but a claim only upon the portion apportioned to the heir in the division.

v. Sch. § 529. B. G. B. 2033 to 2037, 2371.

636.

III. Contracts before the Succession.

Contracts made by an heir with a co-heir or a third person, as to an inheritance not yet fallen to him, without the co-operation or consent of the decedent are not binding.

Considerations given under the terms of such a contract can be demanded back.

The German law seems to conform herewith apparently. The lawful contract for the sale of inheritance to property vested by the death of the owner, v. Sch. C. § 547. B. G. B. 2371 to 2385.

637.

B. Liability of Co-heirs Among Themselves.
I. Guaranty.

After conclusion of the division, co-heirs are liable to one another for the articles of inheritance, as vendor and vendee. They must guarantee to one another the validity of the claims, which have been made upon them in the division, and are liable to one another, so far as it is not a matter of securities in bankruptcy, up to the amount at which the claim has been charged to the taker at the division, as one who has given simple security. The action arising out of the duty to guarantee lapses with the running of a year after the division, or from the time upon which the claims would later become due.

638.

II. Contest of the Division.

A contest of the contract for division is governed by the regulations in regard to the contest of contracts in general.

639.

C. Liability to Third Persons.
I. Joint Liability.

The heirs are liable for the decedent's debts to creditors, even after a division, jointly and with their whole property, so long as the creditors have not expressly or tacitly consented to a division or assumption of the debts. The joint liability of co-heirs terminates with the lapse of five years after the division, or from the time at which the claim would later become due.

v. Sch. C. § 532.

640.

II. Contribution from Co-heirs.

If an heir has paid a debt of the decedent, which was not charged against him in the division, or if he has paid in one debt more than he had assumed, he has the right to demand contribution from his co-heirs. This claim for contribution lies in the first place against him, who assumed the debt paid, in the division made.

Otherwise, in default of other arrangement, the heirs must bear the debts among themselves in proportion to the heirs' portions.

Sch. C. § 529, 2. B. G. B. 2039.

FOURTH PART.

THE LAW OF THINGS.

FIRST DIVISION — OWNERSHIP.

EIGHTEENTH TITLE — GENERAL PROVISIONS.

641.

A. Definition of Property therein.

Whoever is the owner of a thing can freely dispose of it within the limitations of the law's enactment.

He has the right to reclaim it from anyone who retains it from him, and to defend it against every illegal interference.

v. Sch. C. § 323. B. G. B. 903.

642.

B. Extent of Property.
I. Component Parts.

Whoever is the owner of a thing has the ownership in all its component parts.

A component part of a thing is everything that belongs to its integrity according to the usual local conception, and cannot be separated from it without its destruction, injury or alteration.

643.

II. Natural Fruits.

Whoever is the owner of a thing has the ownership also in its natural fruits.

Natural fruits are the periodical additions, and the profits which are won from a thing conformably to its destined use according to the usual conception.

Until a severance, the natural fruits are a component part of the thing.

Sch. C. § 323.

644.

III. Appurtenance.
1. Definition.

The disposition of a thing carries with it also its appurtenances, if no exception is made. Appurtenances are the movable things, which are, according to the usual local conception or clear intention of the owner, attached to the main thing permanently for its management, use or preservation, and, by connection, adjustment or otherwise, brought into the relation with the main thing, in which it must serve such main thing.

If anything is an appurtenance, its temporary severance from the main thing cannot take from it this quality.

645.

2. Exceptions.

Such movable things are never appurtenant which serve the possessor only for a temporary use or for consumption, or which stand in no relation to the particular qualities of the main thing, as well as such things as are brought into connection with the main thing only for storage, sale, or leasing purposes.

646.

C. Ownership in Common.
I. Co-ownership.
1. Relation of Co-owners.

If several persons have a thing in their ownership by fractions, and without outward severance, they are co-owners. If it is not otherwise determined, they are co-owners in equal parts. Each co-owner has in respect to his share the rights and duties of an owner, and this share can be alienated and pledged by him and be attached by his creditors.

Sch. C. § 304. B. G. B. 741, 742, 743. As to pledging, v. Sch. C. § 325, 2, 3.

647.

2. Administration.

The co-owners control the thing in common, when it is not otherwise agreed upon. Each one has the right, so long as the majority has not otherwise ordered it, to perform the customary acts of administration, such as the direction of betterments and the procuring of cultivation. For the direction of more important acts of administration, such as change of cultivations and undertaking of extensive repairs, the resolution of the majority of the co-owners is requisite, which majority likewise represents the greater part of the thing.

Sch. C. § 304, 1, 2, 3. B. G. B. 744, 745.

648.

3. Control over the Thing.

Each co-owner has the right to represent the thing, to use and to enjoy it, in so far as it is compatible with the rights of the others.[1]

For the alienation or burdening of the thing, as well as for the change of its intended use, the consent of all the co-owners is requisite, provided they have not otherwise unanimously stipulated.[2]

[1] B. G. B. 742. Sch. C. § 304.
[2] Sch. C. § 304, 5. B. G. B. 747.

649.

4. Bearing of Costs and Charges.

The costs of administration taxes and other charges, which grow out of the co-ownership, or lie against the thing owned, shall be borne by the co-owners in proportion to their shares, when not otherwise agreed.

If a co-owner has borne such expenditures in excess of this his share, he can demand contribution from the others in the same proportion.

Sch. C. § 304, 3. B. G. B. 748.

650.

5. Dissolution.
a. Claim for a Division.

Each co-owner has the right to demand a dissolution of the co-ownership, if it is not forbidden by some juridical act or by the dedication of the thing to a permanent purpose.

The dissolution can be delayed at the most ten years by a juridical act.

The dissolution may not be inopportunely demanded.

Sch. C. § 304, 4. B. G. B. 752, 757.

651.

b. Method of Division.

The dissolution is effected by a physical division, by a sale, privately or at auction, with a division of the proceeds, or by transfer of the whole thing to one or more of the co-owners by purchase from the others. If the co-owners cannot agree upon the method of dissolution, the thing will be divided physically by order of the judge, or if this is impossible without a material depreciation of its value, it shall be sold at auction publicly or among the co-owners.

An adjustment of the shares in money can be joined to the physical division by way of owelty.

See last note.

652.

II. Joint Ownership.
1. Prefatory.

If several persons own a thing by virtue of their community, such persons being bound together into a community by prescript of law or contract, they are joint owners and the right of each one pertains to the whole thing.

Sch. C. § 30.

653.

2. Effect.

The rights and duties of the joint owners are determined by the rules under which their legal or contractual community stands. If there is no other prescript, the exercise of ownership, and in particular the control over the thing, requires the unanimous action of all joint owners.

So long as the community lasts, a right to a division or the control over a part thereof is barred.

v. last note.

654.

3. Dissolution.

Dissolution is effected by the alienation of the thing or the termination of the community.

The division is made according to the provisions in regard to co-ownership, when it is not otherwise stipulated.

NINETEENTH TITLE — OWNERSHIP OF LAND.

FIRST SECTION — SUBJECT, ACQUISITION AND LOSS OF OWNERSHIP IN LAND.

655.

A. Subject.

Pieces of land are subject to realty ownership.

Pieces of land in the sense of this law are, — (1) immovables[1]; (2) the independent and permanent rights contained in the Land Register[2]; (3) mines.[3]

[1] v. Sch. C. § 323.
[2] v. Sch. C. § 348.
[3] v. Sch. C. § 350.

656.

B. Acquisition.
I. Entry.

The entry thereof in the Land Register is necessary to the acquisition of ownership in land.

In case of occupation, inheritance, expropriation, execution, or judicial order, the (*erwerber*) new owner acquires the ownership therein even before an entry made, but he can make disposition of the piece of land in the Land Register only after such an entry has been made.

This section adopts for the entire republic the German law, previously in force in certain of the cantons only. On this subject, v. Sch. C. §§ 317 to 322.

657.

II. Methods of Acquisition.
1. Transfer.

The contract for transfer of ownership requires the public authentication to be binding. The disposition *mortis causa* and contract of marriage require the prescribed forms of the law of inheritance and of marital property.

Sch. C. § 327.

658.

2. Appropriation.

The appropriation of a piece of land, registered in the Land Register, can only occur if it is without an owner according

to such registry. The appropriation of land that is not taken up according to such registry stands under the regulations as to ownerless things.

v. Sch. C. § 331.

659.

3. Formation of New Land.

If land fit for tilling arises through alluvium, discharge upon, slipping of land, changes in the course or channel of public water, or otherwise, out of ownerless land, it belongs to the canton in whose domain it lies. The cantons are free to cede such land to the abutting owners. If any one can prove that the soil was torn away from his property, he can reclaim it within a reasonable time.

v. Sch. C. § 331, Intr. Law § 65.

660.

4. Shifting of Land.

Shiftings of soil from one piece of land to another work no change of the boundaries. The soil and other objects thereby transferred from one piece of land to another are subject to the regulations as to attached things or conjunctions of things.

661.

5. Prescription.
a. Ordinary Prescription.

If anyone has been unjustifiedly entered in the Land Register as an owner, his ownership can no longer be contested after he has possessed the piece of ground in good faith for ten years, uninterruptedly and uncontestedly.

v. next note.

662.

b. Extraordinary Prescription.

If anyone is in possession of a piece of ground, as his property, uninterruptedly and uncontestedly for thirty years, the piece not being entered in the Land Register, he can demand that he be entered therein as owner. Under like conditions this right belongs to the possessor of a piece of land whose owner cannot be ascertained from the registry or may be declared dead or disappeared upon the beginning of the prescriptive period of thirty years. The entry may, however,

be made only upon judicial order, after no objection has been raised within a time set by official declaration, or any objection raised has been overruled.

C. Sch. § 330. Ger. Code Civ. Proc. 977 to 981. B. G. B. 927.

663.

c. Limitations.

For the computation of the time of limitations, the interruption or ceasing of the adverse possession, the regulations as to outlawing of claims correspondingly apply.

664.

b. Ownerless and Public Things.

Ownerless and public things are subject to the sovereignty of the state in whose domain they are found. In the public waters, as well as land, not fit for cultivation, as cliffs and débris, snow and ice and glaciers, and springs issuing therefrom, no private ownership exists, subject to proof otherwise.

The cantonal law fixes the necessary regulations as to the appropriation of ownerless land, the enjoyment and common use of the public things, such as streets and squares, waters and river beds.

665.

III. Right of Entry.

The ground of acquisition gives the new owner a personal claim against the occupant for entry and upon his refusal the right to a judicial determination of the ownership. In case of appropriation, succession, disappropriation, execution, or judicial order, the new owner can himself cause the entry to be made.

Changes in ownership of real estate, caused by marital property law, shall, after the publication of the entry in the marital registry, be entered in the Land Register.

This conforms in principle with the German law, under which all ownership of land must be registered in the land register (*Gründbuch*). The German legislation on this subject is largely contained in the Land Registry Act (*Grundbuchordnung*) of March 24, 1897.

666.

C. Loss.

Ownership in land ceases with the cancellation of the entry as if with the complete obliteration of the piece of ground.

The point of time at which the loss arises in case of expropriation is fixed by the law of expropriation of the federal state and cantons.

This also conforms with German law.

SECOND SECTION — DEFINITION AND LIMITATIONS OF OWNERSHIP OF LAND.

667.

A. Definition.
I. Scope.

Ownership in land and soil reaches above and underneath into the air and the earth so far as the exercise of the ownership requires.

It embraces all buildings and plants as well as springs, subject to the legal restrictions.

This modifies somewhat the English law doctrine, which does not limit the right of ownership, either above or below the surface; it conforms with German law. v. Sch. C. § 324. B. G. B. 905.

668.

II. Definition of Boundaries.
1. Method.

The boundaries shall be set forth upon the land registry surveys and in the metes and bounds of the piece of land. If the survey in the Land Register and the metes and bounds contradict one another, the correctness of the survey shall be presumed.

Prior to the adoption of this code, there were three systems of land transfer in Switzerland; the German judicial registry of title, the French notarial law, and in some cantons transfer was, by the deed of the vendor, registered according to a method somewhat similar to the registry of deeds in York and Middlesex, England.

v. Sch. C. § 321. B. G. B. 894 to 897.

This section adopts the German system of judicial registry of land title based on an official survey, of which the plans or maps show each lot of ground separately owned, each lot being also numbered and referring by such number to a separate registry of the title transfers and of liens, etc. of each lot.

669.

2. Duty to Mark out Boundaries.

Every owner of land is obliged, upon demand of his neighbor, to co-operate in fixing an uncertain boundary, whether it be to correct the Land Register's survey, or to lay out boundary marks.

670.

3. Co-ownership in Boundary Markers.

If there exist monuments of boundaries between two pieces of real estate, such as walls, hedges, or fences, upon a boundary line, co-ownership therein is presumed in favor of both neighbors.

v. Sch. C. § 326, 6. B. G. B. 921, 922.

671.

III. Buildings upon Land.
1. Soil and Building Material.
a. Property Relation.

If anyone uses in a building on his own ground material not his own, or his own material on ground not his own, it becomes a component part of the land.

The owner of the material is, however, if it has been used without his consent, entitled to demand the severance of the material and its return at the cost of the owner of the land provided this is possible without unreasonable damage.

Under like conditions the owner of the land, if the use of it has been without his consent, can demand the removal of the material at the cost of the builder.

672.

b. Compensation.

If no severance of the material from the land is made, the owner of the land shall furnish a proper compensation therefor. In case of bad faith in the building landowner, the judge can grant full compensation in damages. In case of bad faith in the owner of the building material, he can claim only what the building may be worth at the least, to the owner of the land.

As to overlapping buildings, v. Sch. C. § 326, 4. B. G. B. 912 to 915, 916.

673.

c. Transfer of the Ownership in the Land.

If the value of the building clearly exceeds the value of the land, he who has acted in good faith can demand that the ownership in building and land shall be granted to the owner of the materials conditioned upon proper compensation to the land owner.

674.

2. Buildings Extending Over.

Buildings and other constructions, which extend from one piece of land over upon another, remain part of that piece,

from which it proceeds, if its owner has a real right to its so standing. The right to the extension can be entered upon the Land Register as a servitude. If such extension is without right, and the aggrieved party does not raise an objection promptly, although this has come to his notice — provided the circumstances justify it — the one building over can be granted the real right to the extension or property in the soil, upon proper compensation made, provided likewise he has acted in good faith.

v. note to § 672.

675.

3. Right to Build.

Buildings and other constructions, put or built upon a stranger's land, or otherwise permanently joined to land or underneath the soil, can have a special owner, if their relation as a servitude is entered in the Land Register. The disposition of a right to build in special parts of a building is barred.

Servitudes or easements were not in the older forms of German registry of land title entered on the register. They are now, and this section conforms on this point with modern German legislation.

676.

4. Conduits.

Conduits for water, gas, electrical power, and the like, which may be placed outside of a piece of land which they serve, shall be considered to be appurtenant of the works from which they proceed, and the property of the owner thereof, unless otherwise agreed.

In so far as the neighbor's right does not apply, the real burdening of the land of others by such conduits is effected by the erection of a servitude. The servitude arises, if the conduit is not outwardly visible, upon the entry in the Land Register, and in other cases upon the construction of the conduit.

677.

5. Movable Buildings.

Huts, booths, barracks, and the like, retain their special owner, if they have been erected on strange land without an intention of permanent connection. Their description is not to be entered in the Land Register.

678.

VI. Plantings upon the Land.

If anyone introduces strange plants upon his own land, or his own plants upon strange land, the same rights and duties arise as in the case of use of building materials or movable buildings.

The disposition of a servitude corresponding to the right to build does not lie in case of plants or woods.

v. Sch. C. § 323, note 2. B. G. B. 907.

679.

V. Responsibility of Landowner.

If anyone is injured by a land owner's exceeding his right of property, or is threatened with an injury, he can bring an action to remove the source of injury, or to be secured against an impending injury, or for compensation.

v. Sch. C. § 323. B. G. B. 907, but see B. G. B. 904.

680.

B. Restrictions.
I. In General.

The legal restrictions upon ownership stand without entry in the Land Register. Their termination or alteration by juridical act require for their validity the public authentication thereof and the entry in the Land Register.

The termination or alteration of property restrictions of a public character is forbidden.

681.

II. Restrictions upon Alienation.
1. Pre-emption.
a. By Reason of a Notation.

If a right of pre-emption has been noted in the Land Register, it holds during the time fixed in the notation over against every owner, upon the specified conditions, or, failing such, upon the conditions under which the land was sold to the respondent. The vendor must give notice to one having the right of pre-emption of an intended sale. The right of pre-emption is barred with the lapse of one month after the one entitled thereto has received notice of the sale, and in every case with the lapse of ten years after the notation thereof.

v. Sch. C. § 198, B. B. G. B. 1094, 1097, 1098.

682.

b. Among Co-owners.

Co-owners have a right of pre-emption, as against one, not a co-owner, who has acquired a share therein.

German law seems *contra*. v. Sch. C. § 198, note 1. B. G. B. 1095.

683.

2. Right to Buy and Right to Buy Back.

If a right to buy or a right to buy back is noted in the Land Register, it holds during the time fixed of record, as against each owner. These rights are barred in any case with the lapse of ten years from the date of notation thereof.

v. Sch. C. § 195, which, however, seems to be limited to personal or "movable" property.

684.

III. Right of a Neighbor.
1. Way of Using the Property.

Everyone is obliged, in the use of his property, as, for example, in the pursuit of a trade upon his land, to refrain from all encroachments upon the property of his neighbors.

Forbidden especially are every injurious, and, according to place and quality of the land, or according to local custom, unjustifiable encroachment by smoke, soot, heavy dusts, noise or vibrations.

v. Sch. C. § 323. B. G. B. 904, 906.

685.

2. Digging and Building.
a. Rule.

In case of excavations and buildings the owner may not thereby do damage to abutting lands, so that he causes their soil to move or endanger or damage existing improvements.

The regulations concerning overreaching buildings apply to buildings which offend against the precepts of the law of neighbors.

v. Sch. C. § 326. B. G. B. 909. As to overlapping buildings, Sch. C. § 326, 4. B. G. B. 912 to 915.

686.

b. Cantonal Regulations.

The cantons may determine the distances to be observed in case of excavations and buildings.

It is reserved to them to enact further building regulations.

687.

3. Planting.
a. Rule.

Overreaching limbs and over-extending roots can, if they damage his property, and upon his complaint are not removed within a reasonable time, be chopped off by a neighbor and retained by him. If an owner of land submits to such over-

reaching of limbs upon land used for agricultural or building purposes, he has the right to all fruits (*Anriss*) growing thereon.

