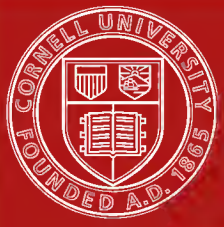

THE CIVIL CODE

OF

JAPAN.

TRANSLATED

BY

Dr. Ludwig Lönholm,
Professor at the Imperial University Tokyo.

Bremen :—MAX NOSSLER.
Tokyo :—MARUYA & Co.
YOKOHAMA, SHANGHAI, HONGKONG & SINGAPORE:
Kelly & Walsh Lim.

Printed by the Kokubunsha, Tokyo.

TO

HIS LORDSHIP

MARQUIS HIROBUMI ITO

MINISTER PRESIDENT OF STATE

AND

PRESIDENT OF THE COMMITTEE FOR

THE REVISION OF THE CODES

THIS BOOK IS RESPECTFULLY DEDICATED.

PREFACE.

THE first draft of a Civil Code for Japan was drawn up by Mr. Boissonade de Fontarabie, a French jurist, and followed in the main the lines of the French law But shortly before it was to go into effect a committee of revision was appointed, who instead of simply revising that draft made a wholly new Code modeled very closely upon the new German Civil Code and entirely different from Mr. Boissonade's Code, which therefore never went into operation.

The authors of the present thoroughly modern and scientific Code are Messrs. Nobushige Hozumi, Masakasa Tomii and Kenjiro Ume, professors of law in the Imperial University of Tokyo.

The technical terms of the Civil Code are very often literal translations into Sinico-Japanese of the corresponding German words. This fact and the great difference in form, arrangement and terminology between the Japanese-German and the English law makes it often difficult to translate the Japanese words by proper technical equivalents in English. For the most part the same Japanese word has been translated whenever it occurs by the same English word, even at the cost of an occasional awkwardness of expression; but in a few cases it was impossible to follow this rule without impairing the clearness of the sentence.

Sometimes unusual words have had to be employed to render the corresponding Japanese expressions, for instance the word "prestation," which, however, is used to some extent by recent writers in English.

A most important difference between the English system and the system embodied in the new Japanese Code is that the latter does not recognize the distinction between real and personal property, which plays so important a part in the former. The rules relating to property are mostly stated in a general form, so as to apply to all kinds of property.

Furthermore the division of the English law into law and equity, which was the result of historical accidents, has no place in the Japanese Civil Code.

In the law of obligations the Japanese Code uses two words to express the meaning of the Latin word *obligatio*, namely 債權 "saiken," obligation-right and 債務 "saimu," obligation-duty. In this translation the single word "obligation" has been used to render both. In some cases, however, when it seemed necessary, obligations have been designated as existing "in favour of" or "against" persons. The English expressions "right of action" and "claim" cannot properly be used to translate the word "saiken," as they have different meanings in English law.

The family law and the law of succession are mainly of native origin. But the original Japanese institutions retained in these parts of the Codes have been greatly modernized.—

In translating from the original Japanese text I have not made any use whatever of the English translation of the first three Books of the Civil Code, which was published in the year 1897, nearly two years later

than my German translation of the same work. The fact that I was the first to translate the Japanese Civil Code into a European language will justify my undertaking to present to the public another English version of this important law, for whose scientific translation or explanation a knowledge of German law is quite indispensable.

I acknowledge my obligation to my friend, Prof. Henry T. Terry, of the College of Law of the Imperial University for his assistance in putting this translation into a correct English shape.

I have appended the translation of the Law concerning the Application of Laws in General, drafted in an excellent and also to foreigners satisfactory manner by Prof. Nobushige Hozumi with the assistance of Prof. K. Ume.

Tokyo, June 1898.

Dr. L. Lönholm.

INDEX.

BOOK I.

GENERAL PROVISIONS.

CHAPTER I.

PERSONS.

SECTION I.

THE HOLDING OF PRIVATE RIGHTS.

1.

The enjoyment of private rights begins at birth.

2.

Foreigners enjoy private rights except as forbidden by law, regulation or treaty.

SECTION II.

CAPACITY.

3.

On the completion of twenty years a person becomes of full age.

4.

For the doing of juristic acts a minor must obtain

the consent of his legal representative, except when he merely acquires a right or is freed from a duty.

An act contrary to the foregoing provisions may be rescinded.

5.

When the legal representative authorizes a minor to dispose of property for a purpose specified by him, the minor may within the limits of such purpose dispose of it at his pleasure. He may do the same as to property which he has been authorized to dispose of without any purpose being specified.

6.

A minor who has been authorized to carry on one or more businesses, has the same capacity in relation to such businesses as a person of full age.

If in such case the minor is not capable of conducting the business, his legal representative may revoke or restrict the authority according to the provisions of Book IV of this Code.

7.

A person of unsound mind may on the application of himself, of her husband or his wife, of any relative to the fourth degree, of the head of his house, of his guardian or curator, or of the public procurator be adjudged incompetent by the court.

8.

A person adjudged incompetent must be placed under guardianship.

9.

The acts of a person adjudged incompetent may be rescinded.

10.

If the cause of the incompetency ceases to exist, the court must on the application of any of the persons mentioned in Art. 7 revoke the adjudication.

11.

Weakminded, deaf, dumb or blind persons and spendthrifts may be placed under curatorship as quasi-incompetent.

12.

A quasi-incompetent person must have the consent of his curator for doing the following acts :—

1. Receiving or employing capital ;
2. Contracting a loan or giving security ;
3. Doing any act whose object is the acquiring or parting with a right in an immovable or a valuable movable ;
4. Doing any act in the course of a lawsuit ;
5. Making a gift, a compromise, or an agreement to submit to arbitration ;
6. Accepting or refusing a succession ;
7. Refusing a gift or a legacy, or accepting a gift or a legacy subject to a charge ;
8. Constructing, rebuilding or enlarging buildings or making extensive repairs ;
9. Hiring and letting property for a period longer than specified in Art. 602.

In proper circumstances the court may order that the quasi-incompetent person must have the consent

of the curator for acts other than those mentioned in the preceding paragraph.

Any act contrary to the provisions of the two preceding paragraphs may be rescinded.

13.

The provisions of Art. 7 and 10 apply correspondingly to quasi-incompetent persons.

14.

A wife must obtain the permission of her husband for doing the following acts:—

1. Those specified in Art. 12, No 1-6;
2. Accepting or refusing a gift or a legacy;
3. Making any contract affecting the disposition of her person.

Any act contrary to those provisions may be rescinded.

15.

A wife who has been permitted to carry on one or more businesses has the same capacity in relation to such businesses as a person *sui juris*.

16.

A husband may revoke or restrict the permission granted by him; but such revocation or restriction cannot be set up against a person acting in good faith.

17.

In the following cases a wife does not require the permission of her husband:—

1. If it is uncertain whether the husband is living or dead;

2. If the husband has deserted her ;
3. If the husband becomes adjudged incompetent or quasi-incompetent ;
4. If the husband because of lunacy is placed in a hospital or a private house to be taken care of ;
5. If the husband has been sentenced to a punishment of imprisonment of one year or more, for the time he is undergoing such sentence ;
6. If the interests of the husband and wife conflict.

18.

If the husband is a minor, he can give permission for the acts of his wife only in accordance with the provisions of Art. 4.

19.

The other party to a voidable act of an incapacitated person may after such person has acquired capacity notify him to declare definitely within a period of not less than one month whether he will ratify such act or not. If no definite answer is given within such time, it is deemed to be ratified.

The same is the case if, so long as the incapacity continues, such a notification is given to the husband or legal representative, and no definite answer is made within the time fixed ; but to a legal representative such a notification can only be given as to matters within the scope of his authority.

If the act is one for which particular forms are required, it is deemed to be rescinded, unless such form is complied with within the time above specified.

A notice may be given to a quasi-incompetent person or to a wife, to ratify the act with the consent of the curator or the permission of the husband within the

time specified in the first paragraph. If the quasi-incompetent person or the wife does not give notice within the time specified that the consent of the curator or the permission of the husband has been granted, the act is deemed to be rescinded.

20.

If the incapacitated person has used fraudulent means to cause it to be believed that he has capacity, his act cannot be rescinded.

SECTION III.

DOMICILE.

21.

The principal place where a person lives is his domicile.

22.

If the domicile of a person is not known, the place of his actual residence is deemed to be his domicile.

23.

If a person, whether a Japanese or a foreigner, has no domicile in Japan, his place of residence in Japan is deemed to be his domicile; but this does not apply, where according to the General Law concerning the Application of Laws the law of his domicile is to govern.

24.

If for the purpose of any act a special domicile has been chosen, that is deemed to be the domicile in respect to such act.

SECTION IV.

DISAPPEARANCE.

25.

If a person leaves the place which up to that time has been his domicile or residence, without having instituted a manager for his property, the court on the application of any person interested or of the public procurator may order all measures necessary for the management of the property to be taken. This applies, if during the absence of such person the authority of the manager comes to an end.

If such person afterwards institutes a manager, the court must on the application of such manager or any person interested or of the public procurator revoke its order.

26.

If it is uncertain whether the absent person who has instituted a manager is living or dead, the court may on the application of any person interested or of the public procurator substitute another manager.

27.

A manager appointed by the court under the provisions of the preceding two articles must make an inventory of the property to be managed by him. The costs are to be paid out of the property of the absent person.

If it is uncertain whether the absent person is living or dead, and an application is made by any party interested or by the public procurator, the court may

order a manager instituted by the absent person himself to do as prescribed in the preceding paragraph.

Also the court may order the manager to take all necessary measures for the protection of the property of the absent person.

28.

If it is necessary for a manager to do any acts in excess of the powers specified in Art. 103, he may do so on obtaining the permission of the court. Where it is uncertain whether the absent person is living or dead, the same applies, if it is necessary for a manager to do any acts in excess of the powers conferred upon him by the absent person.

29.

The court may require the manager to give proper security for the management and restoration of the property.

The court may allow a reasonable compensation to a manager out of the absent person's property, having regard to the relations existing between the manager and the absent person and to the other circumstances.

30.

If it has been uncertain for seven years whether the absent person is living or dead, the court may on the application of any person interested or of the public procurator make an adjudication of disappearance.

The same applies to a person who has gone to the seat of a war, or has been on a ship which was lost, or has come into any other peril of his life, if it is uncertain whether he is living or dead for three years after the war has come to an end, the ship has been lost or the other peril has passed.

31.

A person against whom an adjudication of disappearance has been made is deemed to have died at the completion of the period specified in the preceding article.

32.

If it is proved that the person who disappeared is living, or that he died at a time different from that specified in the preceding article, the court must upon the application of such person or of any person interested revoke the adjudication; but this does not affect the validity of acts done in good faith between the adjudication and the revocation.

A person who has acquired property under the adjudication but loses his right by its revocation is bound to restore such property only so far as he is still enriched by it.

CHAPTER II.

JURIDICAL PERSONS.*

SECTION I.

CREATION OF JURIDICAL PERSONS.

33.

A juridical person can come into existence only by

---

* The usual term in the English law is "artificial persons;" but "juridical persons" is also used by recent writers, and is a closer rendering of the Japanese word. The expression "legal persons" cannot be used here.

virtue of the provisions of this law or of some other law.

34.

Associations or foundations* for purposes of religion, worship, charity, science or art or other purposes of public utility, not having as their object the making of profits, can become juridical persons by the permission of the competent authorities.

35.

Associations for purposes of profit can become juridical persons on compliance with the conditions prescribed for the creation of commercial companies.

To such associations, when they have become juridical persons, all provisions relating to commercial companies apply correspondingly.

36.

The existence of foreign juridical persons other than States, administrative districts and commercial companies is not admitted; but this does not apply to such foreign juridical persons as are admitted by law or treaty.

Foreign juridical persons admitted under the provisions of the preceding paragraph have the same rights as the same classes of juridical persons existing in Japan; but this does not apply to such rights as foreigners cannot enjoy, or so far as special provisions are made by law or treaty.

---

* A foundation—zaidan 財團—is somewhat similar to a "trust" in English law, but the word "trust" cannot be used here, as the legal character of the two is different.

37.

The creators of an association* must draw up articles of association containing the following particulars:—

1. Its object;
2. Its name;
3. The location of its office;
4. Provisions relating to its capital;
5. Provisions as to the appointment or dismissal of its managers;
6. Provisions as to the acquisition or loss of membership in it.

38.

The articles of association can only be changed by the consent of at least three quarters of the members; except so far as the articles themselves provide otherwise.

A change in the articles of association is valid only when it has been approved by the competent public authorities.

39.

A creator of a foundation must in the act of endowment provide for the matters specified in Art. 37, No 1-5.

40.

If the creator of a foundation dies without having made provision as to its name, the location of its office and the appointment or dismissal of its managers, this shall be done by the court on the application of any person interested or of the public procurator.

---

* Henceforth in this chapter the words "association" and "foundation" denote associations and foundations which are juridical persons.

41.

If an endowment is made by an act *inter vivos*, the provisions relating to gifts apply correspondingly.

If an endowment is made by will, the provisions relating to legacies apply correspondingly.

42.

If the endowment is made by an act *inter vivos*, the property given becomes the property of the juridical person from the time when the approval of its creation is granted.

If the endowment is made by will, the property is deemed to vest in the juridical person from the time when the will takes effect.

43.

A juridical person has rights and duties accordant to law and regulations within the scope of its object as defined in the articles of association or the act of endowment.

44.

A juridical person is bound to make compensation for any damage done to other persons by its managers or other representatives in the exercise of their functions.

If the damage arises from an act which is not within the scope of the object of the juridical person, those members or managers who have approved of the resolution for such act, and those managers and other representatives who executed it, are jointly bound to make compensation.

45.

A juridical person must be registered within two weeks from the day of its creation at the place of each of its offices.*

The creation of a juridical person can be set up against third persons only when it has been registered at the place of its principal office.

If a juridical person after its creation establishes a new office, that must be registered within one week from the time of its establishment.

46.

The matters to be registered are as follows :—

1. The object of the juridical person;
2. Its name;
3. The location of its office;
4. The date of the permission for its creation;
5. Its duration, if that has been fixed;
6. The total amount of its property;
7. The manner in which contributions are to be made, if any such has been provided for;
8. The names and domiciles of its managers.

If any change takes place in the matters above specified, that must be registered within one week. Before registration a change cannot be set up against third persons.

47.

If for any of the matters required to be registered under the provisions of Arts. 45, 1 and 46 the permission of some public authority is necessary, the period limited

---

* The word "office" here denotes a place where the affairs of the juridical person are managed.

for registration is computed from the reception of the certificate of permission.

48.

If a juridical person changes its office, such change must be registered at the original place within one week, and the registration specified in Art. 46 must be made at the new place within the same period.

If the change of office is within the same registration district, only the fact of the change need be registered.

49.

The provisions of Arts. 45,3, 46 and 48 apply, where a foreign juridical person has established an office in Japan ; but as to facts arising in foreign countries the period for registration is computed from the time when notice thereof is received.

When a foreign juridical person first establishes an office in Japan, third persons need not recognize the existence of such juridical person, until registration has been effected at the place of its office.

50.

A juridical person has its domicile at the place of its principal office.

51.

A juridical person must make an inventory of its property at the time of its creation and within the first three months of each year, and must keep it always at its office. If a special business year has been established, such inventory must be made at the time of its creation and at the end of each business year.

An association must keep in its office a list of its

members, which must be revised whenever a change in its members occurs.

SECTION II.

THE MANAGEMENT OF JURIDICAL PERSONS.

52.

A juridical person must have one or more managers.

If there are several managers, and the articles of association or the act of endowment does not contain different provisions, decisions as to the affairs of the juridical person are made by a majority of the managers.

53.

The managers represent the juridical person in its affairs, but they may not act contrary to the provisions of the articles of association or to the contents of the act of endowment. In an association they must also obey the resolutions of a general meeting.

54.

Any restriction upon the powers of representation of the managers cannot be set up against third persons acting in good faith.

55.

The managers may delegate to other persons the power to represent the association as to particular acts only in case it is not forbidden by the articles of association, the act of endowment or a resolution of a general meeting.

56.

If a vacancy occurs among the managers, and damage is likely to ensue from delay, the court may on

the application of any person interested appoint a temporary manager.

57.

In a matter in which the interests of a juridical person conflict with those of a manager, the latter has no representative power. In such case a special representative must be appointed according to the provisions of the preceding article.

58.

By the articles of association, the act of endowment or a resolution of a general meeting one or more supervisors may be constituted for a juridical person.

59.

Supervisors have the following duties:—

1. To examine into the condition of the property of the juridical person ;
2. To examine into the conduct of its affairs by the managers ;
3. If they discover anything improper in the condition of its property or the conduct of its affairs, to give notice thereof to a general meeting or to the competent public authorities ;
4. To call a general meeting, if necessary, in order to give the notice mentioned in No 3.

60.

The managers of an association must at least once a year hold an ordinary general meeting of the members.

61.

The managers of an association may at any time, if they consider it necessary, call an extraordinary general meeting.

The managers must call an extraordinary meeting, whenever at least one fifth of all the members request it, stating the object of it. This number may be increased or diminished by the articles of association.

62.

A call for a general meeting must be made at least five days beforehand, stating the matters to be acted upon, in the manner provided in the articles of association.

63.

The affairs of an association, so far as not entrusted by the articles of association to its managers or other officers, are transacted by resolutions of a general meeting.

64.

Except as otherwise provided in the articles of association, a resolution can be passed in a general meeting only on those matters as to which the notice mentioned in Art. 62 has been given.

65.

All the members have the same right to vote.

Members who do not attend a general meeting may vote by writing or by proxy.

These provisions do not apply, if it is otherwise provided in the articles of association.

66.

A member has not the right to vote upon any

resolution concerning a relation between the association and himself.

67.

The affairs of a juridical person are subject to the supervision of the competent public authorities.

The competent authorities may at any time of their own motion examine the condition of the affairs and of the property of a juridical person.

SECTION III.

DISSOLUTION OF A JURIDICAL PERSON.

68.

A juridical person is dissolved by the following causes :—

1. If any cause of dissolution arises which is specified in the articles of association or the act of endowment ;
2. If the object for which the juridical person was created has been fully accomplished or is impossible to accomplish ;
3. By bankruptcy ;
4. By the revocation of the permission for creation.

An association is also dissolved for the following causes ;—

1. By a resolution of a general meeting ;
2. If there are no longer any members.

69.

Except as otherwise provided in the articles of association, an association can be dissolved by a resolution to dissolve only if at least three fourths of all members concur in such resolution.

70.

If a juridical person becomes unable to meet its obligations in full, the court upon the application of its managers or of any creditor* or of its own motion must make an adjudication of bankruptcy.

In such case the managers must apply immediately for an adjudication of bankruptcy.

71.

If a juridical person carries on undertakings which are beyond the scope of its object, or violates the conditions under which permission for its creation was granted, or does acts which might be injurious to the public interests, the competent authorities may revoke such permission.

72.

The property of a juridical person which has been dissolved goes to the persons designated in the articles of association or the act of endowment.

If in the articles of association or the act of endowment the persons to whom the property shall go have not been designated, or no way of designating them has been provided, the managers may with the permission of the competent public authorities dispose of

---

* For the meaning of "creditor" see Art. 400.

the property for some object similar to that of the juridical person; but in the case of an association they must obtain a resolution of a general meeting.

If no disposition is made under the provisions of the two preeeding paragraphs, the property goes to the State.

73.

A juridical person which has been dissolved is deemed to continue in existence for the purposes of liquidation, until the liquidation is finished.

74.

When a juridical person is dissolved, except in the case of bankruptcy, the managers become liquidators; but this rule does not apply, if in the articles of association or the act of endowment it is otherwise provided, or if a general meeting has appointed other liquidators.

75.

If there are no such persons as ought to be liquidators under the provisions of Art. 74, or if because of a vacancy among the liquidators there is danger of loss, the court on the application of any person interested or of the public procurator or of its own motion may appoint liquidators.

76.

For reasonable cause the court on the application of a person interested or of the public procurator or of its own motion may remove a liquidator.

77.

The liquidators, except in the case of bankruptcy, must within one week after dissolution register their names and domiciles and the cause and date of dissolution, and in any case must give notice thereof to the competent public authorities.

A liquidator who assumes his position in the course of the liquidation must within one week from such day register his name and domicile and give notice thereof to the competent public authorities.

78.

The functions of the liquidators are as follows :—

1. To wind up all pending business of the juridical person ;
2. To collect all obligations existing in its favour and to perform all obligations existing against it ;
3. To hand over the remainder of its assets.

The liquidators may do all acts necessary for the performance of their functions as specified in the foregoing paragraph.

79.

The liquidators must within three months after assuming their functions give three public notices to the creditors to present their claims within a fixed period, which must not be less than two months.

Such public notice must contain a statement that, if a creditor does not present his claim within the period fixed, it will be excluded from the liquidation. But liquidators must not exclude any creditor known to them.

The liquidators must send special notices to present their claims to all known creditors.

80.

If a creditor presents his claim after the expiration of the period fixed, he can enforce it only after all the obligations of the juridical person have been fully satisfied, and only against such assets as have not yet been handed over to the persons entitled to receive them.

81.

If it appears during the liquidation that the assets of the juridical person are not sufficient to satisfy all its obligations, the liquidators must at once apply for an adjudication of bankruptcy and give public notice thereof.

The duties of the liquidators come to an end as soon as they have transferred the affairs of the juridical person to the administrator in bankruptcy.