These regulations do not apply to timber lands bordering on one another.

v. Sch. C. § 326, 2. B. G. B. 910, 911.

688.

b. Cantonal Regulations.

The cantons may prescribe certain distances from an adjoining land for plantings, according to the kind of land and plants, or oblige the landowner to allow the extending over of boughs or roots of fruit trees and in such cases regulate or abrogate the right to the fruits.

This also agrees with German law. The general rule of the B. G. B. may be modified by state legislation. v. Intr. L. 122, 124.

689.

4. Surface Waters.

Every owner is obliged to receive the waters that naturally flow from the higher land, as, for example, rain water, melted snow, and water from springs that are not caught. No one may change the natural drainage to his neighbor's injury.

The water flow necessary for the lower land can be withdrawn from it only so far as it is indispensable for the higher land.

690.

5. Surface Drainage.

In case of surface drainage, the owner of the lower lying land must receive without compensation the water which has flowed upon his land in a natural way. If he is damaged by the drainage, he can demand that the higher landowner at his own cost shall extend the drain through the lower land.

691.

6. Through Drainage.
a. Duty to Allow It.

Every landowner is bound to allow the drainage across his land of springs, drain pipes, gas pipes, and the like, as well as electrical conduits, over or underground, full compensation being given him for the damage done thereby, provided the conduit cannot be laid without the use of his land or at unreasonable cost.

The right to drain across by reason of the right of neighborhood cannot be claimed in those cases, in which the cantonal or federal law has prescribed a way of appropriation.

Such through drainage, if the one entitled thereto demands it, shall be entered at his cost in the Land Register.

This section introduces a law as among adjoining and neighboring owners entirely unknown to English law, and also until very lately in the B. G. B. Since the introduction of irrigation, the question has become one of extreme importance in several of the Western states, the courts taking diverse views on the point.

692.

b. Preservation of the Interests of the Burdened One.

The servient landowner may require that due regard be had to his interests.

Where extraordinary circumstances justify it, he can, in case of surface conduits, demand that the land upon which they may have been laid shall be purchased from him to a fair extent at full price.

693.

c. Change of Circumstances.

If circumstances change, the servient owner can demand a change of course of the conduit to correspond to his interests.

The cost of the change must, as a rule, be borne by the dominant owner.

Where special circumstances justify it, a reasonable part of the costs may be laid upon the servient owner.

694.

7. Right of Way.
a. Way of Necessity.

If a landowner has no sufficient way from his land to the public highway, he can demand that his neighbors shall allow him a way of necessity upon full compensation therefor. This right directs itself in the first instance against the neighbor, to whom the occasion of a way of necessity can earliest be imputed on account of former property conditions and rights of way, and then against him for whom the way of necessity is least harmful. In establishing the way of necessity, consideration must be given the interests of both parties.

v. Sch. C. § 355. B. G. B. 1018 to 1020.

695.

b. Other Rights of Way.

It is reserved to the cantons to enact detailed regulations as to encroachment upon adjacent land permitted the landowner, for the purpose of development or making improvements and buildings, as well as in respect to the right of ingress or egress, to establish a water way, a winter way, plow way, right to wood, and the like.

696.

b. Recording.

Rights of way, established directly by law, stand in law without entry. They are, however, to be entered upon the Land Register if they are of a permanent nature.

697.

8. Enclosure.

The expense of enclosure of a piece of land shall be borne by its owner, subject to the regulations in respect to co-ownership in boundary marks.

The cantonal law remains untouched as far as the duty and manner of enclosure is concerned.

698.

9. Duty to Maintain.

The landowners shall contribute according to their interests to the cost of measures taken in the exercise of the rights of adjourning and neighboring owners.

699.

VI. Right of Entry and Defense.

1. Entry.

The right to enter woods and pasture ground, and the picking of wild-growing berries, mushrooms, and the like, are free to everyone according to local custom, in so far as the proper officials have not issued special definitely defined prohibitions, in the interest of their culture.

The cantonal law can make special regulations in regard to the use of lands in the pursuit of hunting or fishing by others than the owners.

700.

2. Removal of Things Deposited and the Like.

If things are brought by water, wind, avalanche, or other natural force or chance occurrence, upon strange land, or if animals, such as large and small cattle, swarms of bees, birds

and fish come upon strange soil, the owner of that land must allow the owner of such things or animals access to his land and allow him to take them away.

He can demand compensation for any damage arising thereby and has a right of lien on such things therefor.

This exact point does not seem to be specifically regulated in the German law, but the principle is clearly laid down in Sch. C. § 313, B. G. B. 856.

701.

3. Protection against Danger or Damage.

If anyone can ward off from himself or others a threatening damage or an impending danger only by encroaching upon the land of a third person, then he is bound to allow such encroachment so long as the danger or damage are much greater than the impairment caused by the encroachment. Proper compensation must be made for the damage caused thereby.

v. Sch. C. § 86. B. G. B. 227, 228.

702.

V. Public Law's Restrictions.
1. In General.

It is reserved to the federation, the cantons and the communes to establish limitations upon land ownership in the interest of the common weal, *e.g.*, in respect to the building-, fire-, and health-police, the condition of forests and roads, lanes (*Reckweg*), erection of boundary marks and marks of measurement, improvements of the soil, the parceling of land, the laying together of fields and of building grounds, the preservation of antiquities and natural landmarks, the protection of the landscape and points of outlook from deterioration, and the protection of mineral springs.

703.

2. Soil Improvements.

If soil improvements, as erection of dikes, drainage, reforestation, building roads, joining together of wooded and agricultural properties and the like, can be effected only by a joint undertaking and two-thirds of the landowners concerned, who likewise own more than half the soil concerned, have given their consent to the undertaking, then the other landowners are bound to contribute.

The cantons can regulate the procedure. The cantonal legislation can still further encourage the carrying out of such soil improvements and prescribe corresponding regulations for building ground.

704.

C. Rights to Springs and Wells.
I. Ownership and Right in Springs.

Springs are a part of the land, and can be acquired as property only along with the soil from which they spring. The right to springs on the land of another can be acquired by entering it as a servitude in the Land Register.

Subterranean waters are on the same footing with springs.

705.

II. Diversion of Springs.

The diversion of springs can be allowed, restricted or forbidden by cantonal law, for the general good.

If contentions between cantons arise thereout, the Federal Council shall finally decide them.

706.

III. Digging away of Springs.
1. Compensation.

If springs and wells, which are used to a considerable extent or have been walled in for the purpose of their use, are dug away, damaged, or made filthy by buildings, improvements or measures of any kind, to the disadvantage of the owner or the one entitled to their use, he can demand compensation therefor. If the damage is neither intentional nor negligent, or the aggrieved party is himself at fault, the judge shall act upon his own judgment as to what extent and how compensation is to be given.

707.

2. Restoring.

If springs and wells, which are indispensable for the cultivation of, or the dwelling upon, a piece of land, are drained by digging, or made foul, the restoration of the former condition, in so far as it is at all possible, can be demanded.

In other cases this restoration can be demanded only where special circumstances justify it.

708.

IV. Community of Springs.

If adjoining springs, as outlet of a common water shed, form a group of springs of different owners, each owner can demand that they shall be considered to be in common and shall be brought to those entitled thereto in their usual volume.

The expense of the common undertaking shall be borne by those entitled thereto in proportion to their interests.

If any one of them objects, each one of them is entitled to a reasonable walling in and drainage from his spring, even if the strength of the other springs is thereby impaired, and must furnish compensation therefor only in so far as his spring has been increased by the new arrangements.

This permits the confinement of subterranean waters — sources of neighboring springs — and the piping of them to the owners of the springs. No one can block this arrangement by refusing his consent. Each one is entitled to what was his natural supply before such undertaking.

709.

V. Use of Springs.

It is reserved to the cantons to regulate to what degree springs, wells and brooks upon private property may be used, also by the neighbors and other persons for household water, watering cattle or the like.

710.

VI. Wells of Necessity.

If a piece of land is deprived of the water necessary for the house and yard, and this cannot be obtained without quite unreasonable difficulty and expense from other sources, the owner of such land can demand from a neighbor, who can give him such supply without loss, that he shall allow him a share of his well or spring supply upon full compensation therefor.

In fixing such a well of necessity, regard must in the first place be given to the interest of the one to be burdened with such a charge.

If conditions change, a change of the provision made can be demanded.

711.

VII. Duty of Cession.
1. Of Water.

If springs, wells, or brooks are of no use to their owner, or, in relation to their availability, of very little use, then their owner can be required to yield them up against full compensation for the purposes of drinking water plants, public hydrants, or other purpose of the common weal. This compensation can consist of a supply of water from the new arrangement.

v. 710.

712.

2. Of Land.

Owners of arrangements for drinking water can demand the cession of the surrounding land along the way of the appropriation thereof, in so far as it is necessary for the protection of their springs from contamination.

v. 710.

TWENTIETH TITLE — MOVABLE PROPERTY.

713.

A. Subject.

Subject to ownership as movables are those corporeal things, movable by their nature, as well as the forces of nature which can be brought under legal control and do not belong to land.

v. Sch. C. §§ 72, 73, 74.

714.

B. Methods of Acquisition.
I. Transfer.
1. Change of Possession.

Change of possession to the new owner is requisite in a transfer of ownership in movables.

Whoever in good faith accepts the transfer of a movable thing to him becomes its owner, even if the vendor has no right of alienation therein, as soon, as according to the rules of possession, his possession of the thing is protected.

v. Sch. C. §§ 311, 316. B. G. B. 854, 1006.
See for these rules arts. 933–936 of this code.

715.

2. Reservation of Ownership.
a. In General.

The reservation of ownership in a movable thing, transferred to the new owner, is effective only when it has been entered in a public register kept by the execution officials at the then residence of such owner.

In the traffic in cattle, a reservation of ownership is not allowed.

716.

b. In Case of Settlements.

Objects transferred with reservation of ownership can be demanded back by the owner only upon condition that he return the payments made by his transferee, with deduction of a reasonable interest and compensation for use.

717.

3. Acquisition without Possession.

If in consequence of any special legal condition the thing remains with the vendor, the transfer of ownership is ineffec-

tive as against third persons, if their disadvantage or a violation of the provisions as to "fist" pledge (*Faustpfand*) is contemplated.

The judge acts herein according to his judgment.

Sch. C. § 332. B. G. B. 929.

718.

II. Appropriation. 1. Ownerless Things.

An ownerless thing becomes the property of anyone who takes possession of it with the intention of becoming its owner.

v. Sch. C. § 312, 3, § 340. B. G. B. 958, 959.

719.

2. Animals Becoming Ownerless.

Captive animals become ownerless if they again attain their freedom, and their owner does not at once and uninterruptedly seek for them and is at pains to make them captive again.

Tamed animals become ownerless as soon as they again attain a condition of wildness and no longer return to their master. Swarms of bees do not become ownerless by going upon strange land.

v. Sch. C. § 340, note 1. B. G. B. 960. As to ownership of bees, B. G. B. 961 to 964.

720.

III. Finds. 1. Notification, Inquiry.

Whoever finds a lost thing must notify the owner thereof, and, if he does not know him, either give notice of the thing found to the police or himself provide for a notification and inquiry, proper under the circumstances.

He is bound to give notice to the police if the value of the thing clearly exceeds ten francs.

Whoever finds a thing in an inhabited house, or in a place serving the public use or traffic, must deliver it up to the house owner, lessee, or the persons in charge thereof.

Sch. C. § 307. B. G. B. 965 to 977.

721.

2. Safekeeping — Public Sale.

The thing found must be reasonably preserved. With the consent of the proper official, after a preliminary advertisement, the thing may be sold at public auction, if its main-

tenance is expensive, if it is perishable, or if the police or a public place has kept it longer than a year.

The proceeds of the sale take the place of the thing.

v. note to § 720.

722.

3. Acquisition of Property. — Return.

Whoever has fulfilled his obligations as a finder acquires ownership in the thing, if within five years after the notification or notice to the police the owner cannot be found.

If the thing be returned, the finder has a claim for compensation for all expenditures, as well as for a reasonable reward.

If things are found in an inhabited house, or in a place serving the public use or traffic, the owner, lessee, or the establishment will be considered as the finder, but he can claim no reward.

v. note to § 720.

723.

4. Treasure Trove.

If an article of value is found, of which from the circumstances it can be safely assumed that it has been buried for a long time, or concealed, and has no owner, it will be considered treasure trove.

If falls to the owner of the land or movable thing in which it has been found, subject to the regulations in regard to things of scientific value.

The finder has a claim for a reasonable reward which, however, may not exceed the half of the value of the treasure trove.

Sch. C. § 341. B. G. B. 984.

724.

5. Scientific Articles.

If ownerless natural objects or antiquities of considerable scientific value are found, they become the property of the canton in whose territory they have been found.

The owner on whose land such articles have been found is bound to allow their excavation upon security for any damage thereby caused.

The finder, and, in case of treasure trove, the owner also, have claims for reasonable compensation not in excess, however, of the value of the article.

v. note to § 723.

725.

IV. Accession.

If movable things are brought to anyone by floods, winds, avalanches, or other force of nature, or chance occurrences, or if stray animals happen into his keeping, he has the rights and duties of a finder.[1]

If a swarm of bees flies into an occupied apiary of another, it belongs to the owner of the apiary without any duty to compensate.[2]

[1] This provision does not occur in the German Civil Code, which seems to make no such distinction as to how things may be lost, the duty of the finder depending not on how he finds it, but the taking of the thing found into possession. Sch. C. § 307.

[2] As to bees, B. G. B. 961 to 964.

726.

V. Working up.

If anyone works up a thing not his own, or transforms it, the new thing belongs to him, if the work is more valuable than the material; otherwise it belongs to the owner of the original material. But if the workman has not acted in good faith, the judge may, even if the work is more valuable than the object, adjudge the new thing to the owner.

Claims for recompense for damages, or for unjust enrichment, remain reserved.

v. Sch. C. § 338. B. G. B. 950.

727.

VI. Joining or Mixing Together.

If movable things of different owners become so mixed or joined together that they cannot be separated without substantial damage or unreasonable labor and expense, then there arises a co-ownership in the new thing to all parties interested, and that according to the value of the several parts at the time of the joining.

If a movable thing is mixed or joined with another thing in such a way that it appears to be an incidental part

thereof, then the whole thing belongs to the owner of the chief part.

Rights to compensation for damages or for unjust enrichment are reserved.

v. Sch. C. § 335, 337. B. G. B. 946 to 951.

728.

VII. Prescription.

If anyone has had the possession of a movable thing not his own uninterruptedly and uncontestedly during five years in good faith as his property, he becomes owner by prescription.

Involuntary loss of possession does not break the running of the prescription, if the possessor within a year's time or by means of a complaint laid during this time recovers the thing.

In computing the period of time, the interruption and the standstill of the prescription, the regulations as to the limitation of claims correspondingly apply.

In the German law ten years. Sch. C. § 334. B. G. B. 937 to 945.

729.

C. Loss.

The ownership in movables, despite the loss of possession, ceases only when the owner gives up his right, or another in succession has acquired the ownership.

Sch. C. § 332. B. G. B. 929.

SECOND DIVISION.—RESTRICTED REAL RIGHTS.

TWENTY-FIRST TITLE.

FIRST SECTION—LAND SERVITUDES AND CHARGES ON LAND.

730.

A. Subject.

A piece of ground can be burdened in favor of another piece in such a way that its owner must submit to certain encroachments by the owner of the other piece, or may not exercise his right of ownership within certain limitations in favor of this other owner. An obligation to perform acts can be joined to the servitude only incidentally.

Sch. C. § 352, 355. B. G. B. 1018.

731.

B. Creation and Extinguishment.
I. Creation.
1. Entry.

An entry in the Land Register is requisite to the creation of a servitude.

The regulations as to ownership of land control as to the acquisition and entry thereof, in so far as it is not otherwise ordered.

Prescription is only possible by way of a burden to lands, in which property can be acquired by prescription.

v. Sch. C. § 353 and note 3. B. G. B. 900. Registry of servitudes is among the latest evolutions of the German land law, which the Swiss law has adopted by this section.

732.

2. Contract.

The valid contract creating a servitude must be in written form.

Sch. C. § 353.

733.

3. Creation to One's Own Detriment.

An owner may create a servitude upon his own land in favor of another piece of land belonging to him.

734.

II. Extinguishment.
1. In General.

Every servitude terminates with the cancellation of the entry, as well as with the complete destruction of the servient or the dominant tenement.

This simply applies the general rule as to all rights within the operation of the Land Registry Laws. Sch. C. § 365.

735.

2. Merger.

If the dominant tenant becomes the owner of the servient tenement, he can extinguish the servitude.

So long as the servitude is not extinguished, it remains as a real right.

v. Sch. C. § 365. B. G. B. 889.

736.

3. Extinguishment Judicially.

If a servitude has lost all value for the dominant tenement, the servient tenant can demand its extinguishment.

If an interest of the dominant tenement still exists, but is of disproportionately small consequence, compared to the burden thereof, the servitude can be wholly or partially extinguished upon compensation given.

No such legal ground for extinguishment seems to exist in German law, but see Sch. C. § 355, 1.

737.

C. Content.
I. Scope.
1. In General.

The dominant tenant may do all that is necessary to retain and exercise the servitude.

He is bound, however, to exercise his right in the most sparing manner possible. The servient tenant may do nothing that hinders or impedes the exercise of the servitude.

v. Sch. C. § 355, 3. B. G. B. 1023.

738.

2. According to Entry.

In so far as the rights and duties clearly appear in the entry, this is controlling as to the extent of the servitude. Within the entry the extent of the servitude can be shown by its reason for acquisition or by the manner in which it has been exercised for an extended time uncontestedly and in good faith.

739.

3. In Case of Changed Necessity.

If the necessities of the dominant tenement alter, an increased burden may not be imposed upon the servient tenant.

740.

4. By Cantonal Law and Local Custom.

The extent of rights of way, as footpath, paved road, carriage way, plough way, winter way, wood way, further rights to pasture, wood, water for cattle, or irrigation and the like, shall be fixed, so far as they are not otherwise regulated for the special case, by the cantonal law and local custom.

741.

II. Burden of Maintenance.

If any contrivance belongs to the use of the servitude, the dominant tenant must maintain it. If the contrivance serves also the interests of the servient tenant, both tenants must bear the burden of maintenance according to their interests.

v. Sch. C. § 355, 2. B. G. B. 1022.