If in such case payments have already been made to creditors or assets have been handed over to persons entitled to receive them, the administrator in bankruptcy may reclaim them.

82.

The dissolution and liquidation of a juridical person are under the supervision of the court.

The court may at any time of its own motion make any examination necessary for the above mentioned supervision.

83.

The liquidators must give notice to the competent public authorities as soon as the liquidation is finished.

SECTION IV.

PENALTIES.

84.

A manager, a supervisor or a liquidator of a juridical person is liable to a penalty of from five to two hundred yen :—

1. If he omits to make any registration prescribed in this Chapter ;
2. If he violates the provisions of Art. 51, or if he makes any false entry in the inventory or the list of members ;
3. If in the cases mentioned in Arts. 67 and 82 he obstructs any examination made by the competent public authorities or the court :
4. If he makes false statements to the public authorities or a general meeting, or conceals facts from them ;
5. If in violation of the provisions of Arts. 70 and 81 he omits to apply for an adjudication of bankruptcy ;
6. If he omits to give any public notice prescribed in Arts. 79 and 81, or if he gives a false public notice.

CHAPTER III.

THINGS.

85.

Things in the sense of this law are corporeal things.

86.

Land and things fixed to it are immovables.

All other things are movables.

Obligations performable to bearer are deemed to be movables.

87.

If the owner of a thing attaches to it another thing owned by him for permanent use in connection with it, the thing attached becomes an accessory.

The accessory thing is subject to all dispositions made of the principal thing.

88.

Products obtained in the ordinary use of a thing are natural fruits.

Money and other things received as consideration for the use of a thing are legal fruits.

89.

Natural fruits belong to the person who has the right to take them at the time when they are severed from the principal thing.

Legal fruits are apportioned according to the duration in days of the respective rights to receive.

CHAPTER IV.

JURISTIC ACTS.

SECTION I.

GENERAL PROVISIONS.

90.

A juristic act whose intended effect is contrary to the public welfare or good morals is void.

91.

If the parties to a juristic act have expressed an intention differing from a provision of any law or regulation not relating to the public welfare, such intention is to be followed.

92.

If there is a custom differing from a provision of any law or regulation not relating to the public welfare, such custom is to be followed, if it is to be considered that the parties intended to be governed by such custom.

SECTION II.

THE EXPRESSION OF INTENTION.

93.

If a person makes an expression of intention knowing that it is not his real intention, it is nevertheless valid. But it is void, if the other party knows or ought to know his real intention.

94.

An expression of intention which to the knowledge of the other party is only feigned, is void.

The invalidity of such expression cannot be set up against third persons acting in good faith.

95.

An expression of intention is void, if made under a mistake as to an essential element of the juristic act; but if the person who made the expression was grossly negligent, he cannot avail himself of such invalidity.

96.

An expression of intention procured by fraud or coërcion may be rescinded.

If a third person has committed a fraud in respect to an expression of intention made to some person, it can only be rescinded, if the other party knew of the fraud.

The rescission of an expression of intention procured by fraud cannot be set up against third persons acting in good faith.

97.

An expression of intention made to a person at a distance takes effect from the time when the communication thereof reaches him.

The validity of an expression of intention is not affected, if the person who made it dies or becomes incapacitated after he has sent the communication.

98.

If the other party is a minor or has been adjudged incompetent at the time when he receives the expression of intention, such expression cannot be set up against him; but this only applies until such time as his legal representative has knowledge thereof.

SECTION III.

REPRESENTATION.

99.

An expression of intention made by a representative within the scope of his authority and purporting to be made on behalf of his principal* takes effect directly for and against the latter.

This provision applies correspondingly to an expression of intention made by a third person to a representative.

100.

If a representative makes an expression of intention

---

* The word "principal" denotes any person who is represented by another in a juristic act.

not purporting to be on behalf of another, he is deemed to have made it on his own behalf; but if the other party knows or ought to know that he acted for another person, the provisions of Art. 99, 1 apply.

101.

If the validity of an expression of intention would be affected by any defect in the intention, or by fraud or coërcion, or by knowledge or negligent ignorance of any circumstance, such fact is to be taken as it exists with reference to the representative.

If a representative is charged with the doing of a specific juristic act, and does such act according to the directions of the principal, the latter cannot avail himself of the ignorance of his representative in regard to a circumstance which he himself knew, or of which he was ignorant through negligence.

102.

A representative need not be a person of full capacity.

103.

A representative whose authority is not specified, has authority only to do the following acts :—

1. Acts for preservation ;
2. Acts for the use or improvement of the things or rights which form the subject of the representation, but without changing their nature.

104.

A representative whose authority is founded upon a mandate may appoint a substitute only with the sanc-

tion of the principal or in case of unavoidable necessity.

105.

A representative who in the case mentioned in the preceding article appoints a substitute is responsible to the principal for a proper appointment and for supervision.

A representative who appoints a substitute designated by the principal is responsible only in case he knew his unfitness or untrustworthiness and omitted to inform the principal thereof or to revoke the substitution.

106.

A legal representative may appoint a substitute, for whom he is responsible; but in case of unavoidable necessity he incurs only the responsibility specified in Art. 105, 1.

107.

A substitute within the scope of his authority represents the principal directly.

A substitute has the same rights and duties as the original representative with regard to the principal and to third persons.

108.

A person cannot in the same juristic act represent the other party or both parties; but this does not apply to the performance of an obligation.

109.

A person who holds out another to a third person as

his representative is bound by all acts between such other and the third person within the scope of such authority.

110.

If a representative acts in excess of his authority, but the third person had reasonable grounds to believe that it was within his authority, the provisions of the preceding article apply correspondingly.

111.

The right of representation is extinguished :—

1. By the death of the principal;
2. By the death of the representative or his being adjudged incompetent or bankrupt.

The right of representation founded on a mandate is also extinguished by the termination of the mandate.

112.

The extinction of the right of representation cannot be set up against a third person acting in good faith ; but this does not apply, if the third person is ignorant of the fact by his own negligence.

113.

If a person without authority of representation makes a contract as representative, such contract has no effect as to the principal, unless he ratifies it.

A ratification or repudiation can only be set up against the other party, if it has been made to

him ; but this does not apply, if the other party knew the facts.

114.

In the case mentioned in Art. 113 the other party may fix a reasonable period and call upon the principal to answer definitively whether he will ratify or not. If the principal does not give definitive answer within the period fixed, he is deemed to have refused to ratify.

115.

A contract made by a person without authority of representation can be rescinded by the other party so long as the principal has not ratified it; but this does not apply, if the other party knew at the time of the contract of the want of authority.

116.

Unless a different intention is expressed, the effect of the ratification relates back to the time of the contract ; but this cannot impair the rights of third persons.

117.

A person who makes a contract as representative of another is responsible at the option of the opposite party either for performance or for damage, if he cannot establish his right of representation, or if the principal does not ratify the contract.

The foregoing provision does not apply, if the other party knew that the representative had no authority, or if he was ignorant of it through his own negligence,

or if the person acting as representative had not capacity for the act.

118.

The provisions of the foregoing five articles apply to a unilateral juristic act only if the other party consents that the act be done without the person acting as representative having authority as such, or if he does not dispute his authority. The same applies, when a unilateral juristic act is done to a person having no authority with his consent.

SECTION IV.

VOID AND VOIDABLE JURISTIC ACTS.

119.

A void juristic act does not become valid by ratification; but if the parties concerned ratify it with knowledge of its invalidity, they are deemed to have done a new act.

120.

A voidable act can be rescinded only by the incapacitated party or the party who has made the defective expression of intention or by a representative or successor of such persons.

A juristic act done by a wife may also be rescinded by her husband.

121.

An act which has been rescinded is deemed to have been void from the beginning; but the incapacitated

person is bound to make restoration to the extent to which he is still enriched by the act.

122.

If any person specified in Art. 120 ratifies a voidable act, it is deemed to have been valid from the beginning; but the rights of third persons cannot be affected thereby.

123.

If the other party to a voidable act is a determinate person, rescission or ratification of such act must be by an expression of intention made to him.

124.

A ratification is valid only if it is made after the state of facts forming the ground of invalidity has ceased to exist.

When a person adjudged incompetent acquires knowledge of the act after he has recovered his capacity, he can ratify it only after acquiring knowledge.

The provisions of the two foregoing paragraphs do not apply to ratification by a husband or a legal representative.

125.

If after the time when according to the preceding article a voidable act could be ratified, any of the following events takes place in regard to the act, it is deemed to be ratified, unless a reservation is expressed.

1. An entire or part performance;
2. A demand for performance;
3. A novation;*

* See Arts. 513 ff.

4. The giving of security;
5. An assignment of the rights acquired by the voidable act;
6. A seizure under legal process.

126.

If the right of rescission is not exercised within five years from the time when ratification could have been made, it is extinguished by prescription.

The same applies, if twenty years have elapsed since the act was done.

SECTION V.

CONDITIONS AND TIME OF COMMENCEMENT OR ENDING.

127.

An act subject to a condition precedent takes effect, when the condition happens.

An act subject to a condition subsequent ceases to have effect, when the condition happens.

If the parties to the act have expressed an intention that the effect of the happening of a condition shall relate back to a time before its happening, such intention is to govern.

128.

Any party to a juristic act subject to a condition must not, while the condition is pending, do anything by which the benefits which the other party might derive from the happening of the condition will be impaired.

129.

The rights and duties which the parties have, while the condition is pending, may be dealt with, inherited, protected or secured according to the general provisions of the law.

130.

If the party whose interests would be adversely affected by the happening of the condition intentionally prevents it from happening, the other party may treat it as if it had happened.

131.

When the condition has already happened at the time of the juristic act, the latter is unconditionally valid, if the condition is precedent, and is void, if the condition is subsequent.

When it is certain at the time of doing the juristic act that the condition will not happen, the act is void, if the condition is precedent, and unconditionally valid, if the condition is subsequent.

In the cases mentioned in the foregoing two paragraphs the provisions of Arts. 128 and 129 apply, so long as the parties do not know whether the condition has happened or will not happen.

132.

A juristic act upon an unlawful condition, or conditioned upon the not doing of an unlawful act, is void.

133.

An act upon a condition precedent which is impossible is void.

An act upon a condition subsequent which is impossible is unconditionally valid.

134.

An act upon a condition precedent which depends entirely upon the will of the debtor is void.

135.

If a time of commencement* is annexed to a juristic act, performance of the act cannot be demanded until such time has arrived.

If a time of ending† is annexed to a juristic act, the effect of the act ceases when such time arrives.

136.

It is presumed that a time for commencement or ending is annexed for the benefit of the debtor.

The benefit of such a time may be waived, but this will not affect any benefit which would accrue therefrom to the other party.

137.

In the following cases the debtor cannot take advantage of a time of commencement or ending :—

1. If he has been adjudged bankrupt ;
2. If he has destroyed or diminished the security ;
3. If he has not given security when he ought.

CHAPTER V.

PERIODS OF TIME.

138.

The manner of computing periods of time is govern-

---

* dies a quo.

† dies ad quem.

ed by the provisions of this Chapter, unless it is otherwise provided by law or regulations, by an order of the court or in the juristic act itself.

139.

If the period is measured in hours, it begins to run at once.

140.

If the period is measured in days, weeks, months or years, the first day of the period is not included; but this does not apply, if the period begins between midnight and one o'clock a. m.

141.

In the case mentioned in the preceding article the period ends at the end of the last day.

142.

If the last day of a period is a great festival day or a Sunday or any other holiday, and it is customary not to do business on such day, the period ends on the next day.

143.

If the period is measured in weeks, months or years, it is to be calculated according to the calendar.

If the period is not computed from the beginning of a week, month or year, it ends on the day preceding that day of the last week, month or year which corresponds to that on which it began. If in a period measured in months or years there is no corresponding day in the last month, the last day of such month is the day of ending.

CHAPTER VI.

PRESCRIPTION.

SECTION I.

GENERAL PROVISIONS.

144.

The effect of prescription relates back to the day from which its period is computed.

145.

If the party concerned does not claim the benefit of prescription, the court cannot make it the ground of its judgment.

146.

The benefit of prescription cannot be waived beforehand.

147.

Prescription is interrupted :—

1. By a demand ;
2. By the levy of an execution or attachment or by a judicial order making a provisional disposition;
3. By an acknowledgment.*

148.

The interruption mentioned in the preceding article has effect only as between the parties and their successors in title.

---

* That is, an acknowledgment by the debtor of the creditor's right.

149.

A demand by an action has no effect to interrupt prescription, if the action fails or is discontinued.

150.

A demand by a judicial summons to pay has no effect to interrupt prescription, if pendency of the proceeding ceases.

151.

A judicial summons for the purpose of an amicable settlement has no effect to interrupt prescription, if the other party does not appear, or no settlement is effected, and no action is brought within one month.

The same applies, if the parties appear voluntarily, but a settlement is not effected.

152.

Participation in bankruptcy proceedings has no effect to interrupt prescription, if the creditor afterwards withdraws from the proceedings, or his claim is disallowed.

153.

A demand of performance has no effect to interrupt prescription, unless within six months legal proceedings are taken to enforce the claim, or a summons for an amicable settlement is issued, or both parties voluntarily appear for that purpose, or the creditor participates in bankruptcy proceedings, or an execution or an attachment is levied, or a provisional order of disposition made.

154.

The levy of an execution or attachment or a provisional order of disposition has no effect to interrupt prescription, if it is vacated on the application of the person for whom it was granted, or because it was not authorized by the provisions of law.

155.

The levy of an execution or attachment, or a provisional order of disposition not made against the person in whose favour prescription runs, has no effect to interrupt prescription, until he has been notified of it.

156.

In order to make an acknowledgement effectual to itnerrupt prescription, it is not necessary that the maker should have legal capacity or authority in respect to the disposal of the right of the other party.

157.

From the time when the cause of interruption ceases, the interrupted prescription begins again to run.

A prescription interrupted by legal proceedings begins again to run from the time when the judgment becomes finally binding.

158.

Against a minor or a person adjudged incompetent, who within six months before the period of prescription would end is without a legal representative, the prescription is not completed until six months after the time when he acquires legal capacity, or a legal representative has assumed his functions.

159.

As to obligations existing in favour of an incapacitated person against his father, mother or guardian who has managed his property, prescription is not completed until six months after he has acquired capacity, or a new legal representative has assumed his functions.

As to obligations existing in favour of a wife against her husband prescription is not completed until six months after the dissolution of the marriage.

160.

As against an estate which forms the subject of a succession, prescription is not completed until six months after the time when the heir is ascertained, a manager is appointed, or an adjudication of bankruptcy is made.

161.

If at the time when the prescription would end, an interruption of the prescription is prevented by the operation of natural forces* or by inevitable accident, prescription is not completed until two weeks after the time when such obstacle has ceased to exist.

SECTION II.

ACQUISITIVE PRESCRIPTION.

162.

A person who during twenty years with the inten-

---

* This is nearly equivalent to what is called in English law "the act of God."

tion to be owner has held undisturbed and open possession of a thing belonging to another acquires the ownership of it.

A person who during ten years with the intention to be owner has held undisturbed and open possession of an immovable belonging to another acquires the ownership of it, if he acted at the beginning of his possession in good faith and without fault.

163.

A person who has exercised any sort of property right other than ownership undisturbedly and openly with the intention to have it for himself, acquires such right after twenty or ten years according to the distinction mentioned in the preceding article.

164.

The prescription mentioned in Art. 162 is interrupted, if the possessor voluntarily abandons his possession, or if he is turned out of possession by another.

165.

The provisions of the preceding article apply correspondingly to the case mentioned in Art. 163.

SECTION III.

EXTINCTIVE PRESCRIPTION.

166.

Extinctive prescription begins to run from the time when the right can first be exercised.

This provision does not prevent the running of acquisitive prescription, from the time of possession, in favour of a third person who possesses a thing being the subject of a right to which a time of commencement or a condition precedent is annexed ; but the person entitled can always demand an acknowledgment by the possessor in order to interrupt the prescription.

167.

An obligation is extinguished, if it is not exercised for ten years.

Property rights other than obligations and ownership are extinguished, if they are not exercised for twenty years.

168.

An obligation whose subject is the payment of money by instalments is extinguished, if it is not exercised for twenty years from the time for the first payment. The same applies, if ten years have elapsed since the time for the last payment.

The creditor to whom such money is due may at any time demand from the debtor a written acknowledgement of the debt, in order to obtain evidence of the interruption of prescription.

169.

If an obligation whose subject is the delivery of money or any other thing within one year or less is not exercised for five years, it is extinguished.

170.

In the following cases obligations are extinguished, if they are not exercised for three years :—

1. Obligations in favour of physicians, midwives and apothecaries for attendance, services or medicines;
2. Obligations in favour of *gishi*,* master-carpenters and contractors for their work; but the prescription is computed only from the time when the work is finished.

171.

The responsibility of lawyers, notaries and executive officers of courts as to papers which they have received in their capacity as such, ceases after three years, in the case of lawyers from the time when the business was finished, in the case of notaries and executive officers from the time when they have performed their duties.

172.

Obligations in favour of lawyers, notaries or executive officers relating to their functions are extinguished, if they are not exercised for two years from the time when the business out of which the obligation arose was finished; but an obligation arising from any particular fact occuring in the course of such business is extinguished after five years, even though such period of two years has not yet elapsed.

173.

In the following cases obligations are extinguished, if they are not exercised for two years :—

* Gishi 技師 means a scientific expert in the erection of buildings or other structures, such as an engineer or architect.

1. The price of products or goods, sold by the producer or a wholesale or retail dealer;
2. Obligations arising from the services of mechanics or workmen employed in manufactures;
3. Obligations in favour of a keeper of a school or boarding school or of a teacher or a master, for instruction, clothing, board or lodging of a pupil or apprentice.

174.

In the following cases obligations are extinguished, if they are not exercised for one year:—

1. Wages of a person hired, if fixed by the month or a shorter time;
2. Wages of a labourer or geïnin* and the price of things supplied by them;
3. Freight;
4. Charges for lodging, food and drink or hire of rooms, entrance fees, the price for things consumed and expenditures by the keeper, in an inn, restaurant, hired room† or place of amusement;
5. A charge for the hire of a movable.

---

* *geinin* are actors, dancing girls and such like public performers.

† That is, rooms hired for a special occasion, *e. g.* for a meeting, a feast etc.

BOOK II.

REAL RIGHTS.

CHAPTER I.

GENERAL PROVISIONS.

175.

Real rights other than those specified in this law or in other laws cannot be created.

176.

The creation or the transfer of a real right takes effect from the mere expression of intention of the parties concerned.

177.

The acquisition or loss of, or any alteration in a real right in an immovable can be set up against third persons only if such fact has been registered according to the provisions of the Law of Registration.

178.

The assignment of a real right in a movable can be set up against third persons only if the thing has been delivered.

179.

If the ownership of and any other real right in the same thing become vested in the same person, the

latter right is extinguished ; but this does not apply, if such thing or such right is the subject of a right of a third person.

If any real right except ownership and a right of another person, the subject of which is such real right, becomes vested in the same person, such other right is extinguished. In such case the proviso of the preceding paragraph applies correspondingly.

The provisions of the preceding article do not apply to a possessory right.

CHAPTER II.

POSSESSORY RIGHT.

SECTION I.

ACQUISITION OF A POSSESSORY RIGHT.

180.

A person acquires a possessory right by holding a thing with the intention of doing so for himself.

181.

A possessory right may be acquired through a representative.

182.

An assignment of a possessory right is effected by the delivery of the thing possessed.

If the assignee or his representative is already holding the thing, the assignment of a possessory right may be made by a mere expression of intention by the parties.

183.

If a representative expresses an intention to hold a thing which he has in his own possession thereafter for the principal, the latter acquires thereby a possessory right.

184.

When possession of a thing is held through a representative, if the principal directs the representative to hold possession thereafter for a third person, such third person acquires the possessory right upon consenting thereto.

185.

When in consequence of the nature of his title a possessor holds without the intention of being owner, he can change the nature of his possession only by a notice to the person under whom he holds, that he intends to hold as owner, or by beginning a new holding under a new title with the intention of holding as owner.

186.

It is presumed that a possessor possesses with the intention of holding as owner, in good faith, undisturbed and openly.

If it is proved that a person has possessed a thing at two different times, it is presumed that his possession has continued during the interval.

187.

The successor of a possessor can rely at his option either upon his own possession only or upon his own possession together with that of his predecessor.

In the latter case he also succeeds to all defects in his predecessor's possession.

SECTION II.

THE EFFECT OF A POSSESSORY RIGHT.

188.

It is presumed that the possessor has lawfully the right which he exercises over the thing possessed.

189.

A possessor in good faith acquires the fruits of the thing possessed.

If a possessor in good faith is defeated in a petitory* action, he is deemed to have been a possessor in bad faith from the time of the commencement of the action.

190.

A possessor in bad faith must restore the fruits, and must account for the value of those which he has consumed or by his fault damaged or omitted to secure.

---

* See Art. 202.

This provision applies correspondingly to a person who possesses by force or clandestinely.

191.

If the thing possessed is lost or damaged by a cause attributable to the possessor, a possessor in bad faith is liable to the person who reclaims the thing for full damages, and a possessor in good faith is liable only so far as he is presently enriched by reason of such loss or damage; but a possessor who has not the intention to hold as owner is liable for all damages even though he acts in good faith.

192.

If a person without disturbance and openly begins to possess a movable thing in good faith and without fault, he acquires at once the right exercised by him over the thing.

193.