742.

III. Changes of Burden.
1. Transfer.

If only a portion of the land is used in the exercise of a servitude, the owner can, if he proves an interest and assumes the costs, demand the transfer to another, for the dominant tenant, no less appropriate place.

He is entitled thereto even if the servitude has been entered in the Land Register as against a certain place.

The regulations as to adjacent owners are likewise applied to transfer of conduits.

v. Sch. C. § 355. B. G. B. 1023.

743.

2. Division thereof.
a. Of the Dominant Tenement.

If the dominant tenement be divided, the servitude as a rule continues in favor of all the parts thereof. If the use of the servitude, however, is limited to one part by the surrounding conditions, the servient tenant can demand that it be extinguished in respect to the other parts. The recorder notifies the dominant tenant of the petition and executes extinguishment if he raises no objection within a month's time.

v. Sch. C. § 355, 5. B. G. B. 1025, 1026.

744.

b. Of the Servient Tenement.

If the servient tenement be divided, the burden, as a rule, continues upon all parts thereof. If, however, the servitude does not rest upon any particular part, and according to the circumstances cannot so rest, each owner of a portion not burdened therewith may demand that it be extinguished as to his land.

The recorder notifies the dominant tenant of the petition, and executes the extinguishment if he raises no objection within a month's time.

v. note to § 743.

SECOND SECTION — USUFRUCT AND OTHER SERVITUDES.

745.

A. Usufruct.
I. Subject.

The usufruct can be created in things movable, land, rights, or a property. It gives the one entitled thereto, where not otherwise ordered, the full enjoyment of the subject.

v. Sch. C. §§ 358, 359. B. G. B. 1030, 1068, 1069, 1085.

746.

II. Creation.
1. In General.

In case of things movable, or choses in action, the transfer to the acquisitor is essential to create an usufruct; and in the case of lands, the entry thereof in the land title registry. The regulations as to ownership obtain, in so far as it is not otherwise ordered, for the acquisition thereof in things movable and in lands, as well as for the entry thereof.

As to possession, v. Sch. C. § 360, 1. As to registry of the usufruct of lands, this section simply reiterates the general rule of German law as to right in immovable property.

747.

2. By Prescript of Law.

The legal usufruct in lands exists as against third persons who have knowledge of the right thereto, even without entry in the Land Register.

By the entry it becomes effective as against everyone.

748.

III. Extinguishment.
1. Grounds.

The usufruct ceases with the complete extinction of its subject and likewise as to lands with the cancellation of the entry when this was necessary to its existence.

Other grounds for extinction, as lapse of the term, release or death of the one entitled thereto, give the owner in case of lands only the right to a cancellation of the entry.

The legal usufruct ceases with the ending of the ground therefor.

v. Sch. C. § 365, 6. B. G. B. 1061, 1068, 1090.

749.

2. Term.

The usufruct ends with the death of the one entitled thereto, and for juristical persons with their dissolution, or at most for one hundred years.

v. Sch. C. § 358. B. G. B. 1061.

750.

3. Indemnification upon Extinguishment.

The owner is not under obligation to restore the thing become extinct.

If he restores it, the usufruct is also revived. If indemnification has been given for the thing become extinct, as in case of appropriation and assurance, the usufruct continues in the indemnification matter.

751.

4. Restoration.
a. Duty.

If the usufruct has ceased, the possessor must give back the subject thereof to its owner.

v. Sch. C. § 361.

752.

b. Responsibility.

The owner of the usufruct becomes liable for the destruction and for the depreciation of the thing, in so far as he does not prove that this loss has come without any neglect on his part. Objects used up, whose consumption does not belong to the use, must be compensated for.

He is not required to pay for the depreciation of objects caused by the reasonable use of the thing.

v. Sch. C. § 360, 2. B. G. B. 1041, 1050.

753.

c. Expenditures.

If the owner of a usufruct has made outlays or undertaken charges to which he was not bound, he can demand compensation therefor upon the return, just as a bailee without hire. Improvements made by him for which, however, the owner will furnish no indemnification, he may take away, but he must restore the original condition.

v. Sch. C. § 360, 5. B. G. B. 1078.

754.

5. Lapse of Claims for Compensation.

Claims by an owner for compensation on account of changes or depreciation of the thing, as well as claims of the owner of the usufruct for compensation for outlays or taking away of improvements, lapse after one year from the return of the thing.

v. Sch. C. § 361, 5. B. G. B. 1057.

755.

VI. Definition.
1. Rights of the Usufruct Owner.
a. In General.

The usufruct owner has the right to the possession, the use, and the enjoyment of the thing.[1]

He attends to its administration. In the exercise of this right he must act according to the rules of a careful[2] management.

[1] Sch. C. § 360, 2. B. G. B. 1030, 1068, 1073.
[2] Sch. C. §§ 360, 361. B. G. B. 1036, 1037, 1039, 1040, 1041.

756.

b. Natural Fruits.

Natural fruits belong to the owner of the usufruct if they have ripened during the time of his enjoyment thereof.

Whoever cultivates the field has for his outlay a claim against him who takes the ripe fruit for reasonable compensation, not, however, in excess of the worth of the ripe fruits.

Component parts, which are not periodical additions or profits out of the thing, belong to the owner thereof.

v. notes to § 755.

757.

c. Interest.

Interest on investments, subject to usufruct, and other periodic returns, belong to the owner of the usufruct from the

day when his right begins up to the time when it ceases, even if they do not fall due till later.

Sch. C. § 360, 2.

758.

d. Transferability.

The usufruct can, if it is not a matter of a strictly personal right, be transferred in use to another. The property owner may make his rights effective directly against such transferee.

In German law the right of usufruct cannot be assigned, but the usufructuary may authorize another to exercise the right. v. Sch. C. § 361, note 1.

759.

2. Right of the Property Owner.

a. Oversight.

The owner of the property can make objection to every illegal or unreasonable use of the thing.

v. Sch. C. § 362. B. G. B. 1053.

760.

b. Security.

The owner of the property may demand from the owner of the usufruct security as soon as he can prove an impairment of his rights.

Without this proof, and even before the transfer of the thing, he can demand security if perishable things or securities form the subject of the usufruct.

In case of securities, their deposit suffices for the giving security.

v. Sch. C. 362, 2, 3. B. G. B. 1052, 1054.

761.

c. Security in Case of a Donation and Legal Usufruct.

The claim for security does not lie against him who has given the object to its owner subject to the usufruct.

In case of the legal usufruct the claim stands under the special regulation of the legal relation.

762.

d. Consequences of not Furnishing Security.

If the usufruct owner does not give security within a reasonable fixed time or does not discontinue illegal use of the thing after protest from its owner, the judge shall take away from him possession of the thing until further order, and appoint a curatorship.

v. note to § 760.

763.

3. Duty to Take Inventory.

The property owner and the usufruct owner have the right at any time to demand that an inventory with public authentication shall be taken of the articles, subject to the usufruct at their joint cost.

Sch. C. § 359. B. G. B. 1067.

764.

4. Burdens.
a. Care of the Thing.

The usufruct owner shall keep the subject in its condition and himself undertake any improvements or renewals which belong to its usual maintenance.[1]

If important work or provisions are necessary for the protection of the subject, the usufruct owner must give notice thereof to the owner and allow their execution. If the owner does not lend any assistance, the usufruct owner may provide therefor at the cost of the owner.[2]

[1] Sch. C. § 360, 2. B. G. B. 1041.
[2] Sch. C. § 360, 3, 4. B. G. B. 1042, 1043, 1044.

765.

b. Maintenance and Management.

The usufruct owner bears the expenditures for the ordinary maintenance and management of the thing, the interest for the principal debts charged thereon, as well as the taxes and imposts, in proportion to the length of his rights therein. If the taxes and imposts are paid by the owner of the property, the usufruct owner must refund the same to him in the same proportion. The property owner bears all other charges, but he may, in case the usufruct owner does not voluntarily upon demand furnish the necessary moneys, attach the usufructuary objects.

v. notes to § 764.

766.

c. Duty to Pay Interest in Case of Usufruct in any Property.

If a property is subject to a usufruct, the owner of such usufruct must pay the interest upon the debts against the principal, but he can, where circumstances justify it, demand that he be freed from this obligation to pay interest by having the debts paid out of the property and the usufruct restricted to the balance, the property remaining.

v. notes to § 764.

767.

d. Insurance.

The usufruct owner must insure the subject thereof in favor of the property owner against fire and other perils, in so far as this insurance is counted among the duties of careful management, according to the local conception.

The insurance premiums in this case must be paid by the usufruct owner during the time of his usufruct, as well as whenever a thing already insured falls into the usufruct.

v. notes to § 764.

768.

V. Special Cases.
1. Land.
a. Fruits.

The owner of a usufruct in land must see to it that it is not used beyond the usual measure in the manner of enjoying the usufruct. So far as fruits are raised in excess of this manner, they belong to the property owner.

769.

b. Economical Use.

The owner of a usufruct may not undertake changes, in the economical use of the land, that are of substantial disadvantage to the property owner.

The thing itself may neither be transformed nor materially altered by him.

Such new improvements, as quarries, marlpits, peat-diggings and the like, are allowed him only after previous notice to the property owner, and under the condition that the economical use of the land be not materially changed thereby.

Sch. C. § 362. B. G. B. 1053.

770.

c. Woodland.

If a woodland is the subject of the usufruct, the owner thereof can claim its use only so far as an ordinary plan of management justifies it. The owner of the property, as well as that of the usufruct, can require the observance of a plan of management which does not impair their rights.

If in consequence of a storm, fall of snow, fire, scourge of insects or other reasons, a substantial excess of use occurrs, it shall be gradually reduced or the plan of management be fitted to the new conditions, but the money received for the excessive use shall be capitalized, and shall serve as an adjustment for the later reduction of the use.

v. B. G. B. 1038.

771.

d. Mines.

The regulations as to the usufruct in woodland shall correspondingly apply to the usufruct in subjects whose use consists in the winning of parts of the earth, as, for example, mines.

v. § 769, as to digging. As to mines, in the German law, minerals do not generally belong to the surface owner as such; but mining rights are separately granted by the government, with a separate registry thereof.
v. Sch. C. § 350. B. G. B. 1038.

772.

2. Perishable and Appraised Things.

The owner of the usufruct in perishable things acquires the property therein, when not otherwise agreed, but becomes liable for the value they had at the beginning of the usufruct.

If other movable things are transferred under an appraisement, the owner of the usufruct therein, when not otherwise agreed upon, can freely dispose of them, but becomes liable for their value when he makes use of this right. Compensation can be made in subjects of like kind and value, in case of agricultural arrangements, herds, storehouses and the like.

v. Sch. C. § 359. B. G. B. 1036, 1037, 1041.

773.

3. Claims.
a. Definition.

If a claim is object of an usufruct, the owner thereof can collect its yield.

Notices to the debtor, as well as dispositions of securities, must proceed from the creditor and from the usufruct owner. Notices from the debtor must go to both.

The creditor and usufruct owner have, as against each other, a right to compel consent to the measures required by a careful administration in case of a danger to the claim.

Sch. C. § 360, 6. B. G. B. 1078, 1083.

774.

b. Repayments and Reinvestments.

If the debtor is not authorized to make a repayment to the creditor or the usufruct owner, he must either pay both together or deposit it.

The subject of the performance, as, for example, the principal debt repaid, continues subject to the usufruct. The creditor, as well as the usufruct owner, have a right to the safe and interest-bearing reinvestment of the principal sums.

Sch. C. § 360, 1. B. G. B. 1076 to 1080.

775.

c. Right to Delivery.

The owner of the usufruct has the right, within three months after the beginning of his usufruct, to demand the delivery of the claims or valuable papers, subect to his right of usufruct.

If their delivery follows, he becomes liable to the former creditor for the value thereof at the time of their delivery, and must furnish security in that amount unless such be waived.

The transfer follows, in case of no waiver, only after security is given.

Sch. C. § 360, 1. B. G. B. 1036. But as to instruments payable to bearer, B. G. B. 1081, 1082.

776.

B. Right of Residence.
I. In General.

The right of residence consists in the right to reside in a building or in a part thereof.

It cannot be transferred or inherited. It is governed by the same law as usufructs, in so far as the law does not otherwise provide.

v. Sch. C. § 366. This right of residence, often reserved by the farmer when, too old to work, he transfers his holding to a more active member of his family, or devised by will for the benefit of the widow and minor or unmarried children, is recognized and its exercise quite usual in Germany. It is not, however, separately regulated in the B. G. B., but may be the subject of state legislation. (Intr. Law § 96.)

777.

II. Privileges of Him Entitled Thereto.

The right of residence is in general measured by the personal requirements of him entitled thereto. He may, if the right is not expressly confined to his person, bring his immediate family and servants into the residence. If a right of residence is confined to a part of the house, he who is entitled thereto may also use the arrangements intended for common use.

v. Sch. C. § 364. B. G. B. 1093.

778.

III. Charges.

If an exclusive right of residence belongs to one entitled thereto, he bears all the charges for the usual maintenance. If he has only a right to co-enjoyment, the expenses of maintenance fall upon the owner of the property.

On this point the German law seems *contra*. v. Sch. C. § 370. B. G. B. 1108.

779.

C. Right to Build.

Land can be burdened with the servitude, so that the grantee thereof receives the right to erect a construction, upon or under the surface, or to support it thereon. This right can be transferred or inherited unless otherwise agreed. If the right to build is independent and permanent, it can be entered as an immovable in the Land Register.

This resembles the "heritable building right" of the German law, as to which v. Sch. C. § 349. B. G. B. 1012 to 1017. Law of Land Registry, § 7.

780.

D. Right to Springs.

The right to a spring on another's land burdens the land in which it is with the servitude of drawing and carrying away water therefrom. It can be transferred or inherited unless otherwise agreed. If the said right is independent and permanent, it can be entered as an immovable in the Land Register.

781.

E. Other Servitudes.

Servitudes of other kinds as to land can be created in favor of any person or community, provided these can serve any purpose for anyone in a particular respect, as for the holding of target practice or for a road and footpath. They cannot be transferred unless otherwise agreed, and their nature is determined by the usual requirements of those entitled thereto. Otherwise the law as to servitudes applies to them.

THIRD SECTION — CHARGES ON LAND.

782.

A. Subject.

By a charge on land, the then owner of any land becomes bound to a service to the claimant, for which service the land only is liable. The owner of any other piece of land may become the one entitled thereto. Subject to a rent and the charges of the public law on land, a charge on land can have for its subject only a service, which springs from the economical nature of the land charged therewith, or which is fixed by the economical requirements of the land entitled thereto.

v. Sch. C. § 366. B. G. B. 1105.

783.

B. Creation and Termination.
I. Creation.
1. Entry and Method of Acquisition.

A charge on land is created by entry in the Land Register. Upon entering it, a fixed sum shall be charged as its total value in coin of the land, and, in case of periodically recurring services in default of any other stipulation, twenty times the sum of the yearly service.

The regulations as to land ownership obtain as to the acquisition and entry unless otherwise provided.

v. Sch. C. § 367.

784.

2. Charges on Land by the Public Law.

Public law charges on land require no entry in the Land Register unless otherwise provided.

If the law gives the creditor only a claim for a charge on land, this charge arises only after entry thereof in the Land Register.

785.

3. For Purposes of Security.

If a charge on land is created for the purpose of security for a money claim, it comes under the regulations as to rent.

v. Sch. C. § 372 and note 2.

786.

II. Termination.
1. In General.

A charge on land ends with the cancellation of the entry, as well as with the complete destruction of the land charged therewith.

From a waiver or discharge or other terminating grounds, the one burdened therewith obtains a claim for cancellation of the entry as against the one entitled thereto.

v. Sch. C. § 367.

787.

2. Discharge.
a. By the Creditor.

The one entitled thereto can demand the discharge by payment of the charge on land, according to arrangement and further: (1) If the land charged is parceled out, and thereby the right of the creditor is seriously impaired. (2) If the property owner depreciates the value of the land and offers no other securities as compensation therefor. (3) If the debtor is three years in arrears as to the services.

This seems to apply to the charge, the German law of mortgage. Sch. C. § 388 and citations.

788.

b. By the Debtor.

The debtor can demand the discharge according to agreement and further: (1) If the agreement on which the charge rests, has not been observed by the one entitled thereto. (2) After thirty years' existence of the charge, and that, too, even if a longer term or an irredeemable character be agreed upon.

If the discharge follows upon an existence for thirty years, a notice thereof must be given within the year in all cases. This claim is barred if the charge on land is joined to an irredeemable land servitude.

v. note to § 787.

789.

c. Consideration for Discharge.

The discharge follows upon payment of the amount, entered in the Land Register as the total value of the charge, subject to the right of proof that the charge in reality had a smaller value.

790.

1. Prescription.

The charge on land is not subject to prescription. The single act of service is subject to prescription from the time when it becomes the personal indebtedness of the owner charged therewith.

791.

C. Meaning.
I. Right of the Creditor.

The creditor of the charge on land has no personal claim upon the debtor, but a right only for satisfaction thereof out of the value of the land charged.

The single act of service becomes, however, with the lapse of three years from the time of its falling due, a personal debt for which the land is no longer liable.

Sch. C. § 368. B. G. B. 1108 *contra.*

792.

II. Duty to Pay.

If the land changes owners, the purchaser becomes at once the debtor of the charge.[1] If the land charged is parceled out, the same consequences follow for the charge on land as for the ground rent.[2]

[1] v. Sch. C. § 369.
[2] v. Sch. C. § 370. B. G. B. 1108, 1109.

TWENTY-SECOND TITLE — THE LAND-PLEDGE.

FIRST SECTION — GENERAL PROVISIONS.

793.

A. Prefatory.
I. Kinds.

The pledge of land is effected by,— (1) an entry of security by way of mortgage; (2) a mortgage certificate of indebtedness; or (3) a ground rent.[1]

Other kinds of land pledges cannot be effected.

[1] The code reduces the sixty odd forms of giving land as security for a debt or as security for certain purposes, *e.g.*, the wife's separate estate, guaranty of credit, etc., to three forms. These are based upon the historical development of legal and economical conditions, and are controlled in this result by two considerations:— (1) The personal relations between debtor and creditor with land as the subject of the security given for the claim or indebtedness; and (2) The modern demand of commercial life that land shall be fieely and readily transferable and its value be likewise made a ready asset for the purposes of credit. Specifically:—

(1) *Die Grundpfandverschreibung* is "merely the entry upon the land title register (*Grundbuch*), upon which no document or instrument is issued. Material thereto is that the right to security depends upon the existence of a claim, which is secured thereby. Formally it exists in the entry in the public registers until its cancellation."