If in the case mentioned in the preceding article the thing is one which has been stolen or lost, the party wronged or the loser may claim the restoration of the thing from the possessor within two years from the time of the theft or loss.

194.

If the possessor has acquired the thing stolen or lost in good faith by purchase at an auction or in a public market or from a trader who deals in such wares, the person wronged or the loser can reclaim it from the possessor only on condition that he repays to the possessor the amount which the latter has paid for it.

195.

A person who has possession of an animal other than a domestic animal, which was formerly kept by another person, acquires the right which he exercises over such animal, if he began his possession in good faith, and the former keeper of the animal does not reclaim it within one month from the time when it escaped.

196.

When the possessor of a thing restores it, he is entitled to reimbursement from the person who reclaims it for whatever amount he has expended on its preservation and for other necessary expenses; but if the possessor has acquired the fruits of the thing, the ordinary necessary expenses fall upon him.

If the possessor has expended money in repairing the thing, or incurred other beneficial expenses for it, provided that an increase of the value of the thing still exists therefrom, he is entitled against the person who reclaims it to the amount either of such expenditure or of the increase of value at the latter's option. But as against a possessor in bad faith the court may on the application of the person reclaiming grant him a reasonable time for payment.

197.

A possessor may bring a possessory action* as provided in the following five articles. This applies also to a person who holds possession for another.

---

* See Art. 202.

198.

If a possessor is disturbed in his possession, he may by an *action for the maintenance of possession* claim the stoppage of the disturbance and compensation for damage.

199.

If there is danger that his possession is about to be disturbed, a possessor may by an *action for the protection of possession* claim the prevention of such disturbance or security for damages.

200.

If the possessor is dispossessed by force, he may by an *action for the recovery of possession* claim the restoration of the thing and compensation for damage.

Against a singular successor of a forcible dispossessor an action for the recovery of possession will not lie, unless he had knowledge of the fact of the dispossession.

201.

An action for the maintenance of possession must be brought while the disturbance continues, or not later than one year after it has ceased. But if the thing possessed is damaged by any construction made upon it, the action cannot be brought after one year has elapsed since the beginning of such construction, or after it is completed.

An action for the protection of possession can be brought at any time while the danger continues; but if the danger arises from any construction, the proviso of the preceding paragraph applies.

An action for the recovery of possession must be brought within one year from the time of dispossession.

202.

A possessory action and a petitory action* do not exclude each other.

A possessory action cannot be decided upon grounds relating to the right itself.

SECTION III.

EXTINCTION OF A POSSESSORY RIGHT.

203.

A possessory right is extinguished, if the possessor abandons the intention to possess, or if he loses the detention† of the thing, unless he brings an action for the recovery of possession.

204.

If the possession is held through a representative, the possessory right is extinguished :—

1. If the principal abandons the intention to have the representative hold possession ;

---

* Petitory action, *honken no uttae* 本權ノ訴, is any action founded upon the right itself, *e. g.* upon the right of ownership or superficies etc. Possessory action, *senyū no uttae* 占有ノ訴, means an action based on the mere fact of possession.

† Detention means any physical hoding of a thing.

2. If the representative expresses to the principal his intention, thereafter to hold for himself or for a third person;
3. If the representative loses the detention of the thing possessed.

A possessory right is not extinguished by the extinction of the authority of the representative.

SECTION IV.

QUASI-POSSESSION.

205.

If a person exercises a property right with the intention to have it for himself, the provisions of this Chapter apply correspondingly.

CHAPTER III.

OWNERSHIP.

SECTION I.

THE EXTENT OF OWNERSHIP.

206.

The owner has the right, subject to the restric-

tions imposed by law or regulations, freely to use the thing, to take the profits of it and to dispose of it.

207.

The ownership of land, subject to the restrictions imposed by law or regulations, extends above and below the surface.

208.

If several persons divide a building among themselves, so that each owns a part of it, those parts of the building and its appurtenances which are used in common, are presumed to be owned in common.

The expenses of repairs of the parts held in common, and charges affecting such parts, are to be borne in proportion to the values of the shares of the co-owners.

209.

If an owner of land erects or repairs any wall or building on or near the boundary line, he may make use of adjoining land so far as necessary for the purposes of such erection or repairs; but he cannot enter upon the dwelling house of a neighbour without the latter's consent.

If in such case the neighbour sustains any injury therefrom, he may claim compensation.

210.

If land is so surrounded by other land that it has no access to the public highway, the owner of the former land may pass over the latter land to reach the highway.

The same applies, if access to the highway can only be had over a lake, marsh, river or canal, or the

sea, or if there is a steep slope with a considerable difference of level between the land and the highway.

211

In the cases mentioned in the preceding article the locality of the way and the manner of its construction must be so chosen as to meet the needs of the person entitled thereto, and at the same time to cause as little injury as possible to the surrounding land.

If necessary, the person entitled may construct a road for passage.

212.

The person entitled to passage must pay a compensation for any injury arising to the servient land. Such compensation, except for damage done by the construction of a road, can be made by annual payments.

213.

If in consequence of a partition of land a part thereof is left without access to the highway, the owner of such part has a right of passage to the highway only through land owned by the other persons who were parties to the partition. In such case no compensation need be paid.

These provisions apply correspondingly, if the owner of land alienates a part of it.

214.

The owner of land must not obstruct the natural flow of water from adjoining land.

215.

If by reason of some extraordinary event the flow of the water is obstructed upon the lower land, the owner of the higher land may at his own expense construct any works necessary for the off-flow of the water.

216.

If land is injured or endangered by works constructed upon other land for collecting, discharging or conducting water, being in bad condition, or by water accumulating, the owner of the former land may require the owner of the latter to make repairs or provide for the off-flow of the water, and, if necessary, to construct works for protection.

217.

If in the cases mentioned in the preceding two articles there is any special custom as to defrayment of the expenses, such custom is to govern.

218.

The owner of land must not construct any roof or other works so that rain water falls directly upon adjoining land.

219.

The owner of land on which there is a ditch or other water course must not change the direction or the width of the water course, if the opposite bank belongs to another person.

If both banks belong to the owner of the land on which the water-course is, he may change its direction

or width, but the water must be restored to its natural course at the place of exit.

If in such a case there is a different custom, such custom is to govern.

220.

The owner of land, in order to drain wet land or to get rid of waste water used for domestic, agricultural or industrial purposes, may conduct water through lower land to a public highway, water course or drain; but the locality and manner of construction of the conduit must be so chosen as to do the least possible damage to the lower land.

221.

The owner of land may use for the passage of water works constructed by the owner of any higher or lower land.

A person who so uses works constructed by another must bear the expenses of their construction and preservation in proportion to the benefit which he derives therefrom.

222.

If the owner of land on which there is a water course has occasion to construct a dam, he may join it to the opposite bank; but he must pay compensation for any damage arising therefrom.

If a part of the land on which the water course is, belongs to the owner of the opposite bank, the latter may also use the dam. In such case the expenses are to be apportioned according to the provisions of the preceding article.

223.

The owner of land may at the joint expense of himself and the owner of the adjoining land set up things to mark the boundary.

224.

The neighbours must bear equally the expenses of constructing and maintaining the boundary marks; but the expense of a survey is to be divided in proportion to the areas of the respective lands.

225.

If between two buildings belonging to different owners there is land which is not built upon, either owner has a right to set up a fence on the boundary line at their joint expense.

If the parties cannot agree, the fence shall be made of boards or bamboos and shall be six *shaku* high.

226.

Both neighbours must bear the expense of the construction and preservation of the fence equally.

227.

Either of the neighbours has the right to make the fence of better materials or higher than is provided in Art. 225, 2, but the additional expense of doing so he must bear himself.

228.

If there is a custom different from the provisions of Arts. 225-227, such custom is to govern.

229.

Boundary marks, fences, walls and ditches made on the boundary line are presumed to be owned in common by the two neighbours.

230.

If a wall standing on a boundary line forms a part of a building, the provisions of Art. 229 do not apply.

Nor do they apply to that portion of a wall between two buildings of unequal height, which overtops the lower building, unless it is a wall built for protection against fire.

231.

Each neighbour has a right to carry up a common wall higher, but if the wall cannot bear such structure, he must strengthen or rebuild it at his own expense.

The addition made to the height of the wall under the foregoing provisions is in the sole ownership of the maker.

232.

If in the case mentioned in the preceding article the neighbour is injured, he may claim compensation.

233.

If the branches of bamboos or trees on adjoining land extend over the boundary line, the owner of such bamboos or trees may be required to cut them off.

If the roots of bamboos or trees on adjoining land extend over the boundary line, they may be cut off and taken.

234.

Buildings must not be erected at a distance of less than one *shaku* five *sun* from the boundary line.

If a person is erecting a building in contravention of the foregoing provision, the owner of the neighbouring land may have it stopped or changed; but if a year has elapsed since the commencement of the building, or if the building has been completed, he can only claim damages.

235.

A person who makes at a distance of less than three *shaku* from the boundary line a window or veranda which overlooks the curtilage of a dwelling house, must provide a screen.

The distance is computed perpendicularly to the boundary line from that point of the window or veranda which is nearest to the neighbouring land.

236.

If in the cases mentioned in Arts. 234 and 235 there is a different custom, such custom is to govern.

237.

If a well, a cistern, a cesspool or a receptacle for manure is dug, it must not be at a distance of less than six *shaku* from the boundary line; or if a pond, a cellar or a privy vault is dug, it must not be at a distance of less than three *shaku* from the boundary line.

Water pipes must not be laid or ditches dug at a distance of less than one half of their depth from the boundary line; but in no case need the distance be more than three *shaku*.

238.

A person who makes any one of the works mentioned in Art. 237 near to the boundary line, must use due care to prevent the earth or sand from caving in or the water or filth from percolating through.

SECTION II.

THE ACQUISITION OF OWNERSHIP.

239.

The ownership of a movable thing which has no owner is acquired by possessing it with the intention of being owner.

An immovable thing which has no owner falls to the ownership of the State.

240.

The finder of a lost article acquires the ownership of it, if the owner cannot be ascertained within one year after public notice has been given according to the provisions contained in special laws.

241.

The finder of hidden property acquires the ownership of it, if the owner cannot be ascertained within six months after public notice has been given according to the provisions contained in special laws. But if it is found in a thing belonging to another, the

finder and the owner of such thing acquire the ownership in equal shares.

242.

The owner of an immovable thing acquires the ownership of a thing which is attached to it as an accessory; but this does not affect the rights of a person who by virtue of a special title has attached the thing to the other.

243.

If several movable things belonging to different owners are attached to each other so that they cannot be separated without injury, the ownership of the thing formed by the combination belongs to the owner of the principal thing. The same applies, if separation can be made only at an excessive cost.

244.

If among movable things so attached together there is no distinction of principal and accessory, the owners of the separate things become co-owners of the thing formed by the combination in proportion to the values which the separate things had at the time of attachment.

245.

The provisions of the two preceding articles apply correspondingly, when two things belonging to dfferent owners are mixed together so that distinction is impossible.

246.

If a person has worked up a movable thing of

another,* the product belongs to the owner of the materials; but if the value created by the work largely exceeds the value of the materials, the worker acquires the ownership of the product.

If the worker has supplied a part of the materials, he acquires the ownership of the product only in case the value of the materials supplied by him together with the value of his work exceeds the value of the materials supplied by the other.

247.

If the ownership of a thing is extinguished under the provisions of Arts. 242-246, all other rights in the thing are also extinguished.

If the owner of such a thing becomes the owner of the thing created by combination, mixture or specification, the rights mentioned in the preceding paragraph continue as to the new thing; if he becomes co-owner, they continue as to his portion.

248.

A person, who has suffered a loss by the application of the provisions of any of the preceding six articles may claim compensation according to the provisions of Arts. 703 and 704.

---

* This is nearly the same as what is called *specification* in Roman law. Hereafter that word will be used to designate the manner of acquisition of ownership described in Art. 246.

SECTION III.

CO-OWNERSHIP.

249.

Each co-owner may use the whole of the thing held in common in proportion to his share.

250.

It is presumed that the shares of the co-owners are equal.

251.

No co-owner has the right to make any alteration in the thing held in common without the consent of the other co-owners.

252.

Except in the case mentioned in Art. 251, matters relating to the management of the thing held in common are decided by the majority in value of the co-owners, but each co-owner has the right to do acts of preservation.

253.

Each co-owner must pay the expenses of the management of the thing held in common, and must bear the charges upon it, in proportion to his share.

If one co-owner neglects to perform these obligations for one year, the other co-owners have a right to acquire his share on payment of a reasonable compensation.

254.

If an obligation exists in favour of one co-owner against another in regard to the thing held in common, the former may exercise his right against a singular successor of such other co-owner.

255.

If a co-owner renounces his share or dies without an heir, his share accrues to the others.

256.

Each co-owner has a right to demand partition of the thing held in common, but it may be provided by contract that partition shall not be made for a period not exceeding five years.

This contract may be renewed, but its duration from the time of renewal must not exceed five years.

257.

The provisions of the preceding article do not apply to such things held in common as are mentioned in Arts. 208 and 229.

258.

If the co-owners cannot agree, application may be made to the court for partition.

If in such case partition of the thing itself cannot be made, or if there is reason to apprehend that by partition the value of the thing would be considerably diminished, the court may order the thing to be sold by auction.

259.

If an obligation exists in favour of one co-owner

against another relating to the co-ownership, the former may at the time of partition claim performance out of the share falling to his debtor.

The creditor may, if necessary for such performance, demand a sale of the part of the thing held in common falling to his debtor's share.

260.

A person who has a right in the thing held in common, or any creditor of a co-owner, may at his own expense intervene in the partition.

If in disregard of an application for intervention made according to the provisions of the preceding paragraph, partition is effected without waiting for the intervention, the partition cannot be set up against the person who made the application for intervention.

261.

Each co-owner is bound in proportion to his share by the same warranties as a seller in respect to the things which the other co-owners have received under the partition.

262.

After the partition each party must preserve all documents relating to the the thing which he has received.

Documents relating to a thing partitioned among all or several of the co-owners must be preserved by the person who has received the largest share.

If there is no such person, the parties to the partition must upon consultation appoint a custodian.

If they cannot agree, he must be appointed by the court.

The custodian of a document must on demand allow the use of the document to the other parties to the partition.

263.

As to an *iriaiken** which has the nature of co-ownership the provisions of this Section apply in addition to the customs of the particular district.

264.

The provisions of this Section apply correspondingly, where several persons hold in common a property right other than ownership, except as otherwise provided by law or regulations.

CHAPTER IV.

SUPERFICIES.

265.

A superficiary has the right to use another person's land for the purpose of owning thereon structures or bamboos and trees.

266.

If a superficiary is bound to pay a fixed ground

---

* *Iriaiken* means generally a right held by a whole village to take wood or grass from certain land, especially forests. See also Art. 294.

rent to the owner of the land, the provisions of Arts. 274-276 apply correspondingly.

Also the provisions as to the contract of hiring apply correspondingly to the rent.

267.

The provisions of Arts. 209-238 apply correspondingly to the relations between several superficiaries and between a superficiary and the owner of the land; but the presumption mentioned in Art. 229 applies to a superficiary only as to works which have been constructed after the creation of the superficies.

268.

If no time for the duration of the superficies has been fixed in the act by which it was created, and there is no special custom to the contrary, the superficiary may surrender his right at any time; but if he is bound to pay a ground rent, he must give notice at least one year beforehand or pay one full year's rent.

If the superficiary does not surrender his right according to the foregoing provisions, the court may on the application of a party interested fix the duration of the right at from twenty to fifty years, taking into consideration the kind and condition of the structures or bamboos and trees, as well as the circumstances existing at the time when the right was created.

269.

At the termination of the superficies the superficiary, on restoring the land to its former condition, may take away structures or bamboos and trees. But if the owner of the land gives notice that he desires to buy such things, and offers their present

value, the superficiary cannot refuse such offer except for some just reason.

If there is a custom different from the provisions of the preceding paragraph, such custom is to govern.

CHAPTER V.

EMPHYTEUSIS.

270.

An emphyteuta has a right to carry on agriculture or cattle raising on the land of another on payment of a rent.

271.

An emphyteuta must not make any change which will cause permanent damage to the land.

272.

An emphyteuta may assign his right, or may let the land for the purpose of agriculture or cattle raising within the duration of his right; unless that has been forbidden by the act of creation of the right.

273.

As to the duties of the emphyteuta, in addition to the provisions of this chapter and to any provisions contained in the act of creation, the rules relating to hiring apply correspondingly.

274.

Even though the emphyteuta suffers a loss of profits by *vis major*, he has no claim for the remission or reduction of his rent.

275.

If the emphyteuta because of *vis major* receives no profits at all for three consecutive years or more, or for five consecutive years or more receives only a profit which is less than his rent, he may surrender his right.

276.

If the emphyteuta fails to pay his rent for two consecutive years or is adjudged bankrupt, the landlord may claim the extinguishment of the emphyteusis.

277.

If there is any custom different from the provisions of the preceding six articles, such custom is to govern.

278.

The duration of an emphyteusis is from twenty to fifty years. If it is created for a longer period than fifty years, it is reduced to fifty years.

An emphyteusis may be renewed, but not for more than fifty years from the time of renewal.

If the period of duration has not been fixed in the act of creation, it is, except so far as there is a different special custom, to be thirty years.

279.

The provisions of Art. 269 apply correspondingly to an emphyteusis.

CHAPTER VI.

SERVITUDES.

280.

The holder of a servitude has a right to use another person's land for the benefit of his own land in accordance with the purpose specified in the act of creation; but the provisions of Chapter III, Section I relating to public welfare must not be contravened.

281.

The servitude, being appurtenant to the ownership of the dominant land, is transferred with it, and is the subject of rights which others have in the dominant land, unless otherwise provided in the act of creation.

A servitude cannot be assigned or made the subject of other rights apart from the dominant land.

282.

One co-owner cannot have a servitude existing for the benefit of or in the land extinguished as to his part.

If land is partitioned, or a part of it alienated, the servitude exists for or in each part, unless it from its nature relates only to some particular part of the land.

283.

Only a continuous and visible servitude can be acquired by prescription.

284.

If one co-owner has acquired a servitude by prescription, such acquisition enures to the benefit of all the co-owners.

An interruption of prescription against co-owners is effective only if it is made against all the co-owners who exercise the servitude.

If there are two or more co-owners exercising the servitude, and there is a cause for the suspension of prescription in regard to one co-owner, prescription will nevertheless continue to run in favour of all.

285.

If on land subject to a servitude for the use of water there is not sufficient water for the requirements of the dominant and the servient land, the water is to be used first for domestic purposes according to the requirements of both pieces of land and the remaining water for other purposes. But this rule does not apply, when it has been otherwise provided by the act of creation.

If two or more servitudes for the use of water have been created in the same servient land, the holder of a later servitude must not interfere with the use of the water by the holder of a prior servitude.

286.

If the owner of the servient land takes upon himself, either by the act of creation or by a special agreement, a duty to build or repair structures at his own expense for the exercise of a servitude, such duty devolves upon the singular successor of the owner of the servient land.

287.

The owner of the servient land may at any time free himself from the duty mentioned in the preceding article by abandoning to the holder of the servitude the ownership of such portion of the land as is necessary for the servitude.

288.

The owner of the servient land may use structures put upon his land for the purposes of the servitude, but only so as he does not thereby interfere with the exercise of the servitude.

In such case the owner of the servient land must bear a part of the expense of the construction and preservation of the structures in proportion to the benefit accruing to him therefrom.

289.

If the possessor of servient land has exercised his possessions under the conditions necessary for acquisitive prescription, the servitude is extinguished by prescription.

290.

The extinctive prescription mentioned in the preceding article is interrupted by the holder of the servitude exercising his right.

291.

The period for extinctive prescription specified in Art. 167, 2 is computed, as to a discontinuous servitude from the time when the holder exercised it last, and as to a continuous servitude from the time when a fact interfering with the exercise of the servitude occurred.

292.

If the dominant land belongs to two or more co-owners, and an interruption or suspension of the prescription occurs in favour of one of them, such interruption or suspension takes effect also in favour of the other co-owners.

293.

If the holder of a servitude omits to exercise a part of his right, such part only is extinguished by prescription.

294.

As to an *iriaiken** not having the nature of co-ownership the custom of each locality is to govern ; also the provisions of this Chapter apply correspondingly.

CHAPTER VII.

POSSESSORY LIENS.

295.

If the possessor of a thing belonging to another has an obligation in his favour relating to the thing possessed, he may retain the thing, until the obligation is performed, unless the obligation is not yet due.

The foregoing provision does not apply, if the possession began by an unlawful act.

---

* See Art. 263.

296.

The lienholder may exercise his right against the whole of the thing retained, until the obligation has been wholly performed.

297.

The lienholder may take the fruits of the thing retained, and may apply them to the performance of the obligation in preference to other creditors.

Such fruits must first be applied upon the interest on the obligation, and if there is any surplus, that must be applied upon the principal.

298.

The lienholder must keep the thing retained with the care of a good manager.

The lienholder must not use or let the thing retained, or dispose of it by way of security, without the consent of the debtor; but this does not apply to such use as is necessary for the preservation of the thing.

If the lienholder acts contrary to these provisions, the debtor may claim the extinguishment of the lien.

299.

If the lienholder incurs necessary expenses in respect to the thing retained, he may require the owner to reimburse him.