This form of pledge serves only the purpose of security. Only an excerpt from the land title register, or a means of proof, is furnished the creditor.

(2) *Der Schuldbrief* is "the pledge of land as security for a personal debt, upon which a document or instrument of pledge is issued, which gives the creditor an assignable right in the land, given in pledge, while a personal relation of indebtedness is connected therewith." It seeks to combine the characteristics of the mortgage and ground rent, with the view of making the instrument issued by the land title registrar more readily usable for the purposes of commercial life, in that it is not only a mortgage in our sense of the word but also a landed security of a definitely ascertained value, safeguarded, too, by an official appraisement of the land, etc.

(3) *Die Gült* is a ground rent — "a charging the land with a creditor's claim for interest and capital, without any personal claim against the debtor and therefore with only a landed security, fixed for the best part of the land value. On the above statement of the origin and nature of the Swiss law, it is evidently needless to attempt any exact reference to other legal systems as to the pledging of land, as it differs from all of them. It is most like the German, as it is included in the registry of land title,

although even on this point there is a notable exception as to the claims of laborers. For the purpose of a general comparison with Roman, German and English law, v. Sch. C. §§ 371 to 391, and v. B. G. B. 1113 and following.

794.

II. Form of the Claim.
1. Amount.

In creating a landed pledge, a definite sum for the claim in lawful coin must be given in all cases. If the amount of the claim is undetermined, a maximum amount shall be given beyond which the land shall not be liable for any demands of the creditor.

This last paragraph would apply especially to the first class of pledges — where security is entered for the wife's separate estate, for credit extended to another, etc.

795.

2. Interest.

The interest obligation can be freely fixed by contract within the limits prescribed against usury.

The cantonal laws can fix the maximum interest, allowable on claims, for which land is pledged.

B. G. B. 246. Sch. C. § 376. B. G. B. 1119.

796.

III. Land.
1. Availability as a Security.

A landed pledge can be created only upon lands entered in the Land Register.[1]

The cantons may permit under prescribed conditions, or forbid the pledging of public land or soil of commons or pastures which may belong to corporations, as well as the rights of members thereof to use such.

[1] This regulation brings debts secured on land into harmony with the registry system.

797.

2. Definiteness.
a. One Parcel of Land.

In case of the creation of a landed pledge the land pledged must be definitely specified.

Parts of a piece of land cannot be pledged so long as its division has not been entered in the Land Register.

"Certainty" means definite entry on the proper land register. Sch. C. § 375. B. G. B. 1114.

798.

b. Several Parcels of Land.

A right to a landed pledge for one debt can be created as against several pieces of land, if they belong to the same owner or are the property of jointly obligated debtors.[1] In all other cases each parcel must be charged with a definite part of the debt, when several parcels of land are pledged for the same debt.[2] This charge is determined by the comparative worth of the parcels, if not otherwise agreed upon.

[1] Sch. C. § 378, 3. B. G. B. 1132.

[2] In German law each parcel is charged with the entire debt, but it may be apportioned by agreement. v. last note above.

799.

B. Creation and Termination.
I. Creation.
1. Entry.

The pledge of land is created by entry thereof in the Land Register, subject to the legal exceptions.

A contract to create a pledge of land requires for its validity the public authentication.

This accords with the general rule of German law. v. Sch. C. § 309. As to pledge of lands, v. Sch. C. § 375 and citations.

800.

2. Community Property.

If a piece of land is owned in common, each owner can pledge his share therein.

If a piece of land is held by joint ownership, it can be pledged jointly only and in the name of all its owners.

v. Sch. C. § 378.

801.

II. Termination.

The pledge of land ceases with the cancellation of the entry, as well as with the complete destruction of the land. The disappearance in consequence of appropriation comes under the law of appropriation of the federal government and the cantons.

802.

III. Land Pledges in Case of United Estates.
1. Shifting of the Rights of Pledge.

In case of estates being united under the co-operation or sanction of public officials, the rights of landed pledges, which fall upon the pieces of land brought together, are to be transferred in the same degree to the land granted for compensation.

If one piece of land takes the place of several parcels, pledged for different obligations, or of which not all are charged therewith, the rights of pledge are laid upon the land in its new dimension, with all possible preservation of their former rank.

German legislation, which began with the Prussian Edict of 1807, abolished the ancient feudal services, and founded the peasant ownership of agricultural land. These peasant holdings are generally quite small, and where in the division of estates one person becomes the holder of several small tracts, they may be lawfully joined into one, the displaced owners receiving the tracts thus vacated with compensation for differences in value of tracts and for other damage actually caused. Similar Swiss law is indicated in this section.

803.

2. Notice by the Debtor.

The debtor may discharge by payment rights of pledge of lands which are united in a mingling of estates at the time of such joinder, provided three months' notice is given.

804.

3. Compensation in Money.

If compensation for pledged lands be given, it is to be distributed among the creditors according to their priority or in case of equal rank according to the amounts of their claims. Such sums may not be paid out to the debtor without the consent of the creditors, if they amount to more than the twentieth part of the principal debts, or if the new land does not offer sufficient security.

805.

C. Effect.
I. Scope of the Obligation.

The right in a landed pledge binds the land including all its parts and appurtenances.

If in the pledging, things are expressly included as appurtenant and so entered in the Land Register, *e.g.*, machinery and hotel equipment, they are treated as appurtenant, so long as it is not set forth that this quality cannot under some legal provision belong to them.

Rights of third persons in appurtenances are reserved.

806.

II. House and Farm Rents.

If the land pledged is leased or rented, the obligation of the pledge extends also to the claims for rent or returns

which accrue from the issuance of an attachment against the land pledged, or from the beginning of bankruptcy proceedings against a debtor up to its attachment.

This obligation is effective as against those liable for rent only after notice is given them of the attachment or the bankruptcy proceeding has been published.

Legal transactions of the owner of the land as to claims for rent or returns not yet accrued, as well as the attachment by other creditors, are not effective as against a pledgee of the land, who may have instituted foreclosure proceedings against pledge before the maturity of the claim for rent.

807.

III. Limitation.

Claims for which a pledge of land is registered are subject to no limitation of time.

808.

IV. Rights to Security.
1. Measures in Case of Impairment of Values.
a. Prohibition and Self-help.

If the property owner impairs the value of the pledged thing, the creditor may have him judicially forbidden any further damaging interference.

The creditor can be empowered by the court to take any appropriate precautions, and can undertake such even without such authority when danger is imminent.

He can demand compensation from the property owner for the cost of such measures, and has for such cost a right of lien on the land without entry in the Land Register, which lien is prior to every lien of record.

809.

b. Security, Restoration, Payment.

If an impairment of value has occurred, the creditors can demand security for his rights from the debtor, or require the restoration of the original conditions. If the peril of an impairment of value threatens, he can demand security.

If the demand is not complied with within the judicially appointed time, the creditor can claim a payment of the debt to such amount as is necessary to put him in a secure position.

810.

2. Innocent Impairments of Value.

Impairments of value which have occurred through no fault of the property owner give the creditor a right to security

or payment only in so far as the property owner is secured against loss. The creditor can, however, take steps to remove or prevent any impairment of value, and has for the cost thereof a right of lien against the land without any claim against the owner and without entry in the Land Register — the lien being prior to every recorded lien.

811.

3. Severance of Small Parcels.

If a part of the land, less in value than the twentieth part of the principal debt, is alienated, the creditor cannot refuse the release of this part from the lien, provided a proportionate payment is offered or the rest of the land offers him ample security.

812.

V. Further Charging.

A waiver by the property owner of the right to place further burdens upon the land pledged is not binding.

If, after the creation of a mortgage right in land, a servitude or charge on land is laid upon the land without the consent of the pledgee thereto, the right of landed pledge is prior to the later burden, and this latter will be extinguished whenever in foreclosure proceedings its existence damages the prior lien creditor.

The owner of the servitude or the charge on land has, however, as against subsequent liens, a claim for the value of his charge, to be satisfied first out of the proceeds.

813.

VI. Priority of Pledges.
1. Effect Thereof.

The security of rights of pledge is confined to the position given it by its entry upon the register. Rights of pledge in lands can be created in a second or any other rank, provided a stated sum is reserved as prior, at the time of entry thereof.

814.

2. Priority of Pledges (Mortgage Entries) Amongst Themselves.

If rights to landed pledges of different ranks are created as against one piece of land, upon the extinguishment of any pledge thereof, no subsequent creditor has any claim to be

moved up to the vacancy. Another landed pledge may be created in the place of the prior canceled pledge.

Contracts between creditors for the advancement of liens are effective as against third persons only when they are noted on the register.

815.

3. Vacant Positions among Pledges.

If a right of landed pledge is created in a subsequent position without any prior pledge existing, if the debtor has not made any disposition as to a prior pledge title, or if such prior claim amounts to less than the entry thereon, then the proceeds of the pledge upon foreclosure shall be distributed to the real lien creditors according to rank without regard to the vacant positions of pledges.

816.

VII. Satisfaction out of the Pledge.

1. Method Thereof.

The creditor has a right to be paid out of the proceeds of land in case his claim be not paid. Any agreement whereby the land pledged shall become the property of the creditor, in case he be not paid, is invalid.

If several pieces of land are pledged for the same debt, the institution of foreclosure proceedings shall be begun against all at the same time, but the foreclosure shall be carried out by order of the execution office only so far as is necessary.

817.

2. Division of the Proceeds.

The proceeds of sale of the land shall be divided among the lien creditors according to their rank. Creditors of the same rank have a right to equal payment among themselves.

818.

3. Scope of the Security.

The right of pledge of lands offers the creditor security, — (1) for the principal debt; (2) for the costs of execution and interest for any delay; (3) for three years' interest due at the time of institution of any bankruptcy proceedings, or of any foreclosure proceedings, and the interest accruing from the last interest day.

The interest originally agreed upon may not be increased beyond five per cent to the disadvantage of subsequent landed lien creditors.

819.

4. Security for Maintenance Expenses.

If the pledgee has made necessary outlays for maintaining the thing pledged, especially has paid insurance premiums incurred by the property owner, he can claim therefor the like security as for his principal debt without entry in the Land Register.

820.

VIII. Right of Lien in Case of Improvement of Soil.
1. Preference.

If a rural piece of land is increased in value by an improvement in soil, accomplished under the co-operation of public officials, the owner thereof can have a right of lien entered in the Land Register for his share of the costs, for the benefit of his creditor, such lien being preferred to all others entered up. If such a soil improvement is accomplished without public subvention, the property owner can have this right of lien entered for at most two-thirds of his expenses.

821.

2. Liquidation of the Debt and the Right of Lien.

If the soil improvement is accomplished without public subvention, the lien debt is extinguished by annuities of at least five per cent of the registered lien debt. The right of lien is extinguished for the claim and for any annuity after lapse of three years from the date of its maturity, and the subsequent lien creditors are advanced accordingly.

822.

IX. Claim for the Amount of Insurance.

Insurance money may be paid to the owner of the insured property only with the consent of all lien creditors.

Upon proper security given, it may, however, be paid to the property owner for the purpose of restoring the pledged property.

Otherwise the cantonal regulations as to fire insurance remain reserved.

823.

X. Representation of the Creditor.

If the name or residence of a landed pledge creditor is unknown, a curator to the creditor may be appointed by the Guardians' Court upon petition of the debtor or others interested in the cases, where the law provides personal action by the creditor, and such is imperatively necessary. The Guardians' Court of the place wherein the pledge is located is competent.

SECOND SECTION — THE ENTRY FOR SECURITY, AGAINST LAND.

824.

A. Purpose and Form.

By entry of security against land, any claim present or future or only a possible one, can be secured by a right of pledge. The land pledged need not be the property of the debtor.

825.

B. Creation and Termination.
I. Creation.

The entry of security against land must be made with a fixed position of lien even for claims of an indefinite or changing amount, and retain the rank according to the entry in the register, regardless of all fluctuations. An excerpt from the Land Register as to any security entered shall be furnished upon request of the creditor, which, however, shall have the character only of a means of proof and not of a security. This means of proof may be replaced by certificate of entry on the article of agreement.

826.

II. Termination.
1. Right to Cancellation.

If the claim has been extinguished, the property owner of the pledged land can demand of the creditor that he permit a cancellation of the entry.

827.

2. Position of the Property Owner.

If the property owner is not the principal debtor, he can obtain a discharge of the right of lien under the same conditions under which the debtor may obtain an extinguishment of the claim. If he pays the debt, he is subrogated to the rights of the creditor.

828.

3. Unilateral Discharge.
a. Conditions and Enforcement.

The cantonal law can empower the purchaser of land, who is not personally responsible for the debts charged there against (provided no attachment has issued), to discharge the rights of lien thereon, if they exceed the value of the land, by his paying to the creditors the purchase price or, in case of acquisition without consideration, the amount at which he values

the land. He must give the creditors six months' notice of the intended discharge. The consideration for the discharge shall be divided among the creditors according to their rank.

829.

b. Public Auction.

In case of such discharge creditors have the right, within a month's time after notice from the purchaser, to demand a public auction of the thing pledged, security first being given for the costs; such sale to be had after due public notice within a month's time after such is demanded.

If a higher price is thereby obtained, then this shall be the amount of the discharge money. The costs of the auction shall be borne by the purchaser in case of its bringing a higher price; otherwise the creditor, who demands it, shall bear them.

830.

c. Official Valuation.

The cantonal law can provide in place of the public auction an official valuation, whose amount shall be the discharge price.

831.

4. Notice of the Claim.

Notice of the claim by the creditor is effective as against the owner of the thing pledged, not the debtor, only if notice thereof has been given to debtor and property owner.

832.

C. Effect.
I. Property and Indebtedness.
1. Alienation.

If land, against which there is an entry for security, is alienated, the liability of the liened land and of the debtor remain unchanged if it is not otherwise agreed.

If, however, the new property owner has assumed the liability for the principal debt, the former debtor becomes freed if the creditor has not within a year's time declared in writing his intention to hold him liable.

833.

2. Subdivision of the Land.

If a part of the mortgaged land, or one of several such pieces of land of the same owner, is alienated, and the mortgaged property is subdivided, the liability, in default of other

arrangement, is to be apportioned in such way that each part is charged according to its value. If a creditor will not accept this apportionment, he can, within a month's time after it has become operative, demand that his claim be paid off within a year. If the purchasers have assumed the liability for the liens charged upon their pieces of land, the former debtor becomes free, provided the creditor does not in writing within a year's time declare his intention to hold him.

834.

3. Notice of the Assumption of the Debt.

The Land Registrar must give the creditor notice of the assumption of the debt by the purchaser.

The limitation of a year for the declaration by the creditor runs from the time of this notice.

835.

II. Transfer of the Claim.

The transfer of the claim for which an entry of security is made requires for its validity no entry in the Land Register.

836.

D. Lien by Operation of Law.
I. Without Registry Entry (Unrecorded).

The legal rights of lien on lands, created by virtue of the cantonal law for public law liabilities or other relations affecting landowners generally, require no entry in the registry unless otherwise ordered.

837.

II. With Registry Entry (Recorded).
1. Cases.

The right to lien on land by operation of law exists, — (1) for the vendor's unpaid purchase money; (2) for the claims of the co-heirs and co-parceners on partition of lands belonging to the community; (3) for the claims of laborers or contractors who have furnished materials and labor or labor only for buildings or other constructions upon a piece of land, against this land, whether they hold the landowner or a contractor as the debtor. The one entitled thereto cannot in advance renounce his right to such rights of lien against land by operation of law.

838.

2. Vendor, Co-heir and Co-parceners.

The entry of the right of lien of the vendor, the co-heirs, or co-parceners, must follow at the latest three months after the transfer of the property.

839.

3. Laborers and Contractors.
a. Entry.

The right of lien of laborers and contractors can be entered on the land title registry from the time when they become bound to furnish the work.

The entry must be made not later than three months after completing the work.

It may be made only when the claim is acknowledged by the property owner, or is judicially determined and cannot be demanded if the property owner offers sufficient security for the claim made.

840.

b. Rank.

If several liens by operation of law, of laborers or contractors, are entered up, they have as between themselves an equal right to satisfaction out of the pledge, even though they are of different dates.

841.

c. Preference.

If claims of laborers and contractors suffer a loss by reason of the attachment of the pledge, the deficiency is to be made up out of the share of prior pledge creditors in excess of the value of the land itself, provided the land has been burdened by their rights of lien in an appreciable way to the disadvantage of the laborers and contractors.

If a prior lien creditor has transferred his title to a lien, he must furnish the laborers and contractors compensation for that which has been thereby taken away from them.

As soon as the commencement of the work has been noted in the Land Register upon notice from one entitled thereto, rights of lien may only be entered up as entries of security against the land until the time for entry has expired.

THIRD SECTION — (SCHULDBRIEF) MORTGAGE CERTIFICATE AND GROUND RENT — (GÜLT).

842.

A. Mortgage.
I. Purpose and Form.

A personal claim is established by a mortgage-certificate secured by pledge of land.

843.

II. Valuation.

The cantonal law can provide an official valuation of the land for the parties in the execution of a mortgage, or generally prescribe it.

It can prescribe that mortgages may be given only up to the amount of the valuation or up to a portion of that valuation.

844.

III. Termination upon Notice.

The mortgage can, when not otherwise provided, be terminated only upon six months' notice by the creditor or debtor, and upon the usual interest days. The cantonal law can prescribe limiting regulations as to the termination upon notice of mortgages.

845.

IV. Position of Property Owner.

The position of the property owner of the thing pledged who is not the debtor is determined by the provisions as to entry of a security against land.

The defenses of the debtor in case of a mortgage run in favor also of the property owner.

846.

V. Alienation, Subdivision.

The regulations as to entry of security against land obtain also for the consequences of alienation or subdivision of the land.

847.

B. Ground Rent.
I. Purpose and Form.

By the ground rent a claim as a landed charge is laid upon a piece of land. It can be created only as against agricultural

lands, dwellings and building lots. The claim stands without any personal liability on the part of the debtor, and the ground of indebtedness is not assigned.

848.

II. Extent of Charge.

A ground rent can be charged upon rural lands up to two-thirds of the rental value of the land increased by one-half of the value of the buildings. A ground rent can be charged upon urban land up to three-fifths of the average rental value on the one side and the value of the land and buildings on the other side, taken together. These values are fixed by an official appraisement, to be regulated by the cantonal law.

849.

III. Responsibility of the State.

The cantons are responsible for the use of all necessary care in the appraisement. They have a right of recourse against offending officials.

850.

IV. Redeemability.

The property owner of a piece of land subject to a ground rent has the right, at the end of a period of six years, — a year's notice of such intention having been given — to demand a discharge of such ground rent, even if the contract has made it irredeemable for a longer time.

The ground rent creditor can discharge the claim for a ground rent only in the cases provided by law.

851.

V. Obligation and Property.

The ground rent lies against the owner of the burdened land. A purchaser of the land becomes, under a discharge of the former owner, the debtor of the ground rent claim without further action. The rents due become personal charges as soon as the land is no longer responsible for it.

852.

VI. Subdivision.

In case of subdivision of land charged with a ground rent, the owners of the several parcels become the rent debtors.

Otherwise the shifting of the claim upon the parcels follows a like procedure as is provided for an entry of security. In case of payment the creditor must give a year's notice thereof within the month after the shifting has become effective.

853.

VII. Cantonal and Hereditary Ground Rents.

The special legal provisions are reserved for ground rents created under the cantonal law, especially regarding the limitations on interest and the definition of the position of the pledge, as well as hereditary rents.

Cf. 624.

854.

C. Common Regulations.
I. Creation.
1. Form of the Claim.

A mortgage and a ground rent may not include a condition or a counter-service.

855.

2. Relation to Original Claim.

With the execution of a mortgage or creation of a ground rent, the relation of debtor and creditor, lying at the base of their creation, is extinguished by a novation. Any other arrangement is effective only between the parties thereto, as well as against third persons who do not act in good faith.

856.

3. Entry and Pledge Title.
a. Necessity of the Title to Pledge.

In the execution of a mortgage or a ground rent, a pledge title shall always be furnished in addition to the entry into the Land Register.

The entry in the registry makes the mortgage or ground rent effective before the pledge title to the pledge is issued.

857.

b. Furnishing the Pledge Title.

Mortgage and ground rent titles shall be certified by the registrar of the Land Register. They require the signature of such registrar and an official or office designated by the cantonal law.

They may be delivered to the creditor or his agent only with the express consent of the debtor and owner of the burdened land.

858.

c. Form of the Pledge Title.

The forms of the mortgage and the ground rent shall be fixed by ordinance of the Federal Council.

859.

4. Designation of the Creditor.

a. Upon Delivery.

As creditor of the mortgage, as of the ground rent, a certain person or the holder may be designated.

The landowner himself may be designated as creditor of the pledge of his own land.

860.

b. With Power of Attorney.

In case of the execution of a mortgage or a ground rent, an attorney-in-fact can be appointed to make and receive payments, accept service of notices, execute releases from pledge, and in general to preserve the rights of creditors as well as the debtor and the property owner with all care and impartiality. The name of such attorney is to be noted in the land title registry and upon the pledge title.

If the power of attorney falls, the judge shall adopt the necessary measures, if the parties cannot agree.

861.

5. Place of Payment.

If the pledge title does not otherwise provide, the debtor shall make all payments at the place of residence of the creditor and that, too, even when the title runs in favor of the holder. If the creditor's place of residence is not known, or is changed to the disadvantage of the debtor, he can acquit himself by deposit with the proper official at the proper residence or former residence of the creditor. If interest coupons are added to the title, the payment of interest is to be made only to the holder of the coupon.

862.

6. Payment after Transfer of the Claim.

Upon the claim's being transferred, the debtor can, so long as no notice is given him, pay interest and annuities, for which no coupons are outstanding, to the former creditor, even if the title runs in favor of the holder. The payment of the principal or an instalment thereof, on the contrary, he can effectively make in all cases only to him who appears to be the creditor at the time of the payment.

863.

If no creditor appears, or if he renounces his right to the pledge, the debtor has the choice of canceling the entry in the Land Register, or allowing it to stand. He may make the pledge title effective for a further time.

II. Termination.
1. Disappearance of Creditor.

864.

A mortgage or ground rent may not be canceled on the Land Register before the pledge title is invalidated or has been judicially declared without force.

2. Cancellation.

865.

A claim upon a mortgage or a ground rent gives everyone a right according to the entry, provided he has relied in good faith upon the land title registry.

III. Rights of Creditor.
1. Shield of Good Faith.
a. By Reason of the Entry.

866.

The pledge title, correct in form as mortgage or ground rent, gives everyone a right according to its tenor, provided he in good faith has relied upon its authentication.

b. By Reason of the Pledge Title.

867.

If the terms of a mortgage or a ground rent do not correspond to the entry, or an entry does not appear, then the Land Register controls. The purchaser in good faith of the title has, nevertheless, a claim for compensation for any damage, according to the provisions as to the Land Register.

c. Relation of the Title to the Entry.

868.

The claim upon a mortgage or ground rent can, as well when the title runs in favor of a specified name as when it runs in favor of the holder, be alienated, pledged, or in general made effective only in connection with the possession of the pledge title.

The making effective of claims is reserved in those cases where the invalidity of the title has been declared or a title not yet issued.

2. Making Effective.

869.

3. Transfer.

The transfer of the claim upon a mortgage or ground rent requires in all cases the delivery of the pledge title to the purchaser.

If the title runs in favor of a certain name it requires likewise the notation of the transfer upon the title, with addition of the purchaser's name.

870.

IV. Declaring Invalid.
1. In Case of Loss.

If a pledge title or interest coupon has been lost or unintentionally destroyed, it may be judicially declared of no force and the debtor obligated to payment thereof, or a new title or coupon may be furnished for the claim not yet due.

The declaration of invalidity is effected by public notice for a year in accordance with the provisions as to the amortization of paper payable to bearer. Likewise, the debtor may demand the declaration of invalidity if a paid-off title has become lost.

871.

2. Summons of the Creditor.

If a creditor of a mortgage or a ground rent is unknown for ten years, and during this time no interest is demanded, the owner of the land pledged can demand that the creditor may be summoned to declare himself, according to the provisions as to the declaration of disappearance.

If the creditor does not declare himself, and the investigation shows the great probability that the claim no longer exists of right, the title shall be judicially declared of no force, and the position of pledge free.

872.

V. Objections of the Debtor.

The debtor can make only such defenses as relate to the entry or its authentication, or belong to him personally, as against the creditor laying the claim.

873.

VI. Delivery of the Pledge Title upon Payment.

The creditor must deliver to the debtor upon his request in case of full payment the uncanceled pledge title.

874.

VII. Changes in Legal Relations.

If the legal status suffers any change, as, for example, part payment of the indebtedness, reduction thereof, or release of the pledge, the debtor has the right to have it entered upon the Land Register.

The Land Registrar shall note this change upon the title.

Without this entry every purchaser in good faith of the title can avoid the effect of the change of legal status for himself, with exception of payments made with the annuities provided in the title.

FOURTH SECTION — ISSUE OF LOAN CERTIFICATES WITH RIGHT OF PLEDGE IN LANDS.

875.

A. Obligations for Loans with Right of Pledge.

Obligations of indebtedness running in favor of the name of the creditor or the holder may be secured by a pledge of land, — (1) by execution of an entry of security against land or a mortgage for the whole loan and the designation of an agent for the creditors and the debtor; (2) by execution of a security bond for the whole loan in favor of the place of issue and the fixing of a right of security in such for the obligation creditors.

876.

B. Delivery of Mortgages and Ground Rents in Series.

I. In General.

Mortgages and ground rents delivered in series come under the general law of mortgages and ground rents with the exception of the following provisions.

877.

II. Form.

The certificates run in a hundred francs or multiples thereof. All certificates of a series bear successive numbers and have the same form.

If the certificates are not issued by the owner of the land himself, the place of issue must be fixed as the agent of the creditor and debtor.

878.

III. Amortization.

A sum may be added to the interest payment due from the debtor for the gradual liquidation of the series.

The yearly sinking fund payment must correspond to a certain number of certificates.

879.

IV. Entry.

The certificate shall be entered in the Land Register with an entry for the whole loan and the addition of the number of certificates.

By way of exception in case of a small number of titles, each certificate may be entered.

880.

V. Effect.
1. Place of Issue.

The bureau of issue can, even where it is named as agent. undertake no changes in the conditions of pledge which are not reserved at the time of issue.

881.

2. Repayment.
a. Plan of Liquidation.

The repayment of the certificate is effected according to the plan of liquidation, fixed at the time of issue or by the bureau of issue under a letter of attorney received at the time of issue.

If a certificate is repaid, its amount shall be paid to the creditor and the certificate canceled.

A cancellation of the entry, when not otherwise agreed upon, may be made only after the debtor has fully complied with the covenants in the entry, and has delivered up the certificate with its coupons or deposited a sufficient sum for the coupons not yet presented.

882.

b. Supervision.

The owner or the bureau of issue, must make payments according to the plan of liquidation and cancel the paid off certificates.

In case of ground rents the cantons must cause the payments and cancellations officially to be supervised.

883.

c. Disposition of Repayments.

Repayments are in all cases to be applied at the next redemption to the liquidation of the pledge titles or certificates.

TWENTY-THIRD TITLE — PLEDGE OF MOVABLES.

FIRST SECTION — PLEDGE OF HAND (FAUSTPFAND) AND RIGHT OF RETENTION.

884.

A. Pledge of Hand.
I. Creation.
1. Possession of the Creditor.

Movables can, where the law makes no exception, be pledged only by transferring the possession of the pledged article to the pledgee.

The receiver in good faith of the article pledged acquires the right of pledge in so far as rights do not exist in favor of third persons by reason of a former possession, even if the pledgor did not have the right to dispose of the thing. The right of pledge does not arise so long as the pledgor retains exclusive control over the thing.

v. Sch. C. §§ 392, 394 and citations.

885.

2. Pledge of Cattle.

For the security of claims of banking institutions and associations, which are authorized by the proper official of their proper canton to transact such business, a right of pledge in cattle can be created without a transfer of the possession by an entry in a record of obligations and notice to the execution office.

An ordinance of the Federal Council shall fix the details of keeping the record as well as the fees.

The cantons determine the districts in which records shall be kept and the officials to be charged with their keeping.

No such exception as to cattle is mentioned in the German code; but a pledge can be given or registered ships by a bottomry bond. C. of Comm. 679, which seems to be the principal German exception to the general rule. See also Sch. C. § 392, and note 1 to same.

886.

3. Successive Pledging.

A succeeding pledge of hand is created by giving the pledgee of hand notice and directions to give the pledge over to the succeeding creditor as his claim is paid.

887.

4. Pledging by the Pledgee.

The creditor can further pledge the article of pledge, only with the consent of the pledgor.

888.

II. Termination.
1. Loss of Possession.

The right of pledge of hand ceases as soon as the creditor loses possession of the article of pledge and cannot demand it back from the third possessors. It has no effect if the pledge with the consent of the creditor remains in the exclusive control of the pledgor.

v. Sch. C. § 406, 1. B. G. B. 1253.

889.

2. Duty to Return.

If the right of pledge in consequence of the extinction of the claim or for any other reason has ended, the creditor shall return the article of pledge to its owner. Until he is fully satisfied, he is not bound to return the pledge in whole or in part.

v. Sch. C. § 399, 6. B. G. B. 1223.

890.

3. Liability of the Creditor.

The creditor is liable for any damage arising out of a depreciation in value or destruction of the thing pledged, provided he cannot prove that this happened without his fault.

If the creditor has wilfully alienated the pledge, or in turn pledged it, he is liable for all damage occasioned thereby.

v. Sch. C. § 399, 1. B. G. B. 1215.

891.

III. Effect.
1. Rights of the Creditor.

The creditor has, in case of nonpayment of his claim a right to pay himself out of the proceeds of the sale of the pledge.

The right of pledge gives him security for his claim, including the interest contracted for the costs of collection, and the interest for the delay.

v. Sch. C. § 403 and citations.

892.

2. Extent of Liability.

The right of pledge attaches to the thing pledged, including its appurtenances. The creditor shall, if not otherwise agreed, deliver to the owner the natural fruits of the thing pledged as soon as they cease to be a component part of the thing. Fruits, at the time of realization upon the pledge still a part thereof, are subject to the pledge.

Sch. C. § 397. B. G. B. 1212.

893.

3. Order of Rights of Pledge.

If several rights of pledge attach to the same thing, the creditors shall be satisfied in their order.

The order of these rights of pledge is fixed by the time of their creation.

Sch. C. § 394.

894.

4. Contract for Forfeiture.

Every agreement, whereby the thing pledged shall be forfeited to the creditor in case he is not repaid, is invalid.

Sch. C. § 392. B. G. B. 1229.

895.

B. Right of Retention.
I. Prefatory.

The creditor has the right to retain movable things and securities in his possession, with the consent of the debtor, until the satisfaction of his claim, if the claim is due, and according to its nature the claim stands in conjunction with the object of the retention. Among merchants this conjunction arises as soon as the possession as well as the claim originate from their regular business.

The creditor has the right of retention, provided no rights exist in favor of third persons, from former possession, even if the thing, which he has received in good faith, does not belong to the debtor.

Sch. C. § 4060, 3. B. G. B. 1204.

896.

II. Exceptions.

The right of retention cannot be exercised over things whose nature does not permit a realization upon them.

Likewise the right is barred if an obligation assumed by the creditor, or a direction, communicated by the debtor before or at the transfer of the thing, or the public regulation opposes it.

897.

III. Upon Insolvency.

In case of insolvency of the debtor, the creditor has the right of retention even if his claim be not due. If the insolvency has occurred or become known to the creditor after the delivery of the thing, he can exercise his right of retention, even if an obligation before assumed by him, or a special direction of the debtor, opposes it.

898.

IV. Effect.

If the debtor fails to meet his obligation, the creditor can, if he has not been sufficiently secured, realize upon the thing retained after previous notice to the debtor, as in the case of a pledge of hand.

In case of realization upon bonds issued, the official for attachment or bankruptcy has to undertake the necessary measures, in place of the debtor.

Sch. C. § 403.

SECOND SECTION—RIGHT OF PLEDGE IN CLAIMS AND OTHER RIGHTS.

899.

A. In General.

Choses in action and other rights can be pledged if they are transferable. Right of pledge in them comes under the provisions as to pledge of hand, if not otherwise ordered.

Sch. C. § 400 and citations.

900.

B. Creation.
I. In Case of Claims with or without an Evidence of Indebtedness.

To pledge a claim, for which no instrument or only a certificate of indebtedness exists, the written draft of the contract of pledge is required and the delivery of the certificate of indebtedness, such existing. The pledge creditor and the pledgor can notify the debtor of the pledge.

In the pledge of other rights there is required in addition to the written pledge contract the observance of the form provided for the transfer.

901.

II. In Case of Securities.

In case of securities (payable) to holder, the transfer thereof to the pledgee suffices for the act of pledge. In case of other securities, the delivery of the instrument is required in connection with an endorsement or an assignment.

902.

III. In Case of Receipts for Goods.

If there exist receipts for goods, which they represent, a right of pledge in the goods is created by a pledge of the receipts.

If there exists in addition to a receipt for goods a special certificate of pledge (warrant) the pledge of such certificate is enough to create the pledge as soon as the pledge, with the amount of the debt and day when due, is endorsed upon such receipt.

903.

IV. Subsequent Pledge.

A subsequent right of pledge of a claim is valid only if the prior pledge creditor is notified in writing by the creditor of the claim or by the subsequent pledge creditor of the subsequent pledge.

904.

C. Effect.
I. Extent of Lien.

In a right of pledge of an interest-bearing claim, or of a claim with other periodically recurring secondary returns as dividends, only the current rights are pledged, if not otherwise agreed upon, and the creditor has no right to overdue returns.

If, however, there are special instruments for such secondary rights, these are considered to be included in the pledge, if not otherwise agreed, only in so far as the right of pledge in them is formally created.

Sch. C. § 397. B. G. B. 1293.

905.

II. Representation of Pledged Shares.

Pledged shares of stock shall be represented in the meetings of stockholders by the shareholders and not by the pledge creditors.

906.

III. Administration and Repayment.

If careful management requires the notification and collection of the claim put in pledge, the creditor thereof may proceed to it and the pledge creditor may demand that it be proceeded with.

The debtor, as soon as he is notified of the pledge, may make payments to the one only with the consent of the other.

If this fails, he shall deposit the amount of the debt.

THIRD SECTION — THE PAWN PLEDGE.

907.

A. Pawn Shop.
I. Grant of Right to the Business.

To follow the pawnbroking business, one must obtain the permission of the cantonal authorities.

The cantons can provide that this permission shall be given only to public institutions of the canton or the communes, or to undertakings of general utility (*gemeinnützige Unternehmungen*).

The cantons can require fees from the institutions.

908.

II. Term.

The permission shall be given to private places only for a stipulated time, but it can be renewed.

It can be revoked at any time if the place does not observe the regulations to which its business is subject.

909.

B. Right of Pawn Pledge.
I. Creation.

The pawn pledge is based upon the delivery of the object of pledge to the pawn shop and the giving of a pawn ticket therefor.

910.

II. Effect.
1. Sale of the Pledge.

If the pledge is not redeemed at the stipulated time, the pawn shop can, after previous public notice to redeem, have

the object of pawn sold officially. A personal claim cannot be enforced by the pawn shop.

911.

2. Right to Surplus.

If a surplus arises out of the proceeds of the sale over the amount of the pawn, the proper person may demand its surrender to him.

Several claims against the same debtor may be considered as a whole in computing the surplus.

The right to the surplus lapses in five years after the sale of the thing.

912.

III. Redemption of the Pledge.
1. Right to Redeem.

The pledge can be redeemed by him entitled thereto upon surrender of the pawn ticket so long as a sale has not been had. If he cannot produce the ticket, he is entitled to redeem the pledge after maturity of the claim if he can prove his right. This right belongs to the one entitled thereto after the lapse of six months after maturity, even if the institution has expressly reserved the right to require the surrender of the ticket before redemption.

913.

2. Rights of the Pawn Shop.

The pawn shop is entitled upon each redemption to demand interest for the whole of the current month. If the pawn shop has expressly reserved the right to give up the pledge to anyone upon surrender of the ticket, it is entitled to do this so long as it does not know nor should know that the holder of the ticket has come into possession of it in a dishonest way.

914.

C. Purchase with Right of Repurchase Given.

The business of buying things from the public, with the right in the seller to buy back (within a certain time at a higher price), is put in the same class as pawnbroking.

915.

D. Regulation of the Business.

The cantons can prescribe detailed provisions for the regulation of the pawnbroking business.