If the lienholder incurs beneficial expenses in respect to the thing retained, and an increase in the value of the thing therefrom remains in existence, he may require the owner to pay either the amount of the expenses or such increased value at the latter's option;

but the court may on the application of the owner allow him a reasonable time for doing so.

300.

The exercise of the right of lien does not prevent the running of extinctive prescription against the obligation.

301.

The debtor may claim the extinguishment of the right of lien on giving proper security.

302.

A lien is extinguished by the loss of possession of the thing; but this does not apply to the case where the thing retained is let or pledged according to the provisions of Art. 298, 2.

CHAPTER VIII.

PREFERENTIAL RIGHTS.*

SECTION I.

GENERAL PROVISIONS.

303.

A holder of a preferential right has according to

* These rights somewhat resemble what in the English law are called equitable liens, but are not exactly the same.

the provisions of this law or other laws a right in the property of his debtor to receive therefrom performance of an obligation due to him in preference to other creditors.

304.

A preferential right can also be exercised against money or other things which the debtor is to receive by reason of the sale, letting or loss of the subject of the right or damage to it; but the holder of the preferential right must make a judicial seizure of such money or thing, before it is paid or delivered.

This applies to the consideration for a real right which the debtor has created in the subject of the preferential right.

305.

The provisions of Art. 296 apply correspondingly to preferential rights.

SECTION II.

CLASSES OF PREFERENTIAL RIGHTS.

SUBSECTION I.

GENERAL PREFERENTIAL RIGHTS.

306.

A person in whose favour an obligation exists based

upon any of the following grounds has a preferential right in the whole property of the debtor :—

1. Expenses for the common benefit ;
2. Funeral expenses ;
3. Wages of employees ;
4. Supplies of the daily necessaries of life.

307.

The preferential right for expenses for the common benefit is for expenses incurred for the common benefit of the creditors in regard to the preservation, liquidation or distribution of the debtor's property.

If any such expense was not incurred for the benefit of all the creditors, the preferential right only exists as against those creditors for whose benefit it was incurred.

308.

The preferential right for funeral expenses is for such expenses as are accordant to the station in life of the debtor.

This preferential right exists also for such funeral expenses incurred by the debtor as are accordant to the station in life of a relative or a member of his house whom the debtor was bound to support.

309.

The preferential right on account of wages of employees is for wages due to an employee of the debtor for six months back ; but the amount is limited to fifty yen.

310.

The preferential right on account of the supply of

the daily necessaries of life is for supplies for six months back of food, drink, fire wood, charcoal and oil, necessary for the living of the debtor, of relatives and members of his house, who live with him and whom he is bound to support, and of their servants.

SUBSECTION II.

PREFERENTIAL RIGHTS IN MOVABLES.

311.

A person in whose favour an obligation exists based upon one of the following grounds has a preferential right in particular movables of the debtor:—

1. Hiring of an immovable;
2. Lodging in an inn;
3. Transportation of travellers or goods;
4. Official misconduct by public officers;
5. Preservation of movables;
6. Sale of movables;
7. Supply of seeds, young plants and manure;
8. Agricultural or industrial services.

312.

The preferential right on account of the hiring of an immovable is for the hire of the immovable and for other obligations of the hirer connected therewith, and is in the movable things of the hirer.

313.

The preferential right of the lessor of land is in such movables as have been brought by the lessee upon the land or into buildings subservient to the use of the land, or as are designed for the use of such land, and is in such fruits of the land as are in the possession of the lessee.

The preferential right of the lessor of a building is in such movables as have been brought into the building by the lessee.

314.

If the lease is assigned, or there is a sub-lease, the preferential right of the original lessor extends to the movables of the assignee or sub-lessee. The same applies to the money which the assignor or the sub-lessor is to receive.

315.

In case of a general liquidation of the property of the lessee the preferential right of the lessor is only for the rent of the last preceding, the current and the next following rent period and for other obligations, as well as for damages which have arisen during the last preceding and the current rent period.

316.

If the lessor has received security-money, he has a preferential right only for so much of the obligation as is not performed out of the security-money.

317.

The preferential right on account of lodging in an inn is for the charges for the lodging of a traveller, his

suite and his beasts of burden, as well as for charges for food and drink, and is in the baggage which is in the inn.

318.

The preferential right on account of transportation is for charges for the transportation of a traveller or of goods and for incidental expenses, and is in all goods in the hands of the carrier.

319.

The provisions of Arts. 192-195 apply correspondingly to the preferential rights mentioned in the preceding seven articles.

320.

The preferential right on account of security given by a public officer is for any obligation arising from a default of a public officer in the performance of his functions, and is in such security.

321.

The preferential right on account of the preservation of a movable is for the expense of the preservation of a movable thing, and is in such thing.

This preferential right exists also for necessary expenses incurred for the purpose of having a right relating to a movable preserved, acknowledged or enforced.

322.

The preferential right on account of the sale of a movable is for the purchase money of a movable and interest thereon, and is in such movable.

323.

The preferential right on account of the supply of seeds, young plants or manure is for the price of seeds, young plants or manure and interest thereon, and is in the fruits which have grown on the land for which those things have been used within one year after their use.

The preferential right above mentioned is also for the supply of silkworm eggs or mulberry leaves used for feeding the worms, and is in the things produced from the eggs and leaves.

324.

The preferential right on account of agricultural and industrial services is, as to an agricultural labourer for wages for one year back, and as to an industrial labourer for wages for three months back, and is in the fruits or manufactured things produced by his labour.

SUBSECTION III.

PREFERENTIAL RIGHTS IN IMMOVABLES.

325.

A person in whose favour an obligation exists based upon one of the following grounds has a preferential right in particular immovables of the debtor :—

1. Preservation of an immovable ;
2. Work done upon an immovable ;
3. Sale of an immovable.

326.

The preferential right on account of the preservation of an immovable is for the expense of preservation of an immovable, and is in the thing preserved.

In that case the provisions of Art. 321,2 apply correspondingly.

327.

The preferential right on account of work done upon an immovable is for the charges for work done upon an immovable of the debtor by a builder, a *gishi** or a contractor, and is in the immovable.

This preferential right exists only if there is a present increase of the value of such immovable due to such work, and is only in such increased value.

328.

The preferential right on account of the sale of an immovable is for the purchase money and interest thereon, and is in the immovable.

SECTION III.

THE RANK OF PREFERENTIAL RIGHTS.

329.

If general preferential rights conflict, their precedence is according to the order in Art. 306.

If a general preferential right conflicts with a special

---

* See note to Art. 170.

preferential right, the latter takes precedence ; but the preferential right on acoount of expenses for the common benefit takes precedence as against all creditors who are benefited thereby.

330.

If preferential rights in the same movable conflict, the order of their precedence is as follows :—

1. The preferential right on account of the hiring of an immovable, of lodging in an inn and of transportation ;
2. The preferential right on account of the preservation of a movable ; but if there are several persons entitled as preservers, a later preserver takes precedence of an earlier one ;
3. The preferential right on account of the sale of a movable, of the supply of seeds, young plants or manure, and of agricultural and industrial services.

If a person who has a preferential right of the first rank knew at the time when he acquired his obligation that other persons had preferential rights of the second or third rank, he cannot exercise his right of precedence against them.

The same applies to a person who has preserved a thing for the benefit of a person having a preferential right of the first rank.

As to fruits, an agricultural labourer has the first rank, a supplier of seeds, young plants and manure the second, and the lessor of the land the third.

331.

If special preferential rights in the same immovable

conflict, their precedence is according to the order in Art. 325.

If successive sales have been made of the same immovable, the order of precedence of the sellers is according to the times of the sales.

332.

If several persons have preferential rights of the same rank in the same thing, each is to receive performance in proportion to the amount of his obligation.

SECTION IV.

THE EFFECT OF PREFERENTIAL RIGHTS.

333.

A preferential right in a movable cannot be exercised after the debtor has delivered the thing to a third person who has acquired it from him.

334.

If a preferential right conflicts with a pledge of a movable, the pledgee has the same right as the holder of a preferential right of the first rank mentioned in Art. 330.

335.

A person who has a preferential right must receive performance first out of property other than im-

movables, and only in case that is insufficient can he receive performance out of immovables.

As to immovables he must receive performance first out of such immovables as are not the subjects of special rights of security.

If a person who has a general preferential right omits to intervene in a distribution of property according to the foregoing provisions, he is forbidden to exercise his preferential right against a third person whose right is registered, to the extent of what he would have received on such intervention.

The provisions of the three preceding paragraphs do not apply, if the proceeds of immovable property are distributed before those of other property, or if the proceeds of an immovable which is the subject of a special security are distributed before the proceeds of other immovable things.

336.

A general preferential right, even though not registered in respect to an immovable, may be set up against any creditor who has no special security; but this does not apply against a third person whose right is registered.

337.

A preferential right on account of the preservation of an immovable retains its effect, if it is registered as soon as the act of preservation is completed.

338.

A preferential right on account of work done upon an immovable retains its effect, if a provisional

estimate of the cost is registered before the work has begun. If, however, the cost of the work exceeds the provisional estimate, there is no preferential right for the excess.

The increase of value of an immovable arising from the work done upon it, is to be estimated by experts appointed by the court, and at the time of the interven tion in the distribution.

339.

A preferential right registered in accordance with the provisions of the preceding two articles can be exercised in preference to a mortgage.

340.

A preferential right on account of the sale of an immovable retains its effect, if at the time when the contract of sale is made, the fact that the price or the interest thereon has not been paid is registered.

341.

As to the effect of a preferential right, in addition to the provisions of this Section the provisions as to mortgages apply correspondingly.

CHAPTER IX.

PLEDGE.

SECTION I.

GENERAL PROVISIONS.

342.

A pledgee has a right to possess the thing which he has received from the debtor or from a third person as security for an obligation existing in his favour, and to receive performance out of it in preference to other creditors.

343.

A thing which is not assignable cannot be made the subject of a pledge.

344.

The creation of a pledge takes effect on the delivery to the creditor of the thing forming its subject.

345.

The pledgee cannot have the pledgor hold the possession of the thing pledged in his place.

346.

The pledge is security for the principle, interest

and any penalty, for the costs of enforcement of the right of pledge, for the expenses of the preservation of the thing pledged and for damages arising from non-performance of the obligation or from latent defects in the thing pledged; except so far as it is otherwise provided in the act of creation.

347.

The pledgee is entitled to retain the possession of the thing pledged, until he has received performance of the obligation mentioned in the preceding article; but he cannot set up this right against a creditor who has a right of precedence over him.

348.

The pledgee may on his own responsibility repledge the thing pledged within the time of the duration of his own right. In that case, however, he is responsible for any damage caused to the thing by *vis major*, which would not have happened but for the repledge.

349.

The pledgor cannot, either by the act of creation or by an agreement made before the obligation is due, in order to make performance to the pledgee, agree that the latter shall become the owner of the thing pledged or shall dispose of it without complying with the requirements of the law.

350.

The provisions of Arts. 296-300 and of Art. 304 apply correspondingly to a pledge.

351.

A person who has given a pledge as security for the obligation of another is entitled to recourse against the debtor according to the provisions of law as to suretyship, if he has performed the obligation or has lost the ownership of the thing pledged in consequence of the enforcement of the pledge.

SECTION II.

PLEDGE OF A MOVABLE.

352.

The pledgee of a movable cannot set up his pledge against a third person, unless he continues to hold possession of the thing.

353.

If the pledgee of a movable is deprived of the possession of the thing, he can recover it only by an action for the recovery of possession.

354.

If the obligation existing in favour of the pledgee is not performed, he may, provided there is a reasonable ground for doing so, apply to the court to have the thing pleged at once appropriated for the performance according to a valuation by experts. The pledgee

must give previous notice of such application to the debtor.

355.

If several pledges for different obligations have been created in the same movable, their rank is according to the times of their creation.

SECTION III.

THE PLEDGE OF AN IMMOVABLE.

356.

The pledgee of an immovable may use and take the profits of the immovable pledged in accordance with its established manner of use.

357.

The pledgee of an immovable is bound to pay the expenses of its management and to bear the charges upon it.

358.

The pledgee of an immovable cannot demand interest upon his obligation.

359.

The provisions of the preceding three articles do not apply, if it is otherwise provided by the act of creation of the pledge.

360.

The duration of the pledge of an immovable may not exceed ten years. If a longer period is fixed, it is to be reduced to ten years.

The pledge of an immovable may be renewed, but not for more than ten years from the time of renewal.

361.

In addition to the provisions of this Section, the provisions of the next Chapter apply correspondingly to the pledge of an immovable.

SECTION IV.

THE PLEDGE OF A RIGHT.

362.

Any property right may be the subject of a pledge.

In addition to the provisions of this Section, the provisions of the last three Sections apply correspondingly to such a pledge.

363.

When an obligation is pledged which is evidenced by a written instrument, the pledge is effected by the delivery of the instrument.

364.

When an obligation in favour of a specified person is

pledged, such pledge cannot be set up against the debtor on such obligation or another third person, unless notice of the creation of the pledge is given to such debtor in accordance with the provisions of Art. 467.

The foregoing provisions do not apply to name-shares.*

365.

If a name-debenture is pledged, such pledge cannot be set up against the commercial company or against other third persons, unless the creation of the pledge is registered in the company's books in accordance with the provisions relating to the assignment of debentures.

366.

If an instrument drawn to order is pledged, such pledge cannot be set up against third persons, unless its creation is noted upon the instrument itself in the manner of an endorsement.

367.

The pledgee may collect directly anything that is due upon the obligation pledged.

When the obligation is for money, the pledgee may collect only such portion as corresponds to the amount of his own obligation.

If the obligation pledged is due before the obligation in favour of the pledgee, the latter may require the debtor on the obligation pledged to deposit its amount, in which case the pledge exists in the money deposited.

---

* I. e. shares of stock in the certificates for which a person certain is named as creditor. See the Commercial Code.

When an obligation which is not for money is pledged, the pledgee has a right of pledge in the thing received in performance thereof.

368.

In addition to the manner provided in the preceding article, the pledgee may enforce the pledge also in the manner provided for the enforcement of obligations in the Code of Civil Procedure.

CHAPTER X.

MORTGAGE.

SECTION I.

GENERAL PROVISIONS.

369.

A mortgagee has a right to receive, in preference to other creditors, performance out of the immovable which the debtor or a third person, without transferring its possession, has made security for an obligation existing in favour of the mortgagee.

A superficies or emphyteusis can also be made the subject of a mortgage. In such case the provisions of this Chapter apply correspondingly.

370.

The mortgage covers all things which are so connected with the immovable mortgaged as to form one thing with it, except buildings standing on mortgaged land. But this does not apply, if it is otherwise provided in the act of creation, or if the creditor has a right to rescind the act of the debtor according to the provisions of Art. 424.

371.

The provisions of the preceding article do not apply to fruits, except for the time after a seizure has been made under legal process upon the immovable mortgaged, or after the notice specified in Art. 381 has been given to a third person who has purchased the immovable.

This proviso, however, applies only if the seizure of the immovable mortgaged is made within one year after the third purchaser has received the notice mentioned in Art. 381.

372.

The provisions of Arts. 296, 304 and 351 apply correspondingly to mortgages.

SECTION II.

THE EFFECT OF A MORTGAGE.

373.

If the same immovable has been mortgaged to secure several different obligations, the rank of such mortgages is according to their respective times of registration.

374.

If a mortgagee is entitled to interest or other money payable by instalments, he can exercise his mortgage only for payments which have fallen due within the preceding two years.

If, however, as to any earlier instalment a special registration has been made after its falling due, the mortgage may be exercised as to it from the time of registration.

375.

A mortgagee may make his mortgage security for an obligation in favour of another person against him, or he may assign or waive his mortgage or the rank thereof in favour of another creditor of the same debtor.

If in any such case the mortgagee has made disposals of his right in favour of several persons, the rights of such persons rank according to the respective times when notes of such facts were added to the registry of the mortgage.

376.

If in any case mentioned in the preceding article the principal debtor has neither been notified according to the provisions of Art. 467 of the disposal of the mortgage nor consented to it, such disposal cannot be set up against him, a surety, the mortgagor or a successor of any of them.

If the principal debtor after receiving such notice or after such consent performs without the consent of the person in whose favour such disposal was made, he cannot set up such performance against the latter or his successor.

377.

If a third person who has bought the ownership of or a superficies in the immovable mortgaged, pays the price to the mortgagee at the latter's request, the mortgage is extinguished in favour of the buyer.

378.

A person who has purchased* the ownership of or a superficies or emphyteusis in an immovable may, under the provisions of Arts. 382-384, remove a mortgage by paying or depositing a sum proposed to the mortgagee and assented to by him.

379.

The principal debtor, a surety or a successor of either of them has not the right to remove a mortgage.

---

* Purchase means in this Section the acquisition of a right otherwise than as heir or legatee. This is nearly its technical meaning in the English law.

380.

A third person who has purchased an immovable subject to a condition precedent has not the right to remove a mortgage pending the condition.

381.

If a mortgagee intends to enforce his mortgage, he must give previous notice thereof to the purchaser mentioned in Art. 378.

382.

A purchaser may remove a mortgage at any time, before he receives the notice mentioned in the preceding article.

When the purchaser has received the notice mentioned in the preceding article, he can remove a mortgage only on condition that he serves within one month the documents specified in Art. 383.

A third person who has purchased one of the rights mentioned in Art. 378, after the notice mentioned in Art. 381 has been given, can remove a mortgage only within the period fixed for the purchaser mentioned in the preceding paragraph.

383.

If a purchaser intends to remove a mortgage, he must serve upon each registered creditor the following documents:—

1. A document specifying the title and the date of his purchase, the name and the domicile of the grantor and of the purchaser, the nature and locality of the immovable mortgaged, the price and other charges assumed by the purchaser;

2. A copy of the registry book, so far as it relates to the immovable; but it is not necessary to insert therein those entries which relate to rights already extinct;
3. If the creditors have not in compliance with the provisions of Art. 384 within one month demanded the sale of the immovable by auction for the sake of obtaining a higher price, a document stating that the purchaser will in accordance with the rank of the obligations pay or deposit the price mentioned under No. 1 or a specified amount of money.

384.

A creditor who does not within one month after having received the service mentioned in the preceding article demand a sale by auction for the sake of obtaining a higher price, is considered to have assented to the offer of the purchaser.

A creditor who demands a sale by auction for the sake of obtaining a higher price must state that he will himself buy the immovable at a price of one tenth higher than that offered by the purchaser in case such price or a higher price is not obtained at the auction.

In such case the creditor must give security for the price and expenses.

385.

A creditor who demands a sale at auction according to Art. 384, must within the period specified in the preceding article give notice thereof to the debtor and the grantor of the mortgaged immovable.

386.

A creditor who has demanded a sale by auction according to Art. 384 can withdraw his demand only with the consent of the other registered creditors.

387.

If the mortgagee has not within the period specified in Art. 382 received payment from the debtor or a notice for the removal of the mortgage, he may demand a sale by auction of the immovable mortgaged.

388.

If the land and the buildings on it belong to the same owner, but the mortgage is on the land only or on the buildings only, it is considered that the mortgagor has created a superficies for the case of a sale by auction.

In such case the ground rent is to be fixed by the court on the application of any party interested.

389.

If the mortgagor after the creation of the mortgage has erected a building on the land mortgaged, the mortgagee may have such building sold with the land; but he can exercise his right of priority only against the price obtained for the land.

390.

The purchaser* may bid for the immovable at the auction.

391.

If the purchaser has incurred necessary or beneficial

* *i. e.* the purchaser mentioned in Art. 378.

expenses in respect to the immovable mortgaged, he has a prior claim for compensation out of the price of the immovable according to the distinctions stated in Art. 196.

392.

If the creditor has a mortgage on several immovables for the same obligation, and the price of all of them is to be distributed at the same time, the burden of the obligation is apportioned according to the respective values of such immovables.

If the price of only one of such immovables is to be distributed at one time, the mortgagee may claim performance of his entire obligation from that price. In that case the mortgagee who is next in rank may exercise the rights of the prior mortgagee in his stead to the extent of the amount which the latter would have received from the other immovables according to the provisions of the preceding paragraph.

393.

A person who exercises the right of mortgage in another's stead according to the provisions of the preceding article, may have a note of such fact added to the registry of the mortgage.

394.

A mortgagee is entitled to performance of his obligation from other property only so far as he is not able to obtain it from the price of the immovable mortgaged.

This provision does not apply, if the price obtained for other property is to be distributed before the price of the immovable mortgaged; but in order to secure that the mortgagee receives payment according to

the provisions of the preceding paragraph the other creditors may demand that the amount which will come to him in the distribution shall be deposited.

395.

A lease which does not exceed the duration specified in Art. 602 may be set up against the mortgagee even though registered after the mortgage; but if such lease causes damage to the mortgagee, the court may on his application order its cancellation.

SECTION III.

THE EXTINCTION OF THE MORTGAGE.

396.

A mortgage is extinguished by prescription as to the debtor and the mortgagor only on the extinguishment of the obligation secured by it.

397.

If a person other than the debtor or mortgagor has possession of the immovable mortgaged under the conditions necessary for acquisitive prescription, the mortgage is extinguished thereby.

398.

A person who has mortgaged a superficies or emphyteusis cannot set up the surrender of his right against the mortgagee.

BOOK III.

OBLIGATIONS.*

CHAPTER I.

GENERAL PROVISIONS.

SECTION I.

THE SUBJECT OF THE OBLIGATION.

399.

The subject of an obligation may be something not capable of being estimated in money.

400.

If the subject of the obligation is the delivery of a specific thing, the debtor† must, until the time of delivery, use in the keeping of the thing the care of a good manager.

401.

When the thing which forms the subject of the obligation is described only in kind, if the quality

* In this translation the word "obligation" is used in the sense of the Roman Law to denote either the right of one party or the duty of the other.

† In this translation the words "debtor" and "creditor" are used to denote respectively the person subject to any kind of obligation and the person to whom it is owed, not as in English law only the parties to an obligation to pay money.

cannot be determined by the nature of the juristic act or the intention of the parties, the debtor must make prestation* of a thing of medium quality.

In such case if the debtor has completed all acts necessary for the prestation of a thing, or if he with the consent of the creditor has selected a thing for the prestation, such thing becomes from that time the subject of the obligation.

402.

If the thing forming the subject of the obligation is money, the debtor may at his option perform in any kind of currency, unless the subject of the obligation is prestation of some particular kind of money.

If at the time of maturity of the obligation the particular kind of currency which forms its subject has lost its legal tender quality, the debtor may perform in any other currency.

These provisions apply correspondingly, if the subject of the obligation is prestation of foreign currency.

403.

If the amount of an obligation is expressed in foreign currency, the debtor may perform in Japanese currency at the rate of exchange prevailing at the place of performance.

---

* Prestation denotes any act which is done or omitted in favour of another. The word *kyūfu suru* 給付スル used in the Japanese text is a translation of the German technical term *leisten* and the Latin *præstare*. Neither performance nor payment would express the same meaning, as will be clearly shown by Arts. 406, 410, 482, 488, 490, 491. There may be, for instance, several prestations in order to make one performance, and there may be a prestation without the obligation being discharged thereby.

404.

If an obligation bears interest and there is no different intention expressed, the rate of interest is five per cent per annum.

405.

If the interest is in arrear for one year or more, and the debtor does not pay upon the creditor's demand, the latter may add such interest to the principal.

406.

If the subject of the obligation is to be selected from among several prestations, the right of selection belongs to the debtor.

407.

The right of selection mentioned in the preceding article is exercised by an expression of intention made to the other party.

Such expression of intention can be rescinded only with the assent of the other party.

408.

When the obligation comes due, if the party having the right of selection on being called upon by the other party to select within a reasonable time, does not do so within such time, the right of selection passes to the other party.

409.

If a third person is to make the selection, it is done by an expression of intention made either to the creditor or to the debtor.

If such third person cannot make the selection or is unwilling to do so, the right of selection passes to the debtor.

410.

If among the prestations which form the subject of the obligation one is from the beginning or afterwards becomes impossible, the obligation remains in existence as to the others.

If a prestation becomes impossible by the fault of the party who has not the right of selection, the foregoing provisions do not apply.

411.

The effect of the selection relates back to the time when the obligation came into existence; but the rights of third persons cannot be impaired thereby.

SECTION II.

THE EFFECT OF THE OBLIGATION.

412.

If a certain time is designated for the performance of the obligation, the debtor is *in mora** from such time.

---

* *Mora* is the expression of the Roman Law for the condition of a party to an obligation who has failed to perform in time or to accept performance of the obligation in time.

If a time which is uncertain has been designated for the performance of the obligation, the debtor is *in mora* after he has notice that such time has arrived.

If no time has been designated for the performance of the obligation, the debtor is *in mora* after a demand for performance has been made upon him.

413.

If the creditor refuses to accept or cannot accept the performance of the obligation, he is *in mora* from the time when a tender of performance is made to him.

414.

If the debtor wilfully fails to perform his obligation, the creditor may apply to the court for compulsory performance; except where the nature of the obligation does not admit of it.

When the nature of the obligation does not admit of compulsory performance, if the subject of the obligation is the doing of an act, the creditor may apply to the court to have it done by a third person at the debtor's expense; but if the subject of the obligation is the doing of a juristic act, the decree of the court stands in the place of an expression of intention by the debtor.

As to an obligation whose subject is the forbearance from an act, the creditor may apply to the court to have such acts as have been done undone and proper measures taken for the future.

These provisions do not affect the right to claim damages.

415.

If the debtor does not perform the obligation according to its terms, the creditor may claim damages.

The same is the case, if the debtor becomes unable to perform for any cause attributable to him.

416.

The claim for damages is for compensation for all such damage as is the natural consequence of non-performance.

The creditor may demand compensation even for such damage as has arisen from special circumstances, if the party concerned foresaw or ought to have foreseen such circumstances.

417.

Unless a different intention has been expressed, the amount of the damages is to be assessed in money.

418.

If the fault of the creditor has contributed to the non-performance of the obligation, the court may take that into consideration in determining the liability for damages or their amount.

419.

On an obligation whose subject is money the amount of damages is fixed according to the legal rate of interest; but if a higher rate of interest has been agreed upon, that is to govern.

The creditor is not bound to prove the amount of such damages, nor can the debtor set up the defence of *vis major* as to them.

420.

The persons concerned may fix beforehand the

amount of damages for non-performance of an obligation. In such case the court may not increase or reduce such amount.

Such a previous fixing of the amount of damages does not affect the right to claim the performance or rescission of the obligation.

A penalty is presumed to be a previously fixed amount of damages.

421.

The provisions of the preceding article apply correspondingly, where the parties have agreed beforehand that compensation shall be made in something other than money.

422.

If the creditor receives as damages the full value of the thing or right which forms the subject of the obligation, the debtor is subrogated by operation of law into the position of the creditor as to such thing or right.

423.

In order to protect his obligation, the creditor may exercise the rights of the debtor, except such as are merely personal to the debtor.

So long as the obligation is not yet due, the creditor can exercise the rights of his debtor only by virtue of a judicial subrogation ; but this does not apply to acts of preservation.

424.

The creditor may apply to the court for the rescission of any juristic act done by the debtor

with knowledge that it would prejudice the creditor. This does not apply, if the person enriched by such juristic act or a subsequent acquirer did not know, at the time of the act or of the acquisition, of the facts which would make it prejudicial to the creditor.

This does not apply to a juristic act whose subject is not a property right.

425.

A rescisssion made according to the provisions of the preceding article avails for the benefit of all the creditors.

426.

The right of rescission mentioned in Art. 424 is extinguished by prescription, if the creditor does not exercise it for two years from the time when he had notice of the cause of rescission. The same applies, if twenty years have elapsed since the time of the act.

SECTION III.

PLURALITY OF CREDITORS OR DEBTORS.

SUBSECTION I.

GENERAL PROVISIONS.

427.

If there are several creditors or several debtors, and no different intention is expressed, each creditor and each debtor has equal rights or duties.

SUBSECTION II.

INDIVISIBLE OBLIGATIONS.

428.

When the subject of the obligation is by nature or by the expressed intention of the parties indivisible, if there are several creditors, each creditor may demand performance on behalf of all the creditors, or the debtor may perform to one creditor on behalf of all the creditors.

429.

Even though an agreement of novation* or release

---

* See Art. 513 *et seq.*

has been made between one creditor on an indivisible obligation and the debtor, the other creditors may demand performance of the entire obligation; but so much as would have come to such creditor, if he had not lost his right, must be restored to the debtor.

Except as aforesaid, the acts of one creditor on an indivisible obligation or facts occurring in respect to such one creditor have no effect as against the other creditors.

430.

If an indivisible obligation rests upon several persons, the provisions of the preceding article and those relating to joint obligations apply correspondingly, except the provisions of Arts. 434-440.

431.

If an indivisible obligation is changed into a divisible one, each creditor can demand performance, and each debtor is bound to perform only as to his share.

SUBSECTION III.

JOINT OBLIGATIONS.

432.

If several persons are bound by a joint obligation, the creditor may demand performance wholly or partly against any one of the debtors or against all the debtors at the same time or successively.

433.

If a cause of invalidity or rescission of the juristic act exists as to one of the joint debtors, the effect of the obligation as to the other debtors is not impaired thereby.

434.

A demand for performance made to one of the joint debtors is effective against all the debtors.

435.

If a novation is made between one of the joint debtors and the creditor, the obligation is extinguished as to all of the joint debtors.

436.

If an obligation exists in favour of one of the joint debtors against the creditor, and such debtor makes a set off, the joint obligation is extinguished as to all the debtors.

So long as the joint debtor in whose favour the obligation exists, does not make a set off, the other joint debtors can make it only in respect to such debtor's share.

437.

A release made to one of the joint debtors avails in favour of the other debtors only in respect to such debtor's share.

438.

If confusion* takes place between one joint debtor

* See Art. 520.

and the creditor, it is deemed that such debtor has performed the obligation.

439.

If prescription has been completed in favour of one joint debtor, the other debtors are freed from their liability to the extent of such debtor's share.

440.

With the exception of the facts mentioned in the preceding six articles, facts which arise with respect to one joint debtor have no effect as to the other debtors.

441.

If all of the joint debtors or several of them are adjudged bankrupt, the creditor may intervene in the distribution of the assets of each for the full amount of the obligation.

442.

If one joint debtor performs or otherwise at his own expense obtains the discharge of all the debtors from the obligation, he has a right to contribution from the other joint debtors up to the amount of their respective shares.

Such a right to contribution includes the right to legal interest from the day of performance or of the discharge and to compensation for necessary expenses and for damage.

443.

If one joint debtor performs or otherwise at his own expense obtains the discharge of all the debtors from the obligation, without having informed the other

debtors of the demand of the creditor, and any othe debtor had a defence which he could have made against the creditor, he may make it against the former debtor as to his share ; but if he does so by way of set off, the debtor in fault may demand against the creditor the performance of the obligation which might have been extinguished by set off.

If one joint debtor omits to inform the other debtors that he has performed or otherwise at his own expense has obtained the discharge of all the joint debtors, and in consequence thereof another joint debtor in good faith performs or otherwise for a consideration obtains a discharge from the obligation, such latter debtor may consider his performance or other act of discharge as valid.

444.

If one of the joint debtors has not the means to make contribution, the amount which he is unable to contribute is to be apportioned among the person entitled to contribution and the other joint debtors who are solvent according to their respective shares ; but if the party entitled to contribution is in fault, he cannot claim contribution against the other joint debtors.

445.

If one of the joint debtors has been released from the obligation, and one of the remaining debtors has not the means to perform, the creditor takes upon himself that share which the debtor released by him ought to have borne in respect to the share which the debtor without means could not perform.

SUBSECTION IV.

SURETYSHIP.

446.

If the principal debtor does not perform his obligation, the surety must perform it.

447.

The suretyship covers interest, penalty and damages on the principal obligation and all other charges accessory to it.

A surety may stipulate that he shall be liable for a penalty or damages only in respect of his own obligation as surety.

448.

If the liability of the surety is more onerous than the principal obligation as to its subject or its modality, it is to be reduced to the extent of the principal obligation.

449.

If a person with knowledge of the ground of rescission becomes surety for an obligation which may be rescinded because of incapacity, he is presumed to have entered into an independent obligation having the same subject, conditioned upon the non-performance or rescission of the principal obligation.

450.

When a debtor is bound to furnish a surety, the latter must have the following qualifications :—

1. He must be a person of full capacity ;

2. He must have the means to perform;
3. He must have his domicile within the jurisdiction of the court of appeal which has jurisdiction over the place of performance, or he must establish a special domicile there.

If the qualifications mentioned under Nos. 2 and 3 cease to exist, the creditor may demand that another person having those qualifications be substituted for the surety.

These provisions do not apply, if the surety has been designated by the creditor.

451.

If the debtor cannot furnish a surety having the qualifications mentioned in the preceding article, he may instead thereof give some other kind of security.

452.

If the creditor demands performance of the obligation from the surety, the latter may require that the principal debtor be first called upon to perform ; unless the principal debtor has been adjudged bankrupt, or his whereabouts is unknown.

453.

Even after the principal debtor has been called upon as provided in the preceding article, if the surety can prove that the principal debtor has the means to perform, and that enforcement against him would not be difficult, the creditor must first enforce his obligation against the property of the principal debtor.

454.

If the surety becomes bound jointly with the principal

debtor, he has not the rights mentioned in the preceding two articles.

455.

If the creditor, disregarding a demand made by the surety according to the provisions of Arts. 452 and 453, has not called upon or enforced his obligation against the principal debtor, and cannot afterwards obtain full performance from him, the obligation of the surety is discharged to the extent to which the creditor would have received performance, if he had at once made such call or enforcement.

456.

When there are several sureties, the provisions of Art. 427 apply, even though they have assumed their obligations by separate acts.

457.

A demand for performance made upon the principal debtor or an interruption of the prescription as against the principal debtor has effect also against a surety.

A surety may avail himself against the creditor by way of set off of any obligation which exists in favour of the principal debtor against the creditor.

458.

If the principal debtor is bound jointly with the surety, the provisions of Arts. 434-440 apply.

459.

A surety who has become such at the request of the principal debtor, if without his own fault he has been adjudged to perform the obligation, or if in place of

the principal debtor he has performed or otherwise has extinguished the obligation at his own expense, has a right of recourse against the principal debtor.

The provisions of Art. 442,2 apply correspondingly to the foregoing case.

460.

A surety who has become such at the request of the principal debtor may exercise beforehand his right of recourse against the principal debtor in the following cases ;—

1. If the principal debtor has been adjudged bankrupt, and the creditor does not intervene in the distribution of his assets ;
2. After the obligation has become due ; if, however, since the making of the contract of suretyship the creditor has given time to the principal debtor, that cannot be set up against the surety ;
3. When the time of performance of the obligation is uncertain, and even the maximum time cannot be known, after ten years have elapsed from the making of the contract of suretyship.

461.

A principal debtor who has according to the provisions of the preceding two articles indemnified the surety, may, so long as the creditor has not received full performance, require the surety to give him security or to procure his discharge from the obligation.

In the foregoing cases the principal debtor may free himself from his obligation to indemnify the surety by

making a deposit, by giving security or by procuring the discharge of the surety.

462.

If a person who has become surety without the request of the principal debtor performs the obligation or otherwise at his own expense obtains the discharge of the principal debtor from his obligation, the latter is bound to indemnify him only to the extent to which he was enriched thereby at that time.

A person who has become surety against the will of the principal debtor has a right of recourse only to the extent to which the principal debtor is presently enriched; but if the principal debtor sets up the fact that before the time of the recourse he had a right of set off against the creditor, the surety may demand against the creditor performance of the obligation which would have been extinguished by the set off.

463.

The provisions of Art. 443 apply correspondingly to a surety.

If a surity who has become such at the request of the principal debtor has in good faith made performance or incurred other expenses for the sake of discharge, the provisions of Art. 443 apply correspondingly to the principal debtor also.

464.

A person who has become surety for a joint debtor or for a debtor on an indivisible obligation, has a right of recourse against the other debtors only to the extent of their respective shares.

465.

If, because the principal obligation was indivisible or because all the sureties have bound themselves by special agreement to perform the whole obligation, one of several sureties has performed the whole obligation or more than his proportional part thereof, the provisions of Arts. 442—444 apply correspondingly.

In a case other than the preceding case, if one of several sureties who are not jointly bound has performed the whole obligation or more than his proportional part thereof, the provisions of Art. 462 apply correspondingly.

SECTION IV.

THE ASSIGNMENT OF OBLIGATIONS.

466.

An obligation may be assigned, unless its nature does not admit of it.

This provision does not apply, if the parties have expressed a contrary intention. Such expression of intention, however, cannot be set up against a third person acting in good faith.

467.

The assignment of an obligation in favour of a specific creditor can be set up against the debtor or another third person only if notice has been given to the debtor, or if the latter has assented to the assignment.

Such notice or assent can be set up against a third person other than the debtor only if it is made by a document having an authenticated date.

468.

If the debtor has given the assent mentioned in the preceding article without reservation, he cannot set up against the assignee a defence which he might have made against the assignor. If, however, in order to extinguish the obligation, the debtor has made any payment to the assignor, he may recover it, or if for such purpose he has assumed an obligation to the assignor, he may treat it as if it did not exist.

If the assignor has merely given notice of the assignment, the debtor may set up against the assignee any defence which he had against the assignor, before he received such notice.

469.

The assignment of an obligation performable to order can be set up against the debtor or other third persons only if the assignment is endorsed on the instrument, and the instrument itself is delivered to the assignee.

470.

The debtor on an obligation performable to order has the right, but is not bound, to verify the identity of the holder of the instrument or the genuineness of his signature or seal; but if the debtor acts in bad faith or with gross negligence, his performance is not valid.

471.

The provisions of the preceding article apply corre-

spondingly, if a specific creditor is designated, but it is added that the obligation shall be performable to the holder of the instrument.

472.

The debtor on an obligation performable to order cannot set up against any assignee in good faith defences which he might have set up against the original creditor, except such as appear upon the face of the instrument or result naturally from its character.

473.

The provisions of the preceding article apply correspondingly to obligations performable to bearer.

SECTION V.

THE EXTINGUISHMENT OF OBLIGATIONS.

SUBSECTION I.

PERFORMANCE.

474.

Performance of an obligation may be made by any third person, unless its nature does not admit of it, or the parties concerned have expressed a contrary intention.

A person who has no interest in the performance,

cannot make performance against the will of the debtor.

475.

If a person has delivered by way of performance a thing belonging to another, he can reclaim it only on condition that he makes another and valid performance.

476.

If the owner of a thing who has not capacity to assign it delivers it in performance, and the performance is afterwards rescinded, he can reclaim the thing only on condition that he makes another and valid performance.

477.

If in the cases mentioned in the preceding two articles the creditor has in good faith consumed or assigned the thing delivered in performance, such performance is valid; but this does not impair the creditor's right of recourse against the person performing, if a third person has claimed damages from him.

478.

If performance is made to the quasi-possessor of an obligation, it is valid only if the person making performance acted in good faith.

479.

Except in the case mentioned in the preceding article, a performance made to a person who is not entitled to receive it, is valid only to the extent to which the creditor has been enriched thereby.

480.

A person who produces a receipt is deemed to have a right to receive performance; but this does not apply, if the person making performance knows that such right does not exist or is ignorant thereof by reason of his negligence.

481.

If a garnishee who has been forbidden by the court to do so nevertheless performs to his immediate creditor, the garnishor may still demand performance to the extent to which he has been damaged.

This provision does not impair the right of the garnishee to exercise his right of recourse against his immediate creditor.

482.

If the debtor with the consent of the creditor makes some prestation other than that which he is bound to make, such prestation has the same effect as performance.

483.

If the subject of the obligation is the delivery of a specific thing, the person making performance must deliver the thing in the condition in which it is at the time when delivery is to be made.

484.

When there is no special expression of intention as to the place of performance, if a specific thing is to be delivered, the delivery is to be made at the place where the thing was at the time when the obligation

arose; other kinds of performance are to be made at the place of the creditor's present domicile.

485.

If there is no special expression of intention as to the expenses of performance, such expenses are to be borne by the debtor; if, however, because of the creditor's changing his domicile or any other act of his, the expenses are increased, such increase must be borne by the creditor.

486.

The person making performance may require the recipient of the performance to give him a receipt.

487

If there are documents evidencing the obligation, a person who has fully performed the obligation can require the surrender of such documents.

488.

When a debtor owes several obligations of the same kind to the same creditor, if the prestation tendered as performance is not sufficient to extinguish them, the person performing may at the time of the prestation designate the obligation to which such performance shall be appropriated.

If the person performing does not make such designation, the person receiving the performance may at the time of reception appropriate such performance; unless the person performing at once objects thereto.

The appropriation of a performance is made by an expression of intention to the other party.

489.

If the parties do not appropriate the performance, the appropriation of it is to be made according to the following rules :—

1. If some of the different obligations are due and some are not due, those which are due have precedence ;
2. If all the obligations are due or all are not due, those have precedence, whose performance is more advantageous to the debtor ;
3. If the advantage is equal, those have precedence, which first came due or will first become due ;
4. If the obligations are equal in the respects mentioned under Nos. 2 and 3, the performance is to be appropriated among them in proportion to their respective amounts.

490.

When for the performance of a single obligation several prestations are to be made, if the person performing makes a prestation not sufficient to extinguish the obligation, the provisions of the preceding two articles apply correspondingly.

491.

In case a debtor is bound in regard to one or several obligations to pay, besides the principal, interest and expenses, and the person performing makes a prestation not sufficient to extinguish the whole obligation, it is to be appropiated in the following order : first expenses, then interest and lastly principal.

In this case the provisions of Art. 489 apply correspondingly.

492.

By a tender of performance a discharge is effected, from the time of the tender, from all liabilities arising out of non-performance.

493.

A tender of performance must be according to the terms of the obligation, and must be actual; but if the creditor refuses beforehand to accept performance, or if it is necessary for the creditor to do any act in respect to the performance, it is sufficient to give notice that all preparations for performance have been made, and to notify the creditor to accept performance.

494.

If the creditor refuses or is unable to accept performance, the person performing may discharge the obligation by depositing for the creditor's benefit the thing forming the subject of the obligation. The same applies, if the person performing, without fault on his part, cannot ascertain who is the creditor.

495.

A deposit must be made at the deposit office of the place where the obligation is to be performed.

If there are no special provisions by law or regulations as to the deposit office, the court must on the application of the person performing designate a deposit office and appoint a keeper of the thing deposited.

The depositor must at once give notice of the deposit to the creditor.

496.

So long as the creditor has not signified his

acceptance of the deposit, or the judgment of the court declaring the deposit valid has not become finally binding, the person performing may take back the thing deposited. In that case the deposit is deemed not to have been made.

This does not apply, if by the deposit a pledge or a mortgage has been extinguished.