These provisions require the approval of the Federal Council to be valid.

FOURTH SECTION — CERTIFICATES OF PLEDGE.

916.

A. Meaning.

Institutions designated by the proper cantonal official for dealing in land pledges can issue certificates of pledge, with a right of pledge in the titles of land pledges to them, and in other claims arising in the course of their regular business, without there being required a special contract of pledge and the delivery of the title to the pledge and the documents.

The *Pfandbriefe* seem to correspond to our mortgage trust certificates, issued by many trust companies, giving the holders the security of mortgages held in trust by the company for its certificate holders, and a guaranty by the company to maintain intact a fund of mortgages at all times somewhat more in amount than the certificates outstanding.

917.

B. Form.

The certificates of pledge are for the creditor uncallable.

They are issued to the holder or to an owner and provided with interest coupons payable to bearer.

918.

C. Authorization for Issue Thereof.

Institutions which would issue certificates of pledge require therefor a special authorization from the proper official.

Federal legislation shall determine the conditions under which the issue of certificate of pledge may be made, and prescribe detailed provisions as to the management of such institutions.

Until the federal order goes into force, the power over this regulation belongs to the cantons.

THIRD DIVISION — POSSESSION AND THE LAND REGISTER.

TWENTY-FOURTH TITLE — POSSESSION.

919.

A. Definition and Kinds.
I. Definition.

Whoever has the actual power over a thing is its possessor. In the case of land servitudes and landed charges, the actual exercise of the right is equivalent to its possession.

Sch. § 311, 312. B. G. B. 854.

920.

II. Independent and Dependent Possession.

If a possessor has transferred the thing to another to a limited real right or a personal right, both are possessors. Whoever possesses a thing as property owner has an independent possession, and the other a dependent possession.

Sch. § 311, 2. B. G. B. 868.

921.

III. Temporary Interruption.

A hindrance temporary in its nature, or neglect to exercise the actual power, does not terminate the possession.

Sch. § 313. B. G. B. 856.

922.

B. Transfer.
I. Between Persons Present.

Possession is transferred by the delivery of the thing itself, or the means which procure the assignee the power over the thing. The transfer is complete as soon as the vendee with the consent of the former possessor finds himself in the position of being able to exercise power over the thing.

Sch. § 312. B. G. B. 854.

923.

II. Between Persons not Present.

If a transfer is made between persons not present, the transfer is complete upon the delivery of the thing to the vendee or his representative.

v. note to § 922.

924.

III. Without Delivery.

Possession of a thing can be acquired without delivery if a third person, or the vendor himself by reason of a special legal relation, remains in possession of the thing. As against the third person this transfer of possession is effective only from the time when the vendor has given him notice thereof.

The third person can refuse delivery to the vendee for the same reason for which he could have refused it to the vendor.

Sch. § 312.

925.

IV. In Case of Receipts for Goods.

If receipts are given for goods delivered to a freighter or a storage house to represent the goods, the transfer of such an instrument is equivalent to a transfer of the goods themselves.

If, however, a receiver in good faith of the goods stands opposed to a receiver in good faith of the receipt for goods, then the former has a preference over the latter.

Sch. § 312.

926.

C. Significance.
I. Protection of Possession.
1. Self-help.

Every possessor may resist forbidden arbitrary power with force. He may, if the thing be taken from him secretly or with force, at once seize the land by expelling the offender and take away the movable thing from the offender caught in the act and directly pursued. He must, however, refrain from any force not justified by the circumstances.

Sch. § 315. B. G. B. 858, 859.

927.

2. Action for Deprivation of Possession.

Whoever has deprived another of a thing through forbidden arbitrary power is obliged to give it back even if he claims a better right to the thing.

If the defendant at once establishes his better right, and by reason of the same the thing could be again demanded of the complainant, he can refuse the return thereof. The action lies for return of the thing and compensation for damages.

Sch. § 315. B. G. B. 1007.

928.

3. Action for Disturbance of Possession.

If the possession is disturbed by any forbidden arbitrary power, the possessor can make complaint against the disturber even if he claims to have a right. The action lies for the removal of the disturbance cessation from further disturbance and compensation for damages.

Sch. § 315. B. G. B. 862.

929.

4. Jurisdiction over and Limitation of the Action.

The action for forbidden interference is admissible only when the possessor demands the thing back and demands the ending of the disturbance at once, after the interference and the offender become known to him.

The action lapses after the running of a year, beginning with the deprivation or interference, even though the possessor has obtained knowledge of the attack and the offender later for the first time.

Sch. § 315. B. G. B. 864.

930.

II. Protection of the Right.
1. Presumption of Property.

It will be presumed of the possessor of a movable thing that he is its owner.

For every former possessor the presumption stands that he during the time of his possession was the owner of the thing.

931.

2. Presumption in Case of Dependent Possession.

If anyone is in possession of a movable thing, without wishing to be its owner, he can invoke the presumption of ownership thereof in favor of him from whom he received it in good faith. If anyone is in possession of a movable thing under claim of a limited real or personal right, the existence of this right will be presumed, but he cannot invoke this presumption as against him from whom he received the thing.

932.

3. Action against the Possessor.

The possessor of a movable thing can invoke the presumption in favor of his better right as against any suit, under a reservation of the provisions as to wilful deprivation of or interference with that possession.

933.

4. Right of Disposition and Reclaiming.
a. In Case of Bailed Things.

Whoever receives a movable thing in good faith as his property, or transferred under a limited real right, shall be protected in his acquisition even if it was bailed to the alienor without any authority to transfer it.

934.

b. In Case of Lost Things.

The possessor, from whom a movable thing has been stolen or been lost by him or otherwise got out of his possession against his will, can demand it from any receiver thereof within five years. If the thing has been sold at public auction or transferred in a market or by a merchant who deals in goods of that kind, it can be demanded from the first and each later receiver, taking it in good faith, only upon making good to him the price paid by him.

The re-delivery is effected otherwise in accordance with the provisions as to claims against possessors acting in good faith.

v. Sch. § 307. B. G. B. 965, 977.

935.

c. In Case of Money and Securities to Holder.

Money and securities payable to holder cannot be demanded back from a receiver of them in good faith, even if they have gotten away from the possessor against his will.

Sch. §§ 312, 316.

936.

d. In Case of Bad Faith.

Whoever has not acquired possession of a movable thing in good faith can be called upon by the former possessor at any time to give it up. If, however, the former possessor has also not acquired it in good faith, then he cannot reclaim the thing from a later possessor.

Sch. § 315. B. G. B. 1007.

937.

5. Presumption in Case of Realty.

In respect to pieces of land entered in the Land Register, a presumption of right arises and an action for possession for him only whose entry appears. Anyone, however, who has the actual power over the piece of land, can lay his complaint for a wilful deprivation of or interference with his possession.

Sch. § 320. B. G. B. 891.

938.

III. Responsibility.
1. Possessor in Good Faith.
a. Use.

Anyone in possession of a thing in good faith does not become responsible for compensation to the one entitled thereto by reason of the fact that he used and enjoyed the thing according to his presumed right.

He need not replace what is thereby consumed or has been damaged.

Sch. §§ 31, 6, 339. B. G. B. 987, 988, 993.

939.

b. Claim for Compensation.

If the one lawfully entitled thereto demands the return of the thing, the possessor in good faith can demand compensation for his necessary and useful outlays and can refuse the return thereof until such compensation has been made.

For other expenditures he can demand no compensation, but he may, if such be not tendered him, take away what he has expended before giving back the thing, provided this can be done without damage to the thing itself. Fruits gathered by the possessor are to be set off against the claims for expenditures.

940.

2. Possessor in Bad Faith.

One who is in possession of a thing in bad faith must give it up to him lawfully entitled thereto, and must pay compensation for all damages caused by the deprivation of possession as well as for the fruits gathered or neglected.

He has a claim for expenditures only if such would have been necessary for the one lawful owner.

So long as the possessor does not know to whom he shall return the thing, he is liable only for the damage which he is responsible for.

Sch. § 315 and citations.

941.

IV. Prescription.

The one entitled to prescription may avail himself of the possession of his predecessor in so far as his possession has been useful to the prescription.

TWENTY-FIFTH TITLE — THE LAND REGISTER.

942.

A. Creation.
I. Form.
1. In General.

A Land Register shall be kept of rights in and to land or immovables.

The Land Register consists of the main book and the surveys completing the main book, lists of immovable estates, deeds, descriptions of immovable estates, and the day book.

v. on the subject of the land registry (*Grundbuch*), Sch. §§ 317–321. This subject in the German law is only slightly touched upon in the Civil Code: the subject is principally regulated in the Land Registration Act (*Grundbuchordnung*) of 24th March, 1897, which is based largely on Prussian law.

943.

2. Admission.
a. Subject.

As realty there shall be admitted to the Land Register,— (1) immovable estates; (2) independent and permanent rights in realty; (3) mines.

As to the form of admission of independent and permanent rights and mines, a regulation of the Federal Council shall fix the details.

944.

b. Exceptions.

Realty, not private property, and such as serves the public use, shall be admitted to the Land Register only when real rights therein shall be brought for entry or the cantons prescribe their admission.

If a piece of ground, admitted to the register has been changed to such as is not admissible, it shall be excluded from the Land Register.

A special Land Register shall be reserved for railroads serving the public commerce.

945.

3. Books.
a. Main Book.

Each piece of realty shall receive its own leaf and number in the main book..

The procedure to be followed in case of the division of a piece of land, or the joining of several, shall be fixed by a regulation of the Federal Council.

946.

b. The Leaves of the Register.

Upon each leaf shall be entered in separate sections, — (1) the property; (2) servitudes and charges on land, fastened thereupon or resting thereon; (3) rights of pledge with which it may be charged. Appurtenances, upon request of the property owner, shall be noted thereon and may, if this is done, be stricken out only with the consent of all parties interested, as appear in the register.

947.

c. Collective Leaves.

With the consent of the owner several pieces of land can be placed on one single page even if they be not connected with one another.

The entries upon this leaf hold for all the pieces alike, with the exception of servitudes. The owner can at any time demand the separation of several pieces upon a collective leaf, under a reservation of all existing rights therein.

948.

d. Day Book, Deeds.

Presentations for entry in the Land Register shall be recorded without delay in the day book, according to their order in point of time, together with the name of the person presenting them and their requests. Deeds filed for entry in the Land Register shall be arranged in an orderly way and preserved.

In the cantons, which allow the Registrar of the Land Register to give out an authentication thereof, an evidentiary protocol takes the place of the deeds, and the recovering thereof provides the public authentication.

949.

4. Regulations.

The Federal Council fixes the rules for keeping the Land Register, promulgates the necessary regulations, and can, for the proper administration of such registry system, prescribe the keeping of subsidiary registers.

The cantons are authorized to enact special regulations as to the entry of real rights in land, which remain under the cantonal law, which regulations, however, require the sanction of the Federal Council to be valid.

950.

5. Land Register Surveys.

The admission and registration of the several pieces of land are effected in the Land Register by reason of a survey, which as a rule is founded upon an official survey.

The Federal Council prescribes how these plans are to be recorded.

951.

II. Keeping the Registers.
1. District.
a. Jurisdiction.

Districts shall be formed for the keeping of the Land Registers. Land shall be entered on the register of the district in which it lies.

952.

b. Land in Several Districts.

If a parcel of land lies in several districts, it shall be entered in the Land Register in each district with a reference to the Land Register of the other districts. Notices and entries giving rise to rights, are made in the Land Register of the district in which the larger part of the land lies. The entries in this Land Register shall be communicated by the registrar to the other offices.

953.

2. Land Registries.

The creation of land registries (*Grundbuchämter*), the fixing of the districts, the appointment of and compensation for the officials, as well as the establishment of supervision, shall be done by the cantons.

The cantonal regulations require the sanction of the Federal Council to be valid.

954.

3. Fees.

The cantons may require fees for entries in the Land Register, and for any survey work in connection therewith.

No fees may be required for entries made in connection with land improvements, or the exchange of lands, for the purpose of rounding out the agricultural use thereof.

955.

III. Registrars.
1. Responsibility.

The cantons are responsible for all damages arising out of the administration of the Land Register.

They have a right of recovery against the officials and employees of the Land Register's administration, as well as against the organs of supervision, guilty of any negligence. They can demand security from the officials and employees.

956.

2. Supervision.

The official conduct of the Land Registrar shall be subject to a regular supervision. Complaints against his official conduct, and delays in regard to deeds delivered or to be delivered to him, and declarations, shall be passed upon by the cantonal supervisory official, unless judicial proceedings are prescribed.

A special regulation is reserved for the appeal from these decisions to the federal officials.

957.

3. Disciplinary Regulation.

3. Breaches of official duties by officials and employees of the Land Register's administration shall be punished by the cantonal supervisory official with the disciplinary penalty.

This penalty consists in a reprimand, a fine up to one thousand francs, and, in aggravated cases, removal, from office.

The right of criminal prosecution is reserved.

958.

B. Entry.
I. Land Register Entries.
1. Property Ownership and Real Rights.

The following rights in realty shall be entered in the Land Register: (1) The property ownership. (2) The servitudes and charges on land. (3) The rights of pledge therein.

959.

2. Notations.
a. Personal Rights.

Personal rights may be noted in the land title register if their notation is expressly provided for by law, as in case of pre-emption and repurchase, option to purchase, rental and lease.

By their notation they become effective as against any later acquired right.

960.

b. Limitations on Disposition.

Limitations of disposition may be noted against various parcels of land, — (1) by reason of an official order for security for claims in litigation or satistified; (2) by reason of an attachment, a confession of bankruptcy or a judicial moratorium; (3) by reason of any juridical act for which the notation is by law provided, as for homesteads and reversionary heirship.

Such limitations on disposition become effective upon the notation, as against any later acquired right.

961.

c. Preliminary Entry.

Preliminary entries can be noted, — (1) for the security of alleged real rights; (2) in case of the legally allowed completion of proof.

They are made with the consent of all parties interested or upon order of the judge, with the consequence that the right becomes effective as a real right from the time of the entry in case it is later established.

The judge shall decide promptly upon the application and grant the notation upon the claimant's making out a credible right, and in this notation he shall exactly fix its effect in time and extent and, in case of necessity, set a time for judicially establishing the claims.

962.

II. Limitations of the Public Law.

The cantons can prescribe that limitations of the public law — as building lines and the like, — shall be noted in the Land Register. These regulations require the Federal Council's sanction to be valid.

963.

III. Preliminary to the Entry.
1. Publication.
a. In Case of Entries.

Entries are made in consequence of a written declaration by the owner of the realty, contemplated by the disposition. No declaration is required of the owner if the purchaser can rely upon a prescript of the law, upon a judicial decree, or upon a record equivalent to a judicial decree.

The officials charged with the duty of public authentication can be directed by the cantons to publish the transactions authenticated by them for entry.

964.

b. In Case of Cancellations.

A cancellation or alteration of an entry requires the written declaration by the persons entitled thereto, as appears in the entry.

This declaration can be made by its inscription in the day book.

965.

2. Evidence.
a. Legal Evidence.

Land Register dispositions, as entries, alterations, or cancellations, may in all cases be made only upon proof of the right thereto and the legal ground therefor.

The evidence as to the right of disposition consists of the proof that the petitioner is the person entitled thereto according to the record of the Land Register, or has received a power of attorney from this person.

The evidence as to the legal ground consists of the proof that the proper form for its validity has been followed.

966.

b. Completion of the Evidence.

If the proofs for a disposition upon the Land Register are not produced, the announcement is to be rejected.

If, however, the legal ground is shown, and it is only a question of completing the proof as to the right to the disposition, a preliminary entry can be made with consent of the property owner or upon a judicial order.

967.

IV. Mode of Entry.
1. In General.

The entries are made in the main book in the order in which they are announced or authentications or declarations are signed before the registrar.

An excerpt of all entries shall be furnished the parties in interest upon their request therefor. The form of the entries and cancellations, as well as that of the excerpts, shall be fixed by ordinance of the Federal Council.

968.

2. In Case of Servitudes.

The entry and cancellation of land servitudes are made upon the leaf of the parcel of land entitled thereto, and the one charged therewith.

969.

V. Duty to Notify.

The Registrar shall notify the parties in interest of any dispositions entered upon the Land Register, if they are made without the previous knowledge of such parties.

The periods fixed for the contest of any such dispositions commence to run upon the delivery of such notices.

970.

C. Publicity of the Land Register.

The land title register is public. Whoever can show reasonably an interest therein can demand that the leaves to be indicated approximately, together with the proper deeds shall be shown him in the presence of an official of the Land Registry, or that excerpts from the same shall be furnished him.

The objection that one did not know of an entry made in the Land Register is not allowable.

971.

D. Effect.
I. Significance of Non-entry.

In so far as the entry in the Land Register is provided for the grounding of a real right, this right exists as a real one only if it appears upon the Land Register.

Within the terms of the entry, the extent of a right can be proven by the deeds or otherwise.

972.

II. Significance of the Entry.
1. In General.

Real rights spring from and receive their rank and date by the entry in the main book.

Their efficacy relates back to the time of their inscription in the day book, provided that the legal proofs are attached to the announcement, or, in case of preliminary entries, are made promptly. Where, according to a cantonal law, the public authentication is made by the Land Registrar by the recording of an evidentiary protocol, this takes the place of the recording in the day book.

973.

2. As against Third Persons Acting in Good Faith.

Whoever in good faith has relied upon an entry in the Land Register, and thereby acquired property or other real rights, is to be protected in this acquisition.

974.

3. As against Third Persons not Acting in Good Faith.

If the entry of a real right is not justified, no third person, who knows the defect or should know it, can rely upon such entry. That entry which is made without any legal ground therefor, or arising out of a void juridical act, is unjustified.

Whoever, by such an entry, is injured in a real right, can directly rely upon the defectiveness of the entry as against a third person not acting in good faith.

975.

E. Termination and Change of Entries.
I. In Case of Unjustified Entries.

If the entry of a real right is unjustified, or if a proper entry is canceled or changed in an unjustified way, anyone injured thereby in his real rights can bring his complaint for concellation or correction of the entry.

The real rights acquired in good faith by third persons through the entry and the claims for damages are excepted.

976.

II. Upon Termination of the Real Right.

If upon the termination of the real right the entry has lost all legal consequence, the one charged therewith can demand its cancellation.

If the Land Registrar grants this request, any party interested may bring his complaint for a cancellation before a judge. The Land Registrar is entitled, by virtue of his office, to cause a judicial investigation and determination of the cessation of the right to be made, and to act upon the cancellation in accordance with the judicial order.