497.

If the thing forming the subject of performance is not suitable for deposit, or if it is perishable or liable to injury, the person performing may with the permission of the court sell it at auction and deposit the proceeds. The same applies, if the keeping would be unreasonably expensive.

498.

If the debtor is to perform upon a prestation being made by the creditor, the latter can receive the thing deposited only on condition that he makes such prestation.

499.

A person who has performed on behalf of a debtor is subrogated into the rights of the creditor on obtaining his consent thereto at the time of performance.

In such cases the provisions of Art. 467 apply correspondingly.

500

A person who has a rightful interest in performance is subrogated into the position of the creditor by operation of law.

501

A person who according to the provisions of Arts. 499 and 500 is subrogated into the position of the creditor can, to the extent to which he might have recourse on the ground of his own right, exercise all the rights which the creditor had in respect to the effects of the obligation or to any security for it; but in such case the following rules are to be observed:—

1. A surety is not subrogated into the position of the creditor as against a purchaser of an immovable which is the subject of a preferential right, pledge or mortgage, unless a note of the subrogation is added beforehand to the registry of such right.
2. A purchaser is not subrogated into the position of the creditor against a surety;
3. One of several purchasers is subrogated into the position of the creditor as against the other purchasers only in proportion to the value of each immovable.
4. The provisions mentioned under No. 3 apply correspondingly among persons who from their own property have given security for the obligation of another.
5. As between sureties and a person who from his own property has given security for the obligation of another, subrogation into the position of the creditor takes place only proportionally to the number of the persons. If, however, there are several persons who from their own property have given security for the obligation of another, as against them subrogation can take place only in respect to the amount which remains after deducting the

share to be borne by the sureties, and in proportion to the value of the respective properties given as security.

If in such case the property is an immovable thing, the provisions of No. 1 apply correspondingly.

502.

If subrogation takes place upon a part performance, the person performing exercises the right together with the creditor in proportion to the value given by him.

In such case the creditor only is entitled to rescind the contract for non-performance; but he must restore to the party making part performance the value given by the latter with interest.

503.

A creditor who has received performance from a person who is thereupon subrogated into his position must deliver to such person the documents relating to the obligation and all things which he held as security.

If subrogation takes place upon a part performance, the creditor must note such subrogation upon the documents relating to the obligation, and must permit the party performing to see to the preservation of the things which he holds as security.

504.

If a third person is according to Art. 500 to be subrogated into the position of the creditor, and the latter intentionally or by omission has destroyed or diminished the security, such third person is discharged from his liability to the extent to which he is thereby prevented from getting reimbursement.

SUBSECTION II.

SET OFF.*

505.

If two persons are bound to each other by obligations whose subjects are of the same nature and both of which are due, either debtor may discharge his obligation by set off to the extent to which the amounts of the obligations correspond, unless the nature of one of the obligations does not admit of it.

The foregoing provisions do not apply, if the parties have expressed a contrary intention; but such intention cannot be set up against a third person acting in good faith.

506.

Set off is made by an expression of intention by one party to the other. A condition or time of commencement or ending cannot be annexed.

Such an expression of intention relates back in its effect to the time when both obligations could first have been set off.

507.

A set off can be made, though the place of performance of the two obligations is different; but the party who makes the set off must indemnify the other party for any damage caused thereby.

---

* *Compensatio* in Roman Law.

508.

A creditor may set off an obligation which is extinguished by prescription, if it could have been set off before its extinction.

509.

If an obligation arises from an unlawful act, the debtor cannot avail himself of a set off against the creditor.

510.

If the obligation is one that cannot be seized under legal process, the debtor cannot avail himself of a set off against the creditor.

511

A garnishee who has been forbidden by the court to perform cannot set off against the garnishor an obligation subsequently acquired by him.

512.

The provisions of Arts. 488—491 apply correspondingly to set off.

SUBSECTION III.

NOVATION.*

513.

If the parties make a contract by which any material

---

* *Novatio* in Roman Law.

element of an obligation is changed, such obligation is extinguished by novation.

It is deemed a change of a material element, if a conditional obligation is made unconditional, if a condition is added to an unconditional obligation, or if a condition is changed. The same is the case, if a bill of exchange is issued instead of performance.

514.

A novation by a change of the debtor may be accomplished by a contract between the creditor and the new debtor, but not against the will of the original debtor.

515.

A novation by a change of the creditor can be set up against a third person only if made in a document having an authenticated date.

516.

The provisions of Art. 468, 1 apply correspondingly to a novation by a change of the creditor.

517.

If the obligation arising from the novation, because of an illegality in its ground or because of some reason which was unknown to the parties, does not definitely come into existence or is rescinded, the original obligation is not extinguished.

518.

The parties to a novation may, to the extent of the subject of the original obligation, transfer a right of

pledge or mortgage given as security for it to the new obligation; but if such security was given by a third person, his consent is necessary.

SUBSECTION IV.

RELEASE.

519.

If the creditor expresses to the debtor an intention to release the obligation, it is extinguished.

SUBSECTION V.

CONFUSION.†

520.

If the obligation right and duty become vested in the same person, the obligation is extinguished. But this does not apply, if such obligation forms the subject of the right of a third person.

† *Confusio* in Roman Law.

CHAPTER II.

CONTRACTS.

SECTION I.

GENERAL PROVISIONS.

SUBSECTION I.

THE FORMATION OF A CONTRACT.

521.

An offer to make a contract in which a time for acceptance is specified, cannot be withdrawn.

If the offerer does not receive notice of acceptance within the time specified, the offer loses its effect.

522.

If the notice of acceptance arrives only after the time specified, but it is apparent that it was sent in such time that in the ordinary course of things it ought to have arrived before, the offerer, unless he has already given notice of the delay, must immediately give notice to the other party of the delayed arrival.

If the offerer fails to give such notice, the notice of the acceptance is deemed not to have been delayed.

523.

The offerer may treat an acceptance which comes too late as a new offer.

524.

A person who, without specifying a time for acceptance, makes an offer to another at a distance cannot withdraw his offer within the time within which notice of acceptance might reasonably be expected.

525.

The provisions of Art. 97, 2 do not apply, if the offerer has expressed a contrary intention, or if the other party had notice of the death or loss of capacity.

526.

A contract between persons at a distance comes into existence at the time when the notice of acceptance is sent.

If according to the expressed intention of the offerer or to a prevailing custom no notice of acceptance is necessary, the contract is deemed to come into existence at the time of the occurrence of the fact which is to be considered as an expression of intention to accept.

527.

If notice of the withdrawal of an offer arrives after notice of acceptance has been sent, but it is apparent that the former was sent in such time that in the ordinary course of things it ought to have arrived before, the acceptor must immediately give notice to the offerer of such delayed arrival.

If the acceptor fails to give such notice, the contract is deemed not to have come into existence.

528.

If a person accepts an offer, but adds a condition to it or changes it, he is deemed to have refused

the offer, and at the same time to have made a new offer.

529.

A person who advertises that he will give a certain reward to whoever shall do a certain act is bound to give such reward to any person who does the act.

530.

The advertiser may at any time before the specified act has been completed, withdraw his advertisement by the same means which he used for advertising, unless he has declared therein that he would not withdraw it.

If the advertisement cannot be withdrawn by the means aforesaid, withdrawal may be made by other means, but in such case it is valid only as against those persons who know of it.

If the advertiser has fixed a time within which the specified act must be done, he is presumed to have renounced his right of withdrawal.

531.

If several persons do the act specified in the advertisement, only that one who does it first has a right to receive the reward.

If several persons do such act at the same time, each one has a right to receive an equal share of the reward. But if the reward is by its nature unsuited to be divided, or if according to the advertisement only one person can receive it, the person to receive it is determined by lot.

The foregoing provisions do not apply, if in the advertisement a different intention is expressed.

532.

If there are several persons who have done the act specified in the advertisement, but only the one who has done it best is to receive the reward, such advertisement is valid only if a time is fixed therein within which the invitation must be acted upon.

The decision which of the persons who have acted upon the invitation has done so the best is to be made by the person designated in the advertisement. If no person is designated, it is to be decided by the advertiser.

The persons who have acted upon the invitation have no right to contest such decision.

If it is decided that several persons have done the act equally well, the provisions of Art. 531, 2 apply correspondingly.

SUBSECTION II.

THE EFFECT OF A CONTRACT.

533.

A party to a bilateral contract may refuse performance of his obligation until the other party tenders performance of his obligation. But this does not apply, if the other party's obligation is not yet due.

534.

If the subject of a bilateral contract is the creation

or transfer of a real right in a specific thing, and such thing is lost or damaged by a cause which is not attributable to the debtor, the loss or damage falls upon the creditor.

When the subject of the contract is a non-specific thing, the foregoing provisions apply from the time when the thing has become specific in accordance with the provisions of Art. 401, 2.

535.

The provisions of the preceding article do not apply, if the thing which forms the subject of a bilateral contract depending upon a condition precedent is lost while the condition is pending.

If the thing is injured by a cause not attributable to the debtor, the damage falls upon the creditor.

If the thing is injured by a cause attributable to the debtor, the creditor, when the condition happens, may at his option either require performance of the contract or rescind it. But the right to damages is not affected thereby.

536.

Except in the cases mentioned in the two preceding articles, if an obligation becomes impossible of performance by a cause not attributable to either party, the debtor has no right to receive the counter-prestation.

If performance becomes impossible by a cause attributable to the creditor, the debtor does not lose his right to the counter-prestation; but if he has received any benefit from being discharged from his obligation, he must surrender it to the creditor.

537.

If a party by a contract has agreed to make a prestation to a third person, the latter has a right to claim such prestation directly from the debtor.

In such case the right of the third person comes into existence at the time when he expresses to the debtor his intention to take the benefit of the contract.

538.

After the right of the third person has come into existence in accordance with the provisions of the preceding article, it cannot be changed or extinguished by the parties to the contract.

539.

Defences based upon the contract mentioned in Art. 537 can be set up by the debtor against the third person in whose favour the contract is made.

SUBSECTION III.

THE RESCISSION OF A CONTRACT.

540.

If by the terms of the contract or by law one party is entitled to rescind the contract, that is done by an expression of intention to the other party.

Such expression of intention cannot be revoked.

541.

If one party does not perform the contract, the other party may fix a reasonable time and notify him to perform within that time. If he does not perform within that time, the other party may rescind the contract.

542.

If the object of the contract according to its nature or to an intention expressed by the parties can be accomplished only by performance at or within a specified time, and such time has expired without one of the parties having performed, the other party may rescind the contract without the notification mentioned in the preceding article.

543.

If performance becomes wholly or partly impossible by a cause attributable to the debtor, the creditor may rescind the contract.

544.

If one party consists of several persons, rescission of the contract can be made only by or against all of them.

If in such case the right of rescission is extinguished as to one of them, it is extinguished also as to the others.

545.

If one party has exercised his right of rescission, each party must restore the other to his former condition; but this cannot impair any right of a third person.

To money which is to be repaid in the foregoing case

interest is to be added from the time when it was received.

The exercise of the right of rescission does not affect a claim for damages.

546.

The provisions of Art. 533 apply correspondingly to the case mentioned in the preceding article.

547.

If no period is fixed for the exercise of the right of rescission, the other party may fix a period and notify the party entitled to rescind to declare within such period whether he will rescind or not. If notice of rescission is not received within such period, his right of rescission is extinguished.

548.

If by his own act or fault the person entitled to rescind materially injures the thing forming the subject of the contract or becomes unable to restore it, or if by specification or making over he changes it into a thing of a different kind, his right of rescission is extinguished.

If without the act or fault of the person entitled to rescind, the thing forming the subject of the contract is lost or injured, the right to rescind is not extinguished.

SECTION II.

GIFT.*

549.

A gift is where one party expresses his intention to give property of his own to the other party without consideration, and the other party expresses his acceptance.

550.

A gift not expressed in writing can be rescinded by either party, except so far as performance has already been made.

551.

The donor is not liable for defects or deficiencies in the thing or right forming the subject of the gift, unless he knew of such defect or deficiency and did not inform the donee thereof.

In case of a gift subject to a charge the donor is to the extent of the charge liable as if he were a seller.

552.

A gift to be made by instalments ceases to have effect on the death of either the donor or the donee.

553.

To a gift subject to a charge the provisions relating to bilateral contracts apply in addition to those of this Section.

---

* *Donatio* in Roman Law.

554.

A gift to take effect at the death of the donor is governed by the provisions relating to legacies.

SECTION III.

SALE.*

SUBSECTION I.

GENERAL PROVISIONS.

555.

A sale is where one party promises to transfer a property right to the other party, and the other party promises to pay him a price for it.

556.

A promise to buy or sell made by one party has the effect of a sale, as soon as the other party expresses his intention to complete the sale.

If no time is fixed for such expression of intention, the promissor may fix a reasonable time and notify the other party to give a definite answer within that time whether he will complete the sale or not. If

---

* *Emtio venditio* in Roman Law.

within that time he does not give any definite answer, the promise loses its effect.

557.

If the buyer has given bargain money to the seller, either party may, before the performance of the contract has begun, rescind it; the buyer on condition that he forfeits the bargain money, the seller on condition that he repays twice its amount.

In such case the provisions of Art. 545, 3 do not apply.

558.

The expenses of the contract of sale are to be borne by both parties equally.

559.

The provisions of this Section apply to contracts other than sales, made upon a consideration, unless the nature of such contract does not admit of it.

SUBSECTION II.

THE EFFECT OF A SALE.

560.

If a right of another person is made the subject of a sale, the seller is bound to acquire such right and transfer it to the buyer.

561.

If in the case falling under the preceding article the seller is not able to acquire the right which he has sold and to transfer it to the buyer, the latter may rescind the contract; but if he knew at the time of the contract that the right did not belong to the seller, he cannot claim damages.

562.

If a seller who at the time of the contract did not know that the right which he sold was not his, is not able to acquire it and transfer it to the buyer, he may rescind the contract on making compensation for damage.

If in such case the buyer knew at the time of the sale that the right which he bought did not belong to the seller, the latter may rescind the contract by merely informing the buyer that he is unable to transfer the right sold.

563.

If because a part of the right which is the subject of the sale belongs to another, the seller is not able to transfer it to the buyer, the latter may claim a reduction from the price in proportion to the part that is lacking.

If in such case the buyer would not have bought the remaining part alone, he may rescind the contract, provided he acted in good faith.

A demand for a reduction from the price or a rescission of the contract does not affect the claim for damages of a buyer acting in good faith.

564.

The rights mentioned in the preceding acticle must be exercised within one year, which is computed, if the buyer acted in good faith, from the time when he first had notice of the facts, if he acted in bad faith from the time of the contract.

565.

The provisions of the preceding two articles apply correspondingly, where a thing was sold with a specification of its quantity, or where a part of the thing sold had already been lost at the time of the contract, and the buyer had no notice thereof.

566.

If the thing sold is subject to a superficies, emphyteusis, servitude, lien or pledge, of which the buyer did not have notice, he may rescind the contract, provided that because of such incumbrance he is unable to accomplish the object for which he made the contract. In other cases he can only claim damages.

The provisions of the foregoing paragraph apply correspondingly, if a servitude which is represented to exist in favour of an immovable does not exist, or a registered lease of such immovable exists.

In the preceding cases the rescission of the contract or the claim for damages must be made within one year from the time when the buyer has notice of the facts.

567.

If the buyer loses the ownership of an immovable sold by reason of the exercise of a preferential right or a mortgage which existed in such immovable, he may rescind the contract.

If the buyer has preserved his ownership by expenditures from his own resources, he may claim reimbursement for such expenditures against the seller.

If in either case the buyer has suffered damage, he may claim compensation.

568.

The buyer at an execution sale may in accordance with the provisions of the preceding seven articles rescind the contract or claim reduction from the price against the debtor.

If the debtor is insolvent, the buyer at such sale may demand from the creditors to whom the proceeds have been distributed the restoration of the whole or a part of such proceeds.

If in these cases the debtor knew of the deficiency in the thing or right, and did not give notice thereof, or if the creditor who demanded the execution sale knew of such deficiency, the buyer may claim damages from the person in fault.

569.

If the seller of an obligation warrants the solvency of the debtor, it is presumed that the warranty is of such solvency at the time of the contract.

If the seller of an obligation not yet due warrants the future solvency of the debtor, it is presumed that the warranty is of such solvency at the time of the maturity of the obligation.

570.

If the thing sold has a latent defect, the provisions of Art. 566 apply correspondingly; but not, if the thing is bought at an execution sale.

571.

The provisions of Art. 533 apply correspondingly to the cases mentioned in Arts. 563—566 and 570.

572.

Even though the seller has specially stipulated that he shall not be liable in the cases mentioned in the preceding twelve articles, he is not exempted from liability for facts which he knew of and concealed, or for rights which he himself has created in favour of or has assigned to a third person.

573.

If a time is fixed for the delivery of the thing sold, it is presumed that the same time is fixed for the payment of the price.

574.

If the price is payable at the same time as the delivery of the thing, it is to be paid at the place of the delivery.

575.

The fruits of a thing sold but not yet delivered belong to the seller.

The buyer is bound to pay interest on the price from the day of delivery; but if a time is fixed for the payment of the price, he is not bound to pay interest before such time.

576.

If a third person asserts a right to the thing sold, and there is danger that the buyer may lose wholly or partly the right which he has bought, he may refuse to

pay the price wholly or partly according to the extent of the threatened loss; unless the seller gives proper security.

577.

If a preferential right, pledge or mortgage exists in an immovable sold, the buyer may refuse to pay the price, until the proceedings for the removal* of the encumbrance are finished; but the seller may require the buyer to proceed with such removal without delay.

578.

In the cases mentioned in the preceding two articles the seller may require the buyer to deposit the price.

SUBSECTION III.

REPURCHASE.†

579.

The seller of an immovable may in pursuance of a special agreement for repurchase made at the time of the sale rescind the sale on repaying the price paid by the buyer together with the expenses of the sale. Unless the parties have expressed a contrary intention, the fruits of the immovable and the interest on the purchase price are deemed to have been set off against each other.

580.

The duration of a right to repurchase cannot exceed

---

* See Art. 378.

† *Pactum de retroemendo* in Roman Law.

ten years. If a longer period is fixed, it is to be reduced to ten years.

If a period for the repurchase has been fixed, it cannot be afterwards extended.

If no period is fixed, the repurchase must be made within five years.

581.

A right of repurchase which has been registered together with the contract of sale is valid even against third persons.

The registered right of a lessee can be set up against the original seller only for one year of its remaining duration, and not even for that, if it was registered for the purpose of injuring the seller.

582.

If a creditor of an original seller proceeds to make the repurchase in his place under the provisions of Art. 423, the buyer may extinguish the right of repurchase by performing the obligation of the seller up to such amount as remains after deducting the amount to be repaid by the seller from the actual value of the immovable as assessed by an expert appointed by the court, and by repaying the surplus, if any, to the original seller.

583.

If the seller does not tender the price and the expenses of the sale within the period of repurchase, he cannot afterwards repurchase.

If the buyer or a subsequent acquirer has made expenditures upon the immovable, the original seller must make reimbursement for them according to the

provisions of Art. 196. In the case of beneficial expenditures the court may on the application of the original seller allow him a reasonable time for reimbursement.

584.

If a co-owner of an immovable has sold his share with a special agreement for repurchase, and afterwards the immovable is partitioned or sold at auction, the original seller may exercise his right of repurchase against the share or price which the buyer has received or is to receive. If partition or auction has taken place without notice being given to the original seller, such fact cannot be set up against him.

585.

If in the case mentioned in the preceding article the original buyer has bought the property at the auction, the original seller may exercise his right of repurchase on repaying the auction price and the expenses mentioned in Art. 583. In such case the original seller acquires the ownership of the whole of the immovable.

If the other co-owners have demanded partition, and thereupon the original buyer has bought the thing at the auction, the original seller cannot exercise his right of repurchase as to the buyer's share only.

SECTION IV.

EXCHANGE.*

586.

Exchange is where the parties agree to transfer to each other property rights other than the ownership of money.

If one party agrees to transfer, in addition to another right, also the ownership of money, as to such money the provisions relating to a price apply correspondingly.

SECTION V.

LOANS FOR CONSUMPTION.†

587.

A loan for consumption is where one person receives from the other money or other things, and agrees to return things of the same kind, quality and quantity.

588.

When a person otherwise than by a loan is bound to make a prestation in money or other things, and the

---

* *Rerum permutatio* in Roman Law.

† *Mutuum* in Roman Law.

parties agree that such things shall be the subject of a loan for consumption, such a loan is deemed to arise.

589.

An agreement to make a loan ceases to be binding, if either party is adjudged bankrupt.

590.

If in the case of a loan upon interest the thing lent has a latent defect, the lender is bound to furnish in its place a thing free from defects. A claim for damages, however, is not affected thereby.

In the case of a loan without interest, the borrower may return the value of the defective thing. If, however, the lender knew of the defect and concealed it from the borrower, the provisions of the preceding paragraph apply correspondingly.

591.

If the time for the return has not been fixed by the parties, the lender may fix a reasonable time and require the borrower to return within that time.

The borrower may return at any time.

592.

If the borrower cannot return according to the provisions of Art. 587, he must pay as compensation the actual value of the thing; but this does not apply to the case mentioned in Art. 402, 2.

SECTION VI.

LOANS FOR USE.*

593.

A loan for use is where one party receives a thing without consideration from the other, agreeing to restore it after having used and taken the profits of it.

594.

The borrower must use and take the profits of the thing according to the contract or to the nature of the thing lent.

The borrower cannot without the consent of the lender have a third person use or take the profits of the thing lent.

If the borrower acts contrary to the foregoing provisions, the lender may rescind the contract.

595.

The borrower must bear the ordinary necessary expenses in regard to the thing lent. As to other expenses the provisions of Art. 583, 2 apply correspondingly.

596.

The provisions of Art. 551 apply correspondingly to loans for use.

---

* *Commodatum* in Roman Law.

597.

The borrower must restore the thing at the time fixed by the contract.

If the parties have not fixed a time for the restoration, the borrower must restore the thing after he has finished using and taking the profits of it for the purpose specified in the contract ; but even before that time the lender may claim restoration as soon as a time reasonably sufficient for such use and taking profits of the thing has elapsed.

If the parties have not fixed a time for restoration or specified the purpose of the use and taking profits, the lender may claim restoration at any time.

598.

The borrower may put the thing lent back into its former condition, and take away any thing which he has annexed to it.

599.

A loan for use loses its effect by the death of the borrower.

600.

Compensation for damage arising from any use or taking profits of the thing contrary to the terms of the contract, and reimbursement for expenses incurred by the borrower, must be claimed within one year from the time when the thing was restored to the lender.

SECTION VII.

THE HIRING OF THINGS.*

SUBSECTION I.

GENERAL PROVISIONS.

601.

The hiring of a thing is where one party agrees to have the other use and take profits of a thing, and the other party agrees to pay a rent† therefor.

602.

If a person who has not disposing capacity or authority to do so, makes a contract of hiring, such hiring cannot be for longer than the following periods:—

1. In case of the hiring of mountain or wood land for the purpose of planting or cutting trees, ten years;
2. In case of the hiring of other land, five years;
3. In case of the hiring of buildings, three years;
4. In case of the hiring of movables, six months.

603.

The periods mentioned in the preceding article can be extended; but such extention must be made as to land within one year, as to buildings within three months, as to movables within one month before the termination of the period.

---

* *Locatio conductio rerum* in Roman Law.

† The word "rent" is used to denote the price of the hiring of either immovables or movables.

604.

The period of duration of a hiring cannot exceed twenty years. If a hiring is made for a longer period, such period is to be reduced to twenty years.

The aforesaid period may be extended; but it must not exceed twenty years from the time of the extention.

SUBSECTION II.

THE EFFECT OF THE HIRING OF THINGS.

605.

If the hiring of an immovable is registered, it is valid against any person who afterwards acquires a real right in the immovable.

606.

The letter is bound to make all repairs necessary for the use and taking profits of the thing hired.

The hirer cannot refuse permission to the letter to do any act necessary to the preservation of the thing hired.

607.

If the letter desires to do, against the will of the hirer, an act of preservation by reason of which it would be impossible for the hirer to accomplish the object of the hiring, the hirer may rescind the contract.

608.

If the hirer has incurred necessary expenses in respect to the thing hired, which ought to have been borne by

the letter, he may claim reimbursement for them at once.

If the hirer has incurred beneficial expenses, the letter must make reimbursement after the hiring has ended in accordance with the provisions of Art. 196, 2; but the court may on the application of the letter allow a reasonable time to do so.

609.

If in the case of the hiring of land for the purpose of taking the profits of it, the hirer because of *vis major* obtains from it less profits than the amount of the rent, he may claim to have the rent reduced to the amount of the profits which he has made; but this does not apply to residential land.

610.

If in the case mentioned in the preceding article the hirer because of *vis major* obtains from the land for two consecutive years or longer less than the amount of the rent, he may rescind the contract.

611.

If a part of the thing hired is lost without the fault of the hirer, he may claim a proportional reduction from the rent.

If in such case the hirer cannot with the remaining part accomplish the purpose for which he entered into the contract of hiring, he may rescind it.

612.

A hirer can assign his right or sublet the thing hired only with the assent of the letter.

If the hirer contrary to this provision has a third

person use or take the profits of the thing, the letter may rescind the contract.

613.

If the hirer rightfully sublets the thing hired, the sub-hirer is directly responsible to the original letter. In such case a payment of the rent made in advance cannot be set up against the original letter.

This does not prevent the original letter from exercising his right against the original hirer.

614.

The rent is to be paid, as to movables, buildings and residential land at the end of each month, as to other land at the end of each year; for things, however, for which there is a certain time for the yielding of their fruits, it must be paid immediately after such time.

615.

If the thing hired needs to be repaired, or if another person asserts a right to it, the hirer must at once give notice thereof to the letter, unless the latter already has knowledge thereof.

616.

The provisions of Arts. 594, 1, 597, 1 and 598 apply correspondingly to the hiring of things.

SUBSECTION III.

THE TERMINATION OF A HIRING OF THINGS.

617.

If the parties have not fixed a period of duration for

the contract of hiring, either party may at any time give notice to terminate it, in which case the contract terminates after the following periods have elapsed from the day of the giving of such notice :—

1. As to land, one year ;
2. As to buildings, three months ;
3. As to separate rooms or movables, one day.

In the case of land for which there is a certain time for the yielding of its fruits, a notice to terminate the contract must be given after such time and before the commencement of the next period of cultivation.

618.

The provisions of the preceding acticle apply correspondingly, when the parties have fixed a period of duration for the contract of hiring, but one or both of the parties have reserved the right to terminate it within that period.

619.

If after the time of hiring has elapsed, the hirer continues to use or take the profits of the thing hired, and the letter knowing thereof does not object, it is presumed that the parties have made a new contract of hiring on the same terms ; but either party may give notice to terminate it in accordance with the provisions of Art. 617.

If security has been given upon the former contract, such security is released at the time when such contract terminates; but this does not apply to money deposited as security for the payment of rent.

620.

The rescission of a contract of hiring takes effect

only as to the future; but this does not affect a claim for damages, where one of the parties has been in fault.

621.

If the hirer is adjudged bankrupt, the letter or the administrator in bankruptcy may, even though the duration of the hiring was fixed, give notice according to Art. 617 to terminate the contract. In that case neither party can claim compensation for damage arising from such termination.

622.

The provisions of Art. 600 apply correspondingly to the hiring of things.

SECTION VIII.

THE HIRING OF SERVICES.*

623.

A hiring of services is where one party agrees to render services to the other party, and the latter agrees to pay him a compensation therefor.

624.

The person hired can claim the compensation only after he has rendered the agreed services.

Compensation determined by periods can be demanded at the end of each period.

---

* *Locatio conductio operarum* in Roman Law.

625.

The hirer can assign his right to a third person only with the assent of the person hired.

The person hired can have a third person render the services in his place only with the consent of the hirer.

If the person hired has a third person render the services contrary to the foregoing provisions, the hirer may rescind the contract.

626.

If the duration of the contract of hiring is for more than five years or for the life time of one of the parties or of a third person, either party may at any time after the expiration of five years rescind the contract; but as to apprentices in a commercial or industrial business such term is ten years.

A person who desires to rescind such a contract according to the foregoing provisions must give notice three months beforehand.

627.

If the parties have not fixed the duration of the contract of hiring, either party may at any time give notice to terminate it, in which case it will terminate two weeks after such notice.

If the compensation is determined by periods, notice to terminate the contract may be given for the next time of payment, but not later than the end of the first half of the current period.

If the compensation is determined by periods of six months or longer, notice must be given three months beforehand.

628.

Even though the duration of the hiring has been fixed by the parties, either party may rescind it immediately for any unavoidable necessity.

If, however, such necessity has arisen by the fault of the party concerned, he is liable for damages to the other party.

629.

If after the period of duration of the contract has elapsed, the person hired continues to render services, and the hirer knowing thereof does not object, it is presumed that the parties have made a new contract of hiring on the same terms; but either party may give notice to terminate the contract in accordance with the provisions of Art. 627.

If security has been given upon the former contract, it is released upon its termination; but this does not apply to money deposited as security for good behaviour.

630.

The provisions of Art. 620. apply correspondingly to a contract for the hiring of services.

631.

If the hirer is adjudged bankrupt, the person hired or the administrator in bankruptcy may, even though the period of the hiring has been fixed, give notice to terminate the contract in accordance with the provisions of Art. 627. In that case neither party can claim compensation for damage arising from the termination of the hiring.

SECTION IX.

CONTRACT WORK.*

632.

A contract for contract work is where one party agrees to accomplish a work, and the other party agrees to pay him a compensation for the result of the work.

633.

The compensation is payable at the time of the delivery of the thing contracted for. If a delivery is not necessary, the provisions of Art. 624, 1 apply correspondingly.

634.

If there is a defect in the thing contracted for, the employer must fix a reasonable time and notify the contractor to make good the defect; but this does not apply, if the defect is not material, and the making it good would be excessively expensive.

The employer may in place of or in addition to the making good of the defect claim damages, in which case the provisions of Art. 533 apply correspondingly.

635.

If, because of a defect in the thing contracted for, the object of the contract cannot be accomplished, the employer may rescind the contract; but this does not apply to buildings and other structures upon land.

---

*_Locatio conductio opreis_ in Roman Law.

636.

The provisions of the preceding two articles do not apply, if the defect arises from the nature of the materials supplied by the employer or from an order given by him, unless the contractor knew of the unfitness of the materials or the impropriety of the order, and did not give notice of it.

637.

A claim for making good a defect, for damages or for the rescission of the contract as provided in the preceding three articles must be made within one year from the delivery of the work contracted for. If delivery is not necessary, the above mentioned period is computed from the time of the completion of the work.

638.

A contractor for a structure to be erected on land is liable for defects in such structure or in the ground for five years from the time of delivery. For structures of stone, earth, brick or metal the period is ten years.

If the structure is injured or destroyed by reason of one of the above mentioned defects, the employer must exercise the right mentioned in Art. 634 within one year from the time of the destruction or injury.

639.

The periods mentioned in Arts. 637 and 638, 1 can be extended by agreement only within the limits of the ordinary period of prescription.

640.

Even though a contractor has expressly stipulated that he should not be liable as provided in Arts. 634 and

635, he is not exempted from liability arising from facts which he knew, but of which he omitted to give notice.

641.

So long as the contractor has not completed the work, the employer may at any time rescind the contract on paying compensation for damage.

642.

If the employer is adjudged bankrupt, the contractor or the administrator in bankruptcy may rescind the contract, in which case the contractor may intervene in the distribution of the assets as to his compensation for work already done and for expenses not included in such compensation.

In that case neither party can claim compensation for damage arising from such rescission.

SECTION X.

MANDATE.*

643.

A mandate is where one party directs the other to do a juristic act, and the other agrees to do so.

644.

A mandatary is bound to execute the business entrusted to him according to the terms of the mandate, and to use the care of a good manager.

---

* *Mandatum* in Roman Law. The meaning of *mandatum* is not the same as that of "agency" in English Law.

645.

If required, the mandatary must at all times give the mandator information as to the condition of the business to be executed by him, and after the termination of the mandate must make at once a full report.

646.

The mandatary must hand over to the mandator all money and other things which he receives in the execution of the business entrusted to him. This applies to fruits taken by him.

Rights which the mandatary has acquired in his own name on behalf of the mandator, must be transferred by him to the mandator.

647.

If a mandatary spends for his own benefit money which he ought to deliver to the mandator or to use for him, he must pay interest thereon from the day when he spent it. If any further damage arises, he is liable to make compensation for that.

648.

A mandatary is entitled to compensation only by virtue of a special agreement.

If a mandatary is to receive compensation, he can claim it only after the mandate is performed; but if compensation is determined by periods, the provisions of Art. 624, 2 apply correspondingly.

If the mandate terminates for some cause not attributable to the mandatary, before it is completely

performed, the mandatary may claim compensation in proportion to what has been done.

649.

If expenses will have to be incurred in the execution of the mandate, the mandator must on the demand of the mandatary furnish the amount of them in advance.

650.

If the mandatary in the execution of the business entrusted to him, has incurred expenses which could reasonably be regarded as necessary, he may claim as against the mandator reimbursement for such expenses together with interest on them from the day when they were incurred.

If the mandatary in executing the business entrusted to him has assumed an obligation which could reasonably be regarded as necessary, he may require the mandator to perform it in his place or, if its time of maturity has not yet arrived, to give proper security.

If the mandatary by reason of the execution of the business entrusted to him has suffered damage without fault on his part, he may claim compensation from the mandator.

651.

A mandate may be terminated at any time by either party.

If one party terminates the contract at a time which is disadvantageous to the other party, he must make compensation for any damage caused thereby, unless the termination was made for some unavoidable necessity.

652.

The provisions of Art. 620 apply correspondingly to a mandate.

653.

A mandate is terminated by the death or bankruptcy of the mandator or the mandatary, or by the mandatary's being adjudged incompetent.

654.

If even after a mandate has terminated any pressing emergency arises, the mandatary or his heir or legal representative must take all necessary measures, until the mandator, his heir or legal representative can himself take charge of the business.

655.

No cause for the termination of the mandate on the part of the mandator or of the mandatary can be set up against the other party, until he has been notified or had knowledge of it.

656.

The provisions of this Section apply correspondingly to a mandate whose subject is other than the doing of a juristic act.

SECTION XI.

DEPOSIT *

657.

A deposit is where one party receives a thing and agrees to keep it for the other party.

658.

A depositary is not allowed without the assent of the depositor to use the thing or to have a third person keep it.

When the depositary is permitted to have a third person keep the thing, the provisions of Arts. 105 and 107, 2 apply.

659.

A person who receives a deposit without consideration is bound to take the same care of it as he does of his own property.

660.

If a third person who asserts a right to the thing deposited sues the depositary or seizes it under legal process against him, the depositary must without delay give notice thereof to the depositor.

661.

The depositor must compensate the depositary for

---

* *Depositum* in Roman Law.

any damage arising from the nature of or any defect in the thing deposited, unless the depositor without fault on his part was ignorant of such nature or defect, or the depositary knew of it.

662.

Even though the parties have fixed a time for the return of the thing deposited, the depositor may demand its return at any time.

663.

If the parties have not fixed a time for the return of the thing deposited, the depositor may return it at any time.

If the time for return is fixed, the depositary may return it before such time only in case of unavoidable necessity.

664.

The return of the thing deposited is to be made at the place where it was to be kept; but if the depositary has for any good reason removed it to another place, it is to be returned at the place where it actually is.

665.

The provisions of Arts. 646—649 and 650, 1 apply correspondingly to deposits.

666.

If the depositary has a right by the terms of the contract to consume the thing deposited, the provisions as to loans for consumption apply correspondingly;

provided that, if the time for return is not fixed by the contract, the depositor may claim return at any time.

SECTION XII.

ASSOCIATION.*

667.

A contract of association is where each party agrees to join in a common undertaking and make a contribution thereto.

The contribution may consist of services.

668.

All contributions of the members and the other property of the association belong to all its members in common.

669.

If a contribution is to be made in money, and the member fails to make such contribution, he must pay damages in addition to interest.

670.

The management of the affairs of the association is decided by a majority vote of the members.

If such management is by the contract of association

---

* *Societas* in Roman law.

committed to several members, the majority of those decide.

The ordinary business of the association may, notwithstanding the provisions of the foregoing two paragraphs, be transacted by any member or by any managing member, as the case may be; unless another member or another managing member objects thereto.

671.

The provisions of Arts. 644—650 apply correspondingly to managing members.

672.

If the management of the business of the association is committed to one or several members, such member or members may not, except for a just cause, resign or be removed from their positions.

For their removal from their positions for a just cause the consent of all the other members is necessary.

673.

Each of the members, even though not a managing member, may examine into the management of the business and the condition of the property of the association.

674.

When the parties have not fixed the proportion in which profits and losses are to be divided, it is fixed according to the respective amounts of their contributions.

If the proportion of the division is fixed only as to profits or only as to losses, the proportion is presumed to be the same for profits and losses.

675.

A creditor of an association, who at the time of the arising of his obligation did not know of the proportion of the division of losses, may exercise his right against each member for an equal part.

676.

A member who has disposed of his share in the property of the association cannot set up such disposition against the association or a third person who has entered into any transaction with it.

Before liquidation a member of the association cannot demand partition of its property.

677.

A debtor of an association cannot set off against his obligation an obligation existing in his favour against a member of the association.

678.

If the duration of an association is not fixed by the contract, or if it is specified that it shall be for the life time of a certain member, any member may at any time withdraw ; but, except for some unavoidable necessity, not at a time which would be disadvantageous to the association.

Even though the duration of an association is fixed, a member may withdraw at any time for an unavoidable cause.

679.

In addition to the cases mentioned in Art. 678, a member ceases to be such :—

1. By death;
2. By being adjudged bankrupt;
3. By being adjudged incompetent;
4. By expulsion.

680.

A member can be expelled only for a just cause and with the consent of all the members. The expulsion can be set up against the member expelled only after notice of it has been given to him.

681.

The account between a member whose membership has ceased and the other members must be made up according to the actual condition of the property of the association.

The share of such a member may be refunded in money, whatever may have been the nature of his contribution.

The account as to a matter not yet concluded at the time when the membership ceases, is to be made up after its conclusion.

682.

An association is dissolved when its object has been accomplished, or its accomplishment has become impossible.

683.

When an unavoidable necessity exists, any member may demand the dissolution of the association.

684.

The provisions of Art. 620 apply correspondingly to a contract of association.

685.

When an association is dissolved, liquidation is carried out by all the members together or by persons appointed by them.

The appointment of liquidators is decided upon by a majority of all the members.

686.

If there are several liquidators, the provisions of Art. 670 apply correspondingly.

687.

If by the contract of association liquidators are to be appointed from among the members, the provisions of Art. 672 apply correspondingly.

688.

As to the functions and powers of the liquidators the provisions of Art. 78 apply correspondingly.

The remaining assets are to be distributed among all the members in proportion to the amounts of their contributions.

SECTION XIII.

LIFE ANNUITIES.

689.

A contract of life annuity is where one party agrees to make prestations* in money or other things to the other party or to a third person at fixed times, until his own death or that of the other party or of the third person.

690.

Life annuities are apportionable by days.†

691.

If, when the debtor has received a capital sum, he fails to make prestation of the instalments or to perform any other of his obligations, the other party may claim the return of the capital; but he must repay to the debtor the surplus which remains after deducting the interest on the capital sum from the instalments already received.

This does not affect a claim for damages.

692.

The provisions of Art. 533 apply correspondingly to the case mentioned in the preceding article.

---

* See note p. 105.

† This means that, if the annuitant dies during one of the periods, the prestation for that period is apportioned to the number of days of the period which have elapsed.

693.

If the death happens from a cause attributable to the debtor, the court may on the application of the creditor or his heir order that the obligation continue for a reasonable time.

This does not affect the exercise of the right mentioned in Art. 691.

694.

The provisions of this Section apply correspondingly to a legacy of a life annuity.

SECTION XIV.

COMPROMISE.*

695.

A compromise is where parties agree to settle a dispute between them by mutual concessions.

696.

If by the compromise it is admitted that one of the parties has the right which forms the subject of the dispute, or that the other has not that right, and it is afterwards established that the former party did not previously have such right, or that the other party had

---

* *Compromissum* in Roman Law.

it, such right is by the compromise transferred to such person or extinguished.

CHAPTER III.

BUSINESS MANAGEMENT.*

697.

A person who, without being bound to do so, enters upon the management of any business of another must manage it according to its nature in such a manner as will be most to the advantage of the principal.

If the manager knows or ought to have known the wishes of the principal, he must manage the business according to such wishes.

698.

A person who manages the business of another in order to protect the latter from an imminent peril to his person, reputation or property is liable for damage arising therefrom only in case he acted in bad faith or with gross negligence.

699.

The manager must give notice to the principal at once of his having entered upon the management, unless the principal already knows of it.

---

* *Negotiorum gestio* in Roman Law.

700.

The manager must continue the management, until the principal, his heir or his legal representative is able to assume it in person, unless it is evident that such continuance would be against the wishes of the principal or prejudicial to his interests.

701.

The provisions of Arts. 645-647 apply correspondingly to business management.

702.

If the manager incurs beneficial expenses for his principal, he may claim reimbursement against the principal.

If he assumes beneficial obligations for his principal, the provisions of Art. 650, 2 apply correspondingly.

If the manager has managed the business of his principal against the latter's wishes, the provisions of the preceding two paragraphs apply only so far as the principal is presently enriched thereby.

CHAPTER IV.

UNJUST ENRICHMENT.*

703.

A person who without any lawful reason has been

---

* This covers the ground of *condictiones* in the Roman Law.

enriched from another's property or services, whereby the other has suffered a loss, is bound to make restitution to the extent to which the enrichment still exists.

704.

If a person has been enriched in bad faith, he must make restitution with interest. If any farther damage has arisen, he must also make compensation for that.

705.

If a person has made a prestation* as in performance of an obligation, knowing at the time that no such obligation actually existed, he cannot claim restitution of the subject of the prestation.

706.

When a debtor has made a prestation in performance of an obligation not yet due, he cannot claim restitution of the subject of the prestation. If, however, he made such prestation by mistake, the creditor must make restitution to the extent to which he is enriched thereby.

707.

If a person who is not a debtor has performed an obligation by mistake, and the creditor in consequence thereof has in good faith destroyed the documentary evidence of the obligation or given up any security or lost his right by prescription, the person performing cannot claim restitution.

These provisions do not affect the right of recourse of the person performing against the debtor.

---

* See note p. 105.

708.

A person who makes a prestation for an illegal cause cannot claim restitution of the subject of the prestation, unless the illegality is only on the part of the person who receives the prestation.