977.

III. Corrections.

The Land Registrar may undertake corrections, without the consent of the parties in interest, only upon judicial orders.

Instead of a correction, the improper entry can be canceled and a new entry be effected.

The correction of a mere clerical error is made officially according to the rule of an ordinance of the Federal Council in relation thereto.

CONCLUDING TITLE — INTRODUCTORY AND INAUGURATING PROVISIONS.

FIRST SECTION—THE APPLICATION OF THE OLD AND NEW LAW.

1.

A. General Provisions.
I. Rule of Non-retroaction.

The legal effect of facts, which have occurred before this law went into effect, shall also hereafter be judged according to the provisions of the law of the canton or confederation, as they may have obtained at the time of the occurrence of these facts.

Accordingly transactions undertaken before this time (January 1, 1912), shall, in relation to their legal obligation and their legal consequences, be controlled also in the future by the provisions obtaining at the time of their being undertaken. Facts arising after this time (January 1, 1912), shall be judged by the new code in so far as the law has provided no exception.

2.

II. Retroaction.
1. Public Order and Morality.

The provisions of this law, enacted on account of public order and morality, shall apply upon the law's going into effect to all matters, so far as the law provides no exception. Accordingly, provisions of the old law, which, according to the new law's conception, contravene public order and morality, have no further application after this law goes into effect.

3.

2. Definition of Legal Relations under the Statute.

Legal relations, whose extent is prescribed by statute, independently of the will of the parties interested therein, shall be defined according to the new law after the going into effect of this statute, even if these relations were established before this point of time.

4.

3. Rights not Acquired.

Matters of fact, come into existence under the authority of the law as it was, but which at the time of the going into

effect of the new law have given rise to no legal right, come under the new law so far as their legal effect goes, after that point of time.

5.

B. Rights of Persons.
I. Commercial Capacity.

Commercial capacity shall in all cases be determined according to the provisions of this statute.

However, he who has been, at the time of this law's going into effect, commercially capable according to the old law but would not be so under the new one shall be recognized as such also even after this point of time.

6.

II. Vanishment.

The declaration of vanishment comes under the provisions of the new law after this statute's going into effect.

Declarations of death, or absence under the old law, shall have, after this statute's going into force like effect with declarations of vanishment under the new law, so that the relations consequent thereupon according to the old law, such as inheritance or divorce, shall remain unaffected, as far as they have been put into effect.

A proceeding pending at the time of the new law's going into effect shall, with proper allowance of the time run, be begun anew according to the provisions of this statute or at the request of the interested party, be carried to a conclusion according to the old procedure and with regard had to the old limitations.

7.

III. Juristic Persons.

Associations of persons and institutions or foundations which have acquired a personality under the old law, retain it under the new law, even if they would not have acquired such personality under its provisions.

Juristical persons, already existent, for whose incorporation under this statute an entry in the public register is essential, must also secure this entry within five years after this law's going into effect, even if such entry was not required under the old law, and after the lapse of this limitation of time shall not, without such entry, any longer be recognized as juristical persons.

The extent of this personality is defined by the new law as soon as this statute goes into effect.

8.

C. Family Law.
I. Marriage, Divorce, and Personal Effects of Marriage.

Every marriage comes under the new law as soon as this statute goes into effect, in respect to the contract of marriage, its dissolution, and the personal effects of marriage.

Marriages and divorces, legal under the old law, shall remain so. Marriages not valid under the old law can be declared invalid only according to the provisions of this law as soon as it has gone into effect, and the time already run must be considered in questions of limitation.

9.

II. Marital Property Rights.
1. Statutory Property Rights.

In respect to effects of marriage upon property rights, the provisions of the present family and inheritance rights shall obtain in the relation of the married persons to one another, even after this law goes into effect, *i.e.*, those rights designated by the cantons as property rights, with the exception of the regulations as to extraordinary property status, the separate property and the marital contract.

As against third parties the married persons come under the new law, if before it goes into effect they have not entered upon the property register their joint written declaration to retain their former property status.

The married persons can, by the filing of their joint written declaration with the proper official, place their property rights even as against one another under the new law.

10.

2. Marriage Contract.

A marriage contract entered into before this law becomes effective retains its validity after this time also, but after such time is effective as against third persons only on condition that it was before that time properly filed for record in the property register.

If a marriage contract under the old law has been recorded in a public register, then it shall be transferred to the property register by the proper official.

11.

3. Liability.

Changes in the marital property rights, effected by the introduction of this law, remain subject to the present provisions for any change as to the property status in respect to liability.

12.

III. Parental and Filial Rights.

The law of parents and child comes under the new law as soon as this law becomes effective.

A loss of parental power, suffered under the old law, remains effective under the new law also, if upon application of one of the parents it is not otherwise decided in accordance with the regulations of the new law.

If children who stand under the parental power by the new law are subject to a guardianship when the new law becomes effective, then is this guardianship to be superseded by the parental power, but shall continue in force until the change is effected by the proper guardianship officials.

13.

IV. Illegitimacy.

The status of illegitimacy as soon as this law goes into effect comes under the new law. If an illegitimate child be born before such time, the mother and child can make claim upon the father for only those rights which were given them under the old law. Recognition by the father is to be effected according to the provisions of the new law, even if the child was born before such became effective.

14.

V. Guardianship.

Guardianship comes under the provisions of the new law as soon as this statute goes into effect.

An appointment of a guardian made before such time remains stable but shall be harmonized with the new law by the guardianship officials. Guardianships, appointed under the old law but not permissible under the new law, are to be dissolved but remain in force up to the time of such dissolution.

15.

D. Inheritance.
I. The Heir and Succession.

Conditions of inheritance, and the effects upon property rights of the death of a father, a mother, or one of a married couple, by the cantonal law inseparably joined therewith, shall, if the decedent dies before the introduction of this statute, be regulated even after such time by the old law.

This provision relates as well to the succession as to the heirs.

16.

II. Dispositions *Mortis Causa.*

Any disposition *mortis causa* made or rescinded before the introduction of this statute, if it be effected by any competent testator under the law in force at such time, cannot be contested on the ground that the testator may have died after the introduction of the new law, and according thereto may be without such capacity.

A disposition *mortis causa* cannot be contested for any formal defect if the provisions as to form, which obtained at the time of the disposition or the death, have been observed.

The contest of any overleaping the freedom of disposition, or of the mode of disposition, shall be governed by the provisions of the new law in all cases of dispositions *mortis causa* if the decedent dies after the introduction of such law.

17.

E. Law of Things.
I. Real Rights in General.

Presently existing real rights upon the introduction of this statute remain unchanged under the new law, saving the provisions as to the Land Register.

In respect to their extent, however, real property and limited real rights come under the new law, after its introduction, in so far as an exception is not made. If their creation be no longer possible under the new law, they remain under the present law.

18.

II. Right to Entry in Land Register.

Claims to the creation of a real right, arising before the introduction of this statute, shall be recognized as legal if they comply with the form of the old or the new law. The regulation concerning the keeping of a Land Register prescribes what proofs are requisite for the entry of such claims.

The extent of a real property right, fixed by a juridical act before the introduction of this statute, remains unaffected by the new law in so far as it does not conflict therewith.

19.

III. Prescription.

Prescription is to be determined according to the new law after the introduction of this statute. If a right of prescription has begun under the old law, and it corresponds to the new law, then the time elapsed up to the introduction of this statute shall be reckoned in proportionately in the limitation for prescription.

20.

IV. Trees upon Another's Soil.

Rights of property now existing in trees upon another's soil shall be in the future also recognized according to cantonal law.

The Cantons may limit or rescind these legal relations.

21.

V. Servitudes.

Servitudes created before introduction of this statute remain in force even without entry after the installation of the land title registry, but so long as they are not entered, cannot be made effective against creditors.

22.

VI. Pledges of Land.
1. Recognition of Present Pledge Titles.

Pledge titles existing at the time of introduction of this statute remain in force without any necessity of their being conformed to the new law. It is, however, reserved to the cantons to prescribe a new execution of existing pledge titles after the plan of the new law within fixed times.

23.

2. Creation of Rights of Lien.

New rights of lien on lands can, after the introduction of this statute, be created only in the ways recognized thereby. For their creation, up to the time of installation of the Land Register, the present cantonal forms shall remain in force.

24.

3. Extinguishment of Titles.

The extinguishment and changes of titles, the release from liens and the like, come under the provisions of the new law,

after its introduction. Until the installation of the Land Register, the forms shall be fixed by the cantonal law.

25.

4. Extent of the Lien.

The extent of the lien is fixed for all rights of lien on lands by the new law. If, however, a creditor by virtue of a special arrangement has lawfully received in pledge along with the realty certain things, his right of pledge in these shall remain in force even if they could not under the new law be joined in pledge.

26.

5. Rights and Obligations Arising from the Land Pledge.
a. In General.

The rights and obligations of creditor and debtor are to be determined by the old law, so far as contractual consequences are concerned, for rights of pledge existing at the time of introduction of this statute.

In respect to consequences entailed by force of the statute, and not changeable by contract, the new law controls from this time on, even for already existing rights of pledge.

If the right of pledge covers several parcels of land, the right of lien remains in force according to the old law.

27.

b. Rights of Security.

Rights of a lien creditor during the existing conditions, as, for example, for purposes of security, and likewise the rights of a debtor, come under the new law from the time of introduction of this statute for all rights of pledge.

28.

c. Notice — Transfer.

The notification of claims of liens and the transfer of pledge titles shall be determined by the old law in cases of rights of pledge already created before the introduction of this statute, saving any compulsory provisions of the new law.

29.

6. Rank.

The rank of rights of pledge shall be determined according to the old law, until the parcels of real estate are entered in the Land Register. From the time of installation of such register on, the rank of creditors shall be fixed by the Land Registry law of this statute.

30.

7. Position of Lien.

In respect to the fixed position of the lien or a right of the creditor to an insertion or a following position, the new law shall obtain upon the introduction of the Land Registry, or at least after the lapse of five years from the enforcement of this statute, saving any special existing claims of the creditor. The cantons can make further provisional regulations, subject, however, to the approval of the Federal Council.

31.

8. Restriction after the Appraisement.
a. In General.

The provisions of this statute in respect to the limitation of creation of rights of lien after the appraisement of the things pledged shall apply only to rights of lien in lands in the future to be created. Positions of liens, created in lawful manner under the present law, remain preserved under the new law until their extinguishment, and presently existing rights of lien may be renewed in these positions of lien without regard to the restricting provisions of the new law.

32.

b. Continuance of the Present Law.

The provisions of the present law in respect to the extent of the burden reman in force for the creation of mortgages so long as the cantons do not make new regulations in respect thereto. Otherwise they obtain until their revocation by the cantons, also in their application to the creation of contractual creation of entries for security upon real estate.

33.

9. Assimilation of Present Kinds of Pledge with those of the New Law.

The cantonal inaugurating statutes can determine that in general or in a special respect any kind of landed pledge of the present law shall be treated similarly with such an one of the new law.

So far as this occurs, the provisions of this statute become effective also upon its introduction, in regard to such cantonal rights of lien. Cantonal provisions in such a case require the approval of the Federal Council to be valid.

34.

VII. Rights of Pledges of Movables.
1. Formal Provisions.

Rights of pledge in movables can be created from the time of the introduction of this statute on, only in the forms

provided herein. So far as before this time a pledge of movables in another form has been made, it is lost with the lapse of six months, which begin to run upon the maturity of the claim with the introduction of the statute and, in case of a later maturity, with its introduction or at the time when the noticc is permissible.

v. Art. 884.

35.

2. Effect.

The effects of the pledge of movables, the rights and duties of the pledge creditor, the pledgor and the pledge debtor arrange themselves according to the new law, from the time of introduction of this statute on, even if the right of pledge has already arisen. A contract of forfeiture, executed before the introduction of this statute, loses its validity at this point of time.

36.

VIII. Right of Retention.

The right of retention under this statute extends also to those things which before its introduction have come into the control of the creditor.

The creditor is entitled to it even for all claims which arose before this time. Earlier created rights of retention come under the regulations of this statute in respect to their effectiveness.

37.

IX. Possession.

Possession is regulated by the new law upon its introduction.

38.

X. Land Register.
1. Introduction of the Land Register.

The Federal Council by arrangement with the cantons shall arrange a general plan for the introduction of the Land Register and the surveys. Present existing arrangements for land registration and surveys shall, so far as possible, be retained as part of the new arrangement for land registration.

39.

2. Surveys.
a. Costs.

The costs of surveying are in the main to be borne by the confederation.

This regulation applies to all surveys, beginning with the year 1907.

A more detailed regulation of the payment of costs will finally be fixed by the Federal Assembly.

40.

b. Relation to the Land Register.

As a rule the survey shall precede the entry in the Land Register. With the approval of the Federal Council, however, the Land Register may be introduced even before that, if sufficient lists of estates in immovables are at hand.

41.

c. Time for Completion.

In respect to the time of surveying, proper regard must be had to the conditions of the cantons and the interest of the various districts. The surveying and the introduction of the Land Register can follow one another in the various districts of the canton.

42.

d. Manner of Surveying.

The Federal Council shall fix the manner of surveying for the various sections after consultation with the cantons.

In sections, for which a more accurate survey is not necesary, as forests and pastures of considerable extent, a simple sketch or plan shall be made.

43.

3. Entry of Real Rights.
a. Procedure.

Upon the introduction of the Land Registry, real rights, already existing, shall be entered.

To this end a public proclamation is to be made to file and enter such rights. Real rights under the present law already entered in public records will be officially entered in the land title register, so far as they can exist under the new law.

44.

b. Consequences of not Entering.

Real rights under the present law, which are not entered, retain their validity, but as against third persons, who may rely in good faith upon the Land Register, may not be enforced.

It remains for the legislation of the confederation or the cantons, after prior proclamation, to declare as extinguished all real rights not entered in the Land Register after a certain time.

45.

4. Treatment of Extinguished Rights.

Real rights, no longer permissible under the Land Registry law, as property in floors of a house, property in trees upon land of another, rights of pledge in easements, and the like, will not be entered in the Land Register, but are to be noted in some serviceable way. If they are lost for any reason, they cannot be created anew.

46.

5. Postponement of Introduction of the Land Register.

The introduction of the Land Register under the provisions of this statute can be postponed by the cantons, under authority from the Federal Council, as soon as the Cantonal provisions as to forms, with or without amendments, appear sufficient to secure the working of the Land Register within the meaning of the new law.

In such case it must accurately be fixed, with what forms of the cantonal law the workings of the new law shall be joined.

47.

6. Introduction of the Law of Things before the Land Register.

The law of things under this statute becomes effective in general, even without the Land Registers being introduced.

48.

7. Workings of the Cantonal Forms.

The cantons can designate forms, as preparation,[1] entry into Land-, Pledge- or Servitude-Register, to which the effect of the Land Register is at once given, with the introduction of the law of things and before the installation of the Land Register.

These forms may be established with the effect that even without and before installation of a Land Register, the effect of a land registration shall be given thereto, in respect to the creation, transfer, amendment and extinguishment of real rights. On the contrary, so long as the Land Register is not installed, or some other similar provision made, the effects as

to third persons acquiring rights in good faith, cannot be given to them.

[1] *Fertigung* is the form under the old law in many cantons for realty transactions, *i.e.*, the examination and approval by an official of such transactions, and entering in a register.

49.

F. Limitation.

Where a limitation of five or more years is newly introduced, the time lapsed before the introduction of this statute shall be counted in, in any limitation, wherein, however, at least two years must run from that time till the full time of limitation is reached.

Shorter periods of limitation fixed by this statute, or of forfeiture, commence to run with the introduction of this statute. Otherwise the provisions of the new law control as to limitations from this time on.

50.

G. Form of Contract.

Contracts executed before introduction of this statute retain their validity even if their form does not comply with the provisions of the new law.

SECOND SECTION — INAUGURATING AND TRANSFERRING PROVISIONS.

51.

A. Repeal of the Cantonal Civil Law.

Upon the introduction of this statute, the civil law regulations of the cantons are repealed so far as it is not otherwise provided by federal law.

52.

B. Supplementary Cantonal Regulations.
I. Right and Duty of the Cantons.

The cantons shall provide the proper regulations for supplementing this statute, *e.g.*, in respect to the jurisdiction of officials and the creation of civil status offices, guardianship courts, and land title registry bureaus. So far as the new law requires the supplementing thereof by cantonal ordinances, the cantons are obliged to provide such and may issue them in the manner of a regulation.

These provisions require the sanction of the Federal Council to be valid.

53.

II. Preliminary Regulation by the Confederation.

If a canton has not provided in proper time the necessary arrangements, the Federal Council shall order preliminarily the requisite regulations in place of the canton, with notice to the Federal Assembly. If a canton makes no use of its authority in any matter which does not necessarily require a supplementary ordinance, then the provisions of this statute shall obtain.

54.

C. Designation of the Proper officials.

Where this statute speaks of a proper official, the cantons shall determine what official, already at hand or first to be appointed, shall be competent.

Where this statute speaks not expressly either of a judge or an administrative official, the cantons may designate as competent either a judicial or administrative official.

The procedure before the competent official is fixed by the cantons.

55.

D. Public Authentication.

The cantons determine in what manner within their boundaries public authentication is to be made.

They must, for the effecting of public announcements in a foreign tongue, provide proper regulations.

56.

E. Grants of Water Rights.

Until the promulgation of a federal ordinance, the following regulation shall obtain as to grants of water rights: —

Water rights in public waters, as soon as proven to be at least thirty years old or of an indefinite time, and not joined as an easement to a dominant parcel of land, may be entered in the landtitle register as independent and permanent rights.

57.

F. Security of Savings Banks Deposits.

The cantons are authorized, until federal regulation of savings banks, to create a statutory right of pledge in commercial paper, and claims of the particular banks, with a limitation preserving the rights of third persons for the savings deposits in their boundaries.

This form of pledge is not restricted to the formal provisions of this statute as to pledges of movables.

Such enactments for a statutory form of pledge to secure savings deposits can be made only in the form of legislation, and require the sanction of the Federal Council to be valid, which is to give special attention to sufficiently emphasizing the principle of savings deposits, and to fix the definition of the objects of pledge with sufficient clearness.

Otherwise the government of the savings banks system remains, as heretofore, a matter of cantonal law, until made a matter of federal regulation.

58.

G. Sale of Realty.

Until the revised law of obligations becomes effective, the sale of realty shall be governed by the following regulations, which will be incorporated into the law of obligations as Arts. 271a to 271g: —

THE SALE OF REALTY.