CHAPTER V.

WRONGFUL ACTS.*

709.

A person who intentionally or negligently violates another's right is bound to make compensation for damage arising therefrom.

710.

Whether the injury was to the person, liberty or reputation of another or to his property, the party bound to make compensation under the preceding article must make compensation even for damage other than pecuniary damage.

711.

A person who has wrongfully caused the death of another is bound to make compensation for damage to the parents, to the husband or wife and to the children of the person killed, even though no property right of theirs has been violated.

---

* *Delicta* in Roman Law.

712.

A minor who has caused damage to another is bound to make compensation for his act, if he had sufficient mental capacity to understand his responsibility for his act.

713.

If a person while in a condition of mental unsoundness causes damage to another, he is not bound to make compensation, unless by his own bad faith or fault he had put himself temporarily into such condition.

714.

When in the cases mentioned in the preceding two articles the incapacitated person is not bound to make compensation, the person whose legal duty it was to control him is bound to make compensation for damage caused to a third person by him; but only in case he has failed to perform his duty of control.

The same responsibility rests upon a person who has exercised control over an incapacitated person in the place of the person legally bound to do so.

715.

If a person has employed another for a certain business, and the latter causes damage to a third person in the course of the execution of such business, the employer is bound to make compensation, unless he has used due care in the selection of the person employed and in the control of the business, or unless the damage would have happened even though such care had been used.

The same responsibility rests upon a person who has exercised control of the business in place of the employer.

These provisions do not affect the right of recourse of the employer or of the person who controlled the business against the person employed.

716.

The employer of a contractor is not liable for damage done by the contractor to a third person in the course of the work, unless the employer was at fault in regard to the work ordered or to his directions to the contractor.

717.

If damage is caused to a third person by a defect in the construction or maintenance of a structure erected on land, the possessor of such structure is bound to make compensation for the damage to the person injured; but if the possessor has used due care to prevent the happening of the damage, the owner is bound to make compensation.

These provisions apply correspondingly to defects in respect to the planting or propping up of bamboos or trees.

If in those cases there is also some other person who is responsibbe in respect to the cause of the damage, the possessor or owner has a right of recourse against such person.

718.

The possessor of an animal is bound to make compensation for any damage caused by the animal to

another person, unless he has kept it with due care according to its species and disposition.

The some responsibility rests on a person who keeps the animal in place of the possessor.

719.

If several persons by a joint wrongful act cause damage to another person, they are jointly and severally bound to make compensation for the damage. The same applies, if among several joint doers of an act the one who caused the damage cannot be ascertained.

Persons who instigated or assisted in the act are deemed to have joined in it.

720.

A person who, in order to protect his own rights or those of another against the wrongful act of a third person, unavoidably commits a harmful act is not bound to make compensation for damage. This does not affect a claim for damages by the injured person against the person who did the wrongful act.

The foregoing provisions apply where a person injures a thing belonging to another in order to avert danger imminent from it.

721.

A child in the womb is deemed to be born in respect to his right to claim damages.

722.

The provisions of Art. 417 apply correspondingly to compensation for damage from wrongful acts.

If the injured person is himself in fault, the court

may take that fact into consideration in determining the amount of damages.

723.

Against a person who has injured the reputation of another, the court may on the latter's application order, instead of or together with damages, proper measures to be taken for the rehabilitation of the other's reputation.

724.

The right to claim compensation for damage from a wrongful act is extinguished by prescription, if it is not exercised for three years from the time when the injured person or his legal representative had knowledge of the damage and the person who caused it. The same applies when twenty years have elapsed since the time when the wrongful act was committed.

BOOK IV.

FAMILY.

CHAPTER I.

GENERAL PROVISIONS.

725.

Relatives comprise :—

1. Relatives by blood up to the sixth degree inclusive ;
2. Husband and wife ;
3. Relatives by affinity up to the third degree inclusive.

726.

The degree of relationship is reckoned by the number of generations from one relative to the other.

The degree of relationship between collateral relatives is reckoned by counting the number of generations from one person or his or her wife or husband up to the common ancestor and then down to the other person.

727.

As between an adopted child and the adopter and

his blood relatives, the same relationship exists from the day of the adoption as between blood relatives.

728.

Between a stepfather or stepmother and the stepchild, and between the *chakubo** and the *shoshi*,† the same relationship exists as between parent and child.

729.

Relationship by affinity and the relationship mentioned in the foregoing article cease on divorce.

The same applies, if after the death of the husband or wife the survivor quits the house.

730.

The relationship between an adopted child and the adopter and his blood relatives ceases on the dissolution of the adoption.

If the adopter quits the house in which the adoption was made, the relationship between him and his blood relatives of his original family on one side and the adopted child on the other side ceases thereby.

If the husband or wife, a descendant or the husband or wife of a descendant of an adopted child quits the house in which the adoption was made, together with the adopted child, in consequence of the dissolution of the adoption, the relationship between such person and the adopter and his blood-relatives ceases thereby.

---

* *Chakubo* 嫡母 means the wife of the father of a natural child which has been recognized by the father.

† *Shoshi* 庶子 means such a natural child as is mentioned in the preceding note. See Art. 825, 2.

731.

The provisions of Arts. 729, 2 and 730, 2 do not apply in the case of succession to the principal house, or of the establishment of a branch house or the re-establishment of a house which has been abandoned or extinguished.

CHAPTER II.

THE HEAD AND MEMBERS OF A HOUSE.*

SECTION I.

GENERAL PROVISIONS.

732.

Members of a house comprise such relatives of the head of the house as are in his house, and the husbands and wives of such relatives.

If the head of the house is changed, the former head and the members of his house are the members of the house of the new head.

733.

A child enters the house of his father.

A child whose father is unknown enters the house of his mother.

A child whose parents are unknown, establishes his own house.

---

* House means a family group united under the headship of one person.

734.

If the father quits the house before the child is born, because of divorce or of the dissolution of adoption, the provisions of Art. 733, 1 apply with relation back to the time of the beginning of the pregnancy.

This does not apply in case both parents quit the house, unless the mother returns to such house before the child is born.

735.

A *shoshi* or a natural child of a member of a house can enter the house only with the consent of its head.

If a *shoshi* cannot enter the house of his father, he enters that of his mother.

If a natural child does not enter the house of his mother, he establishes his own house.

736.

If a woman who is the head of a house marries a man who at the same time enters her house, the husband becomes the head of such house, unless the parties concerned have expressed a contrary intention at the time of the marriage.

737.

A relative of the head of a house, who is in another house, may with the consent of the head of the former house become a member of such house; but if he is a member of the other house, he must obtain the consent of its head.

If such person is a minor, he must obtain the consent of the parent exercising the parental power or of his guardian.

738.

If a person who has entered another house by marriage or adoption desires that a relative, who is not also a relative of his or her wife or husband or of the adopter, should enter that house, he must not only comply with the provisions of the preceding article, but must also obtain the consent of his or her wife or husband, as the case may be, or of the adopter.

The same applies, if a person who has quit a house which he entered by marriage or adoption desires that a descendant of his, who is a member of that house, should become a member of his house.

739.

A person who has entered another house by marriage or adoption goes back to his original house on divorce or on dissolution of the adoption.

740.

A person who under the provisions of the preceding article ought to go back to his original house, but cannot do so because that house has been abandoned or extinguished, establishes a new house; but this does not effect the right to re-establish his original house.

741.

If a person who by marriage or adoption has entered another house desires again to enter another house by marriage or adoption, he must obtain the consent of both the head of the house which he has entered and of the head of his original house.

In such case the head of the house who has not given his consent, may within one year from the time

of the marriage or adoption forbid him to re-enter his house.

742.

A member of a house who has been excluded from his house establishes a house of his own. The same applies, when a person, who after entering another house is forbidden to re-enter his former house, quits the house which he entered because of divorce or the dissolution of adoption.

743.

A member of a house may with the consent of the head of his house succeed to another house, establish a branch house or re-establish an abandoned or extinct principal house, branch house, or co-ordinate* house or other house of a relative; but a minor must obtain the consent of that parent who is exercising the parental power over him or of his guardian.

744.

The legal expectant heir of a house is not allowed to enter another house or to establish a house of his own, unless a necessity for succession to the principal house arises.

By these provisions the application of Art. 750, 2 is not affected.

745.

If a husband enters another house or establishes a house of his own, his wife follows him and enters his house.

---

* Two branches of the same house are co-ordinate houses as to each other.

SECTION II.

RIGHTS AND DUTIES OF THE HEAD AND OF THE MEMBERS OF A HOUSE.

746.

The head and the members of a house bear the name of the house.

747.

The head of a house is bound to support its members.

748.

Property which a member of a house acquires in his own name is his separate property.

Property as to which it is uncertain whether it belongs to the head of the house or to a member, is presumed to belong to the former.

749.

A member of a house may not choose his residence against the will of the head of the house.

So long as a member, in contravention of this provision, is not at the residence appointed by the head of the house, the head of the house is free from his obligation to support him.

In such case the head may notify the member to remove his residence to the place appointed by him within a reasonable time. If the member does not comply with such notification, the head may exclude him from the house, unless he is a minor.

750.

If a member of a house desires to marry or enter into a relation of adoption, he must obtain the consent of the head of his house.

If a member marries or enters into a relation of adoption in contravention of this provision, the head of the house may within one year from the day of the marriage or adoption exclude him from the house or forbid him to re-enter it.

If a member who has adopted another person is excluded from his house under the foregoing provisions, the person adopted follows the adopter and enters his house.

751.

If the head of the house is unable to exercise his right, it is exercised by the family council. But this does not apply, if a person exists who is exercising the parental power over the head of the house, or if the latter has a guardian.

SECTION III.

EXTINGUISHMENT OF THE HEADSHIP OF A HOUSE.

752.

The head of a house may resign his headship only under the following conditions:—

1. If he has completed the age of sixty years;
2. If an heir having full capacity accepts unqualifiedly the succession to the house.

753.

If the head of a house, because of sickness or because of his succeeding to the principal house or of its re-establishment or because of any other unavoidable necessity, has become unable to continue the administration of the house, he may resign the headship with the consent of the court, notwithstanding the provisions of the preceding article; but if there is no legal expectant heir to the house, he must first appoint a person to be heir of the house and obtain his assent.

754.

If the head of a house desires to enter another house by marriage, he must resign the headship according to the provisions of the preceding article.

If the head of a house desires to enter another house by marriage, without resigning the headship, and the registrar accepts the notification of the marriage, it is deemed that the head has resigned his headship on the day of the marriage.

755.

A woman who is the head of a house can resign without regard to her age.

A married woman who is the head of a house must obtain the consent of her husband to resign. But the husband must not refuse such consent without reasonable cause.

756.

An incapacitated person need not obtain the consent of his guardian to resign the headship of a house.

757.

A resignation of the headship of a house takes effect upon its notification to the registrar by the person resigning and the heir.

758.

The relatives of the person resigning or the public procurator may within three months from the day of the notification of the resignation apply to the court for its cancellation, if the resignation is made in contravention of the provisions of Arts. 752 or 753.

If a wife resigns in contravention of the provisions of Art. 755, 2, her husband may apply to the court for the cancellation of the resignation within the above mentioned time.

759.

If the person resigning the headship or his heir was induced by fraud or coërcion to make the notification of the resignation, he may apply to the court within one year from the time when he discovers the fraud or is freed from the coërcion to have the resignation cancelled. But this does not apply, if the person concerned has ratified his act.

So long as the person resigning the headship or his heir has not discovered the fraud or is not freed from the coërcion, his relatives or the public procurator may apply to the court to have the resignation cancelled; but this right ceases, if after such application the person resigning or his heir ratifies the act.

Such right to apply for cancellation also ceases after ten years have elapsed since the application for the registration was made.

760.

A person who has become a creditor of the heir to a house before the resignation is cancelled, may demand performance from the person who becomes head of the house in consequence of such cancellation; but without prejudice to his rights against the heir.

If the creditor at the time of acquiring his obligation had notice of the existence of the ground of cancellation, he can demand performance only from the heir. The same applies to those obligations of the heir which he had incurred before his succession to the headship, and also to such obligations as are merely personal to him.

761.

The extinction of the right of the head of the house by resignation or by the marriage of a woman who is the head of the house with a man who enters her house can be set up against a creditor or debtor of the former head only from the time when he has received notice thereof from the former head or from his heir.

762.

A person who has established a new house may abandon such house and enter another house.

A person who has become the head of a house by succession cannot abandon such house, except to succeed to or to re-establish the principal house, or for some other just cause with the permission of the court.

763.

If the head of a house lawfully abandons his house and enters another house, the members of his house also enter the latter.

764.

If there is no heir to a house which loses its head, such house is extinguished, and the members establish houses of their own; but a child follows his father and enters his house, or if the father is unknown or is in another house or is dead, the child follows his mother and enters her house.

By the provisions of the preceding paragraph the application of Art. 745 is not affected.

CHAPTER III.

MARRIAGE.

SECTION I.

THE EXISTENCE OF MARRIAGE.

SUBSECTION I.

REQUISITES OF MARRIAGE.

765.

A man cannot marry before the completion of his seventeenth year, or a woman before the completion of her fifteenth year.

766.

A person already married cannot contract another marriage.

767.

A woman cannot contract another marriage within six months from the dissolution or cancellation of her former marriage.

If the woman was pregnant at the time of the dissolution or cancellation of her former marriage, this provision does not apply after the day of her delivery.

768.

A person who is judicially divorced or punished because of adultery cannot contract a marriage with the other party to the adultery.

769.

Lineal relatives by blood or collateral relatives by blood up to the third degree inclusive cannot intermarry; but this does not apply as between an adopted child and his collateral relatives by adoption.

770.

Lineal relatives by affinity cannot intermarry. This applies even after the relationship by affinity has ceased according to the provisions of Art. 729.

771.

An adopted child, his or her husband or wife, his descendants and the husband or wife of one of his descendants on the one hand and the adopter and his ascendants on the other hand cannot intermarry, even after the relationship has ceased according to the provisions of Art. 730.

772.

For contracting a marriage a child must have the

consent of his parents being in the same house. This, however, does not apply, if the man has completed his thirtieth year or the woman her twenty fifth year.

If one of the parents is unknown, is dead, has quit the house or is unable to express his intention, the consent of the other parent is sufficient.

If both parents are unknown, are dead, have quit the house or are unable to express their intention, a minor must obtain the consent of his guardian and of the family council.

773.

If a stepfather, a stepmother or *a chakubo* does not consent to the marriage of the child, the child may marry on obtaining the consent of the family council.

774.

A person who has been adjudged incompetent need not obtain the consent of his guardian in order to contract a marriage.

775.

A marriage takes effect upon its notification to the registrar.

The notification must be made by the parties concerned and at least two witnesses of full age, either orally or by a signed document.

776.

The registrar must not accept the notification of a marriage, until he has ascertained that the marriage is not in contravention of any of the provisions of Arts. 741, 1, 744, 1, 750, 1, 754, 1, 765-773

and 775, 2 or to any other law or regulation. This, however, does not apply, if, the marriage being in contravention of the provisions of Art. 741, 1 or Art. 750, 1, the registrar calls the attention of the parties to it, but they persist in their notification.

777.

If Japanese in a foreign country contract a marriage between themselves, they may make the notification of their marriage to a Japanese minister or consul stationed in such country. In such case the provisions of Arts. 775 and 776 apply correspondingly.

SUBSECTION II.

THE INVALIDITY AND THE CANCELLATION OF A MARRIAGE.

778.

A marriage is invalid only in the following cases:—

1. If, because of a mistake as to the person or for any other cause, the intention to contract a marriage between the parties does not exist;
2. If the parties do not make notification of their marriage; but a marriage is valid even though the notification is not in accordance with the conditions specified in Art. 775, 2.

779.

A marriage may be cancelled only under the provisions of the following seven articles.

780.

An application to the court for the cancellation of a marriage which is contrary to the provisions of Arts. 765-771 may be made by either party, by the head of the house or the relatives of either party, or by the public procurator. But the right of the public procurator ceases on the death of either of the parties.

The cancellation of a marriage which is contrary to the provisions of Arts. 766-768 may also be applied for by the husband or wife or the former husband or wife of the party concerned.

781.

An application for the cancellation of a marriage which is contrary to the provisions of Art. 765 cannot be made after the husband or wife, who has married before the age prescribed by law, has attained such age.

A person who has married before the age prescribed may himself or herself apply for cancellation within three months from the time when he or she has attained such age, unless he or she has ratified the marriage after attaining such age.

782.

An application for the cancellation of a marriage which is contrary to the provisions of Art. 767 cannot be made, if six months have elapsed since the former marriage was dissolved or cancelled, or if the wife has

become pregnant after the contracting of the new marriage.

783.

An application for the cancellation of a marriage which is contrary to the provisions of Art. 772 may be made to the court by any person who had a right to consent to the contracting of such marriage. The same applies, when the consent has been obtained by fraud or coërcion.

784.

The right to apply for the cancellation of a marriage provided in the preceding article ceases :—

1. If six months have elapsed since the person who had a right to consent to the contracting of the marriage had notice of the contracting of such marriage or discovered the fraud or was freed from the coërcion ;
2. If the person who had a right to consent to the marriage has ratified it ;
3. If three years have elapsed since the day when the notification of the marriage was made to the registrar.

785.

A person who by fraud or coërcion has been induced to contract a marriage may apply to the court for its cancellation.

This right ceases after three months from the time when the party concerned discovered the fraud or was freed from the coërcion, or if he has ratified the act.

786.

In case of the adoption of a *mukoyōshi** each of the parties concerned may apply to the court for cancellation of the marriage on the ground of the invalidity or cancellation of the adoption. But this does not affect the right to make an application for the cancellation of the marriage together with an application to have the adoption declared invalid or cancelled.

The above mentioned right to cancellation is extinguished, if three months have elapsed since the party concerned had knowledge of the invalidity or of the cancellation of the adoption, or if he has renounced the right of cancellation.

787.

The cancellation of a marriage has no retrospective effect.

A party who at the time of contracting the marriage had no knowledge of the cause of cancellation is bound to restore property obtained by the marriage only so far as he is presently enriched thereby.

A party who at the time of contracting the marriage had knowledge of the cause of cancellation is bound to restore all profits obtained by the marriage. He is also liable for damages to the other party, if the latter acted in good faith.

---

* Mukoyōshi 婿養子 is a person who is adopted by another and at the same time marries the daughter of the house who would be the heir to the headship of the house.

SECTION II.

EFFECT OF MARRIAGE.

788.

By marriage the wife enters the house of the husband.

A man who marries a woman who is the head of a house, or a *mukoyōshi* enters the house of his wife.

789.

A wife is bound to live with her husband.

A husband must permit his wife to live with him.

790.

A husband and wife are bound to support each other.

791.

When the wife is a minor, the husband, if of full age, exercises the functions of a guardian.

792.

A contract made between husband and wife may be cancelled at any time during the marriage by either party, but without prejudice to the rights of third persons.

SECTION III.

THE PROPERTY OF THE HUSBAND AND WIFE.

SUBSECTION I.

GENERAL PROVISIONS.

793.

If the husband and wife have not, before the notification of the marriage, made any special agreement as to their property, their property relations are governed by the provisions of the next Subsection.

794.

If the husband and wife make an agreement different from the legal arrangement as to property of husband and wife, they must have it registered not later than at the time when the notification of the marriage is made. Otherwise such agreement cannot be set up against the successors of the husband or wife or against third persons.

795.

If foreigners, who have made an agreement different from the legal arrangement as to the property of husband and wife existing in the country of the husband, after contracting the marriage acquire the Japanese nationality or gain a domicile in Japan, they must have such an agreement registered not later than within one year. Otherwise it cannot be set up against

the successors of the husband or wife or against third persons.

796.

After the notification of the marriage an alteration in the property relations of the husband and wife cannot be made.

If the party who manages the property of the other party endangers it by bad management, such other party may apply to the court for authority to manage it in person.

In connection with such application the other party may also apply for a partition of the common property.

797.

If under the provisions of the preceding article or in consequence of an agreement the manager of the property is changed or the common property is partitioned, such fact must be registered. Otherwise it cannot be set up against the successors of the husband or wife or against third persons.

SUBSECTION II.

LEGAL ARRANGEMENT AS TO THE PROPERTY OF THE HUSBAND AND WIFE.

798.

The husband must bear all the expenses arising out

of the marriage, except that if the wife is the head of the house, such duty rests upon her.

This does not affect the application of the provisions of Art. 790 or of Chapter VIII.

799.

The husband, or the wife if she is the head of the house, has a right to use the property of the other party according to the established use of it and to take the profits of it.

The husband, or the wife if she is the head of the house, must pay out of the fruits of the property of the other party the interest on such other party's obligations.

800.

The provisions of Arts. 595 and 598 apply correspondingly in the case of the preceding article.

801.

The husband is the manager of his wife's property.

If the husband is not able to manage it, she is the manager for herself.

802.

The husband must obtain the consent of his wife in order to contract a loan for her, to alienate her property, to give it as security or to let it for a longer time than that specified in Art. 602. But this does not apply, where he disposes of the fruits for the purposes of the management.

803.

If any necessity appears, the court may on the appli-

cation of the wife require the husband who is managing her property to give proper security for its management and restoration.

804.

In the daily affairs of the household the wife is deemed to represent her husband.

The husband may wholly or partly deprive her of such power, but he cannot set up such deprivation against third persons acting in good faith.

805.

A husband