271a. Agreements of sale, having realty as their object, require public authentication to be valid.

271b. Preliminary contracts, such as promises to sell and agreements to buy back, require public authentication to be valid.

Preferential agreements[1] of purchase are good, if in written form.

[1] *Vorkaufsverträge* are contracts under which one receives the right to buy land, as soon as the owner intends to sell it to a third person and on the same conditions.

271c. If a purchase of realty has been conditionally agreed upon, the entry in the Land Register is to be made only when the condition is fulfilled.

The entry of a reservation of property is forbidden.

271d. The cantons can by legislation prescribe that an agricultural industry may not be further sold in parcels by the purchaser before the lapse of a certain time.

The cantons therein shall observe the following regulations:—

1. The prohibition of the further sale in parcels shall not last for more than five years from the time when the agricultural industry was transferred to the ownership of the purchaser.
2. The prohibition shall not apply to building, to land under

control of a guardian, or land sold under execution or in bankruptcy. 3. The proper official shall allow an earlier sale wherever sufficient grounds justify it, *e.g.*, if it is a question of sale by heirs of the purchaser or the like. A sale contrary to these provisions is invalid and gives no right to entry in the Land Registry.

271e. The seller of a piece of land shall, saving any other arrangement, furnish the purchaser compensation, if the piece does not possess the quantity given in the agreement of sale. If a piece of land does not measure the quantity given in the official survey in the Land Register, the seller must compensate the purchaser only when he has undertaken the warranty thereof.

The obligation of such warranty for any defects in a building lapse with the running of five years, reckoned from the time of acquisition of title thereto.

271f. If a fixed time for acceptance of title to real estate by the purchaser has been agreed upon in writing, then it will be assumed that from that time the enjoyment and risk passes to the purchaser.

271g. Otherwise the provisions in respect to sale of movables apply similarly to the sale of real estate.

59.

H. Gifts.

Until the revised law of obligations becomes effective, gifts are subject to the following regulations, which will be incorporated in the law of obligations, as Arts. 273a to 273p.

SUPPLEMENT TO SEVENTH TITLE OF THE LAW OF OBLIGATIONS—GIFTS.

273a. As a gift shall be construed every disposition *inter vivos*, whereby anyone enriches another out of his own property without a corresponding return. Whoever renounces a right before he has acquired it, or refuses an inheritance, has made no gift. The performance of a moral duty will not be considered a gift.

273b. One who is commercially capable may dispose of his property in the way of gifts so far as the marital property law or the law of inheritance place no restrictions upon him.

From the property of one commercially incapable, a gift can be made only under a reservation of the responsibility of the legal representative as well as with observance of the provision of the law of guardianship.

A gift can be declared invalid upon complaint to the Guardians' Court, whenever the donor becomes deprived of his legal capacity because of spendthriftiness, and whenever an action to deprive him of such capacity has been begun against him within a year after the making of the gift.

273c. One who is commercially incapable may also accept and lawfully acquire a gift, if he is capable of judgment.

The gift, however, is not acquired, or is rescinded, if the legal representative forbids its acceptance or orders its return.

273d. A gift from hand to hand is made by delivery of the thing from the giver to the favored one. In the case of land and real rights in land a gift is effected only by an entry in the Land Register. This entry assumes a valid promise of the gift.

273e. The promise of a gift to be valid requires a written form. If pieces of land or real rights in such are the subject of the gift, the public authentication thereof is requisite for their validity.

If a promise of gift is fulfilled, the situation will be considered as a gift from hand to hand.

273f. One who intends to give a gift to another, can, even when he has actually separated it from the rest of his property, revoke his action at any time before the acceptance by the donee.

273g. Conditions or burdens may be attached to a gift. A gift whose completion is made dependent upon the death of the donor comes under the provisions in respect to dispositions *mortis causa.*

273h. The donor can compel the fulfillment of any burden assumed by the donee, according to the terms of the contract. If the fulfillment of the burden concerns the public interest, the proper official can require its fulfillment after the donor's death. The donee may refuse fulfillment of any burden, in so far as the value of the gift does not meet the costs of the burden, and the deficit is not made good to him.

273i. The donor can reserve the reversion of the thing given to himself in the contingency that the donee should die before him. This right of reversion can be reserved in the Land Register in the case of gifts of land or real rights in such.

273k. The donor is responsible to the donee for any damage accruing to him by reason of the gift, only in case of deceit or gross negligence, otherwise he must guarantee to him, for the thing given or the claim surrendered, only that which he promised him.

273 l. In the case of gifts from hand to hand, or of a promise of gift fulfilled, the donor can demand back the gift so far as the donee is enriched, — (1) when the donee has committed a serious offence against the donor or some person closely joined to him; (2) when he has seriously offended against the family obligations incumbent upon him in respect to the donor or one of his relatives; (3) when he has in an unjustifiable manner not fulfilled the burdens imposed upon him in the gift.

273m. In case of the promise of a gift the donor can refuse fulfillment, — (1) for the same reasons for which the thing given in a gift from hand to hand can be reclaimed; (2) when, since the promise made, the property conditions of the donor have so altered that the gift would unusually seriously burden him; (3) when, since the promise made, family obligations have increased for the donor, such as existed before that not at all or in quite small measure.

273n. Upon the issuance of a loss certificate or beginning of bankruptcy proceedings against the donor, every promise of gift is rescinded.

273o. The recall of a gift can be made effective within a year, reckoned from the time when the donor has received information of the reason therefor.

If the donor dies before the lapse of this year, the right of action during the rest of this period passed to his heirs.

The heirs of the donor can recall the gift if the donee has intentionally and unlawfully killed the donor or prevented his recall thereof.

273p. If the donor has obligated himself to return per-

formances, his obligation thereto is extinguished by his death, so far as it is not otherwise provided.

60.

The federal law of execution and bankruptcy of April 11, 1889, is amended, upon the introduction of this statute, as follows: —

J. Execution and Bankruptcy.

37: The expression "landed pledge" (*Grundpfand*) in the meaning of this statute embraces,—the entry of security (v. Art. 793, 824), (*Grundpfandverschreibung*), the mortgage (*Schuldbrief*), the ground rent (*Gült*), land pledge rights under former law, charges on land and every right of preference in specified immovable estates, as well as the right of pledge in the appurtenance of an immovable estate.

The expression "pledge of hand" (*Faustpfand*) comprehends also the pledging of cattle, the right of retention and pledge of choses in action or other rights.

The expression "pledge" (*Pfand*) embraces pledges of land as well as pledges of movables.

45: The provisions of the Civil Code are reserved for the proof of claims of the pawn shops.

46: Third paragraph: In default of a representation, each member of a community can be held responsible for the debts arising out of the community status, at the place of its common industrial activity.

47: Third paragraph: For claims, however, which arise arise out of a business classified under Arts. 167 and 412 of the Civil Code, an execution against a debtor is to be levied against the debtor himself in the place of his business.

49: An inheritance can, so long as the partition is not made a contractual community not effected, or an official liquidation not ordered, be levied upon in the method of execution against the deceased, in the place where the decedent could be levied against at the time of his death.

59: Second paragraph: An execution levied in the lifetime of the decedent can be extended against his estate under the provisions of Art. 49.

65: Third paragraph: If an execution is directed against an undivided inheritance, it is filed against the repre-

sentative of the estate, or, if such an one is not known, one of the heirs.

67, Figure 2: The name and residence of the debtor or his legal representative in a given case; in an execution sought against an estate, there must be added what heirs are to be joined.

94, Third paragraph: The rights of landed pledge creditor to the hanging or standing fruits as part of the thing pledged remain secured, yet only on condition that such creditor himself has begun execution process for realization upon the landed pledge before the realization upon the pledged fruits takes place.

96, Second paragraph: Dispositions of property by the debtor are invalid, so far as thereby the rights accruing to the creditors from the attachment are injured, saving the rights of possession acquired by innocent third parties.

101: The attachment of a piece of land has the effect of a restriction upon the disposition thereof, and is communicated to the Registrar by the execution office, together with the statement of the amount for which the attachment is made, for the purpose of its reservation. Likewise the participation of new creditors in the attachment or the lifting of the attachment is to be communicated to him.

The notation of a pledge of an immovable estate is extinguished if within two years after the pledge thereof the realization process is not sought.

102: The attachment of a piece of land embraces also its fruits and other profits, saving the rights of recorded lien creditors.

The execution office must give notice of the attachment made to recorded lien creditors, as well as lessees, in a proper case. It cares for the administration and management of the immovable estate.

107, Fifth paragraph: In case of an attachment against a married man, the wife can independently protect her rights to the property contributed by her to the marriage, and Art. 168, paragraph 2, of the Civil Code, does not apply.

111, First paragraph: The husband, the children, wards and dependents of a debtor have the right for a period

of forty days, as to claims arising out of the marital, parental, or guardianship relations, to take part in an attachment, even without any prior execution. This right can, however, only be asserted, when the attachment has been made during the continuance of the guardianship, parental or marital relations, or within a year's time after its cessation.

The length of a process or execution is not reckoned therein. Children of full age of the debtor can assert for themselves at any time the claims given them under Art. 334, Civil Code, in an attachment without prior execution.

The Guardians' Court is authorized to make such claim for children, wards or dependents.

132bis: The realization upon a share of a community of property is accomplished under the provisions of Art. 132.

The provision of Art. 344, Civil Code, remains reserved.

135, First paragraph: The conditions of sale shall stipulate that the pieces of land are sold subject to all liens thereon (servitudes, charges, entries of security, mortgages and ground rents), with the transfer of any personal obligation to the purchaser. The former debtor of a transferred debt, under an entry of security or mortgage, becomes free only when the creditor does not, within a year's time from such transfer, declare his intention to hold him thereto (Art. 832, Civil Code). Any debts secured on land, fallen due, are not transferred in obligation, but are paid first out of the proceeds.

136, Second paragraph: Repealed.

136bis: The title of the purchaser at such sales can be contested only in a complaint with the request for rescission of the auction sale.

137: If a time for payment is made, the land remains until the payment of the sale price, for the account and risk of the purchaser, in the management of the execution office. Without its consent no entry may meanwhile be made in the Land Register. In addition the execution office can stipulate special security for the extended purchase price.

138, Third paragraph: A corresponding summons is directed also to the owners of servitudes, so far as the cantonal law comes into application.

141, Third paragraph: In case of the charging of a piece of land with a servitude or other burden, without consent of the preceding lien creditor, he has the right to require the summons of the immovable estate, both with or without notice of the new burden. If the bid for the immovable estate with the new burden does not realize enough for satisfaction of the creditor, and he receives better protection without the new burden, then he is entitled to demand its extinguishment in the Land Register. If any surplus remains after his protection, then it is in the first instance to be applied it to the compensation of the holder of the new burden, to the extent thereof.

143bis: The provisions of the Civil Code and the complementary regulations of the cantons in respect to homesteads remain reserved.

150, First paragraph: So far as the claim of a creditor is fully covered, he must receipt the certificate of claim and hand it to the execution official to be handed the debtor.

Third paragraph: In the case of execution sales of immovable estates, the official causes the proper cancellations and changes to be made in the Land Register in respect to servitudes and rights of pledge in land.

152, Second paragraph: If leases exist against the immovable estate, the execution office must give notice to the lessee of the issuance of the execution.

153, Third paragraph: If a third party has instituted the proceeding under Arts. 828 and 829 of the Civil Code, the immovable estate can be sold in execution only if the execution creditor, after termination of the procedure, furnish the proof to the execution office, that in addition a right to a pledge in land lies in his favor for the claim placed in execution against such immovable estate.

158, Second paragraph: After the delivery of this certificate, the creditor can direct the execution against the person of the debtor by way of attachment or bankruptcy proceedings, so far as it is not a matter of a ground rent or other burden on land. If he proceed within a month's time, a new order of payment is not necessary.

176: Notice of bankruptcy proceedings shall be given, as

soon as they are effective, to the recorder of land titles, the bankruptcy office, and the recorder of the commercial register. Likewise the termination or recall of bankruptcy proceedings are to be communicated.

193, Second paragraph: The regulations of the law of inheritance as to the official liquidation of an estate remain intact.

208, First paragraph: The beginning of bankruptcy proceedings effects, as against the bankrupt estate, the falling due of obligations of the debtor in bankruptcy with exception of those protected by liens upon his real estate. The creditor can claim, in addition to the principal, interest to the day of institution thereof and costs of the proceedings.

219, Third paragraph: The rank of landed lien creditors, and the extent of such security for interest and other collateral claims, is determined by the provisions in respect to pledge of lands.

Second class, letter a, third paragraph: In a similar position to what the debtor in bankruptcy as guardian or possessor of the paternal power owes, is yet without the time limitation named, what he may owe as member of a guardians' court (426 to 430 Civil Code).

Fourth Class. The half of the claim of the wife of a debtor in bankruptcy for the loss of her marital contribution made subject to the provisions of the union of property or the community of property, so far as the wife is not already covered by the taking back of the property at hand and by the security given her for the half of her marriage contribution.

258, Fourth paragraph: Art. 141, paragraph 3, is applicable.

259: With respect to the conditions of forced sales the articles 128, 129, 134, 135, 136, 136 (bis), 137 and 143 apply; in place of the execution office read bankruptcy bureau.

260bis: The provisions of the Civil Code and complementary cantonal regulations in respect to homesteads remain intact.

296, The allowance of time shall be publicly announced and communicated to the execution office as well as to the Registrar.

308, First paragraph: The decision, as soon as it is legally binding, shall be publicly announced and communicated to the execution office as well as Registrar.

61.

K. Application of Swiss and Foreign Law.

The federal law respecting the civil law relations of settlers and sojourners of June 25, 1891, remains in force for the legal relations of Swiss abroad and foreigners in Switzerland, as also as far as the law is different from canton to canton for the relations of citizens of different cantons.

Especially will the cantonal law of compulsory portion respecting brothers and sisters and their descendants be recognized as the home law of the canton's citizens (Art. 22 of said law).

The federal law of June 25, 1891, shall receive the following additions: —

7a. Persons for whom no domicile or residence can be proven come under the Swiss law.

7b. A foreigner without commercial capacity, who has closed a juridical act in Switzerland, cannot invoke his incapacity if he were commercially without capacity at such time, according to the Swiss law.

This provision has no application to family juridical acts or questions of inheritance, or such as involve the title of realty situate abroad.

7c. The validity of a marriage will, if the bridegroom or bride or bo h are foreigners, be determined with respect to each of them according to the domestic law. The form of a marriage contracted in Switzerland is determined by Swiss law.

7d. A Swiss living abroad may contract a marriage in Switzerland.

He must cause his desire to be made known to the civil status official of his place of domicile.

7e. If a foreigner living in Switzerland will contract a marriage there, he must make known his desire before the civil status official of his residence, after he has obtained the

consent of the executive of the canton of his residence to such marriage.

This consent may not be refused if the domiciliary officials declare that they will recognize the marriage of their citizen with all its consequences, but it can be granted even without such a declaration. The betrothal of a foreigner having no residence in Switzerland can be celebrated with consent of the executive of the canton in which it is to take place, if, by declaration of the domiciliary officials or otherwise, it appears that the marriage with all its consequences will be recognized in the domicile.

7f. A marriage contracted abroad according to the law there obtaining will be considered as valid in Switzerland if its contraction was not planned for the foreign place with open intention to circumvent the grounds for invalidity in Switzerland. A marriage contracted abroad and invalid according to the law of the place of its contraction can be declared invalid in Switzerland only when it may be invalid under the Swiss law.

7g. A Swiss married person living abroad can bring a suit for divorce before the court of his domicile. The divorce in such case is decreed exclusively according to Swiss law.

If the divorce of Swiss persons living abroad has been decreed by a court of competent jurisdiction there, it will be recognized also in Switzerland even if the divorce were not justified by the Swiss law.

7h. A foreign husband living in Switzerland can bring a divorce proceeding before the court of his residence if he prove that according to law or legal custom of his domicile the ground laid for the divorce is permitted and the Swiss jurisdiction is recognized.

A ground for divorce, which has occurred at a time when the couple stood under another law, can be asserted only when it is permitted by the former law as ground for divorce.

These conditions met, the divorce of the foreign couple is effected otherwise according to the Swiss law.

7i. Complaint and judgment in respect to the foreigner in Switzerland or the Swiss abroad can follow upon divorce or separation as it is allowed by the law invoked.

Separation or a dissolution of a marital community, according to foreign law corresponding thereto, comes under the same law as divorce.

62.

L. Repeal of Federal Civil Law.

Upon the introduction of this statute all civil law provisions of the confederation in conflict herewith are repealed.

In particular are repealed:—

The federal law concerning the determination of and publication of the civil status and marriage of December 24, 1874.

The federal law concerning personal commercial capacity of June 22, 1881.

The federal statute of the law of obligations of June 14, 1881, in the following provisions: Sixth title, excepting Art. 204 (Arts. 199 to 203 and 205 to 228); twenty-eighth title (Arts. 716 to 719), as well as Arts. 10, 29, to and including 35, 38, 76, 105 and 130, relative to claims upon landed security; 141, 146, paragraphs 2 and 3, 161, relative to public proclamations according to the Civil Code; 198, 231, first paragraph; 281 and 314, relative to the entry of leases in public records; 337, 414, 507, relative to the words "according to cantonal law."

The transition provisions of the law of obligations remain in force so far as they are not supplanted by the transition provisions of this statute for their sphere of application.

"Associations" of the French text of the law of obligations receive the term "co-operative societies."

63.

M. Final Provision.

This statute goes into force January 1, 1912. The Federal Council may, with consent of the Federal Legislature, put particular provisions hereof into force at an earlier date.

The Federal Council is charged with the proclamation of this statute, according to the provisions of the Federal Statute

of June 17, 1874, relative to the popular vote upon federal laws and federal resolutions.

Passed by the National Council,
Bern, 10th December, 1907.
President, PAUL SPEISER.
Secretary, RINGIER.

Passed by the Council of State,
Bern, 10th December, 1907.
President, P. SHERRER.
Secretary, SCHATZMANN.

THE SWISS FEDERAL COUNCIL RESOLVES.

The foregoing Federal Statute shall be published.

In the name of the Swiss Federal Council:
The President of the Confederation,
MÜLLER.
The Chancellor of the Confederation,
RINGIER.

Bern, 12th December, 1907.

Date of publication, December 21, 1907.

Limit of time for referendum, March 20, 1908.

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(*Numbers refer to sections. I. S. = Introductory Statute, at end of Code.*)

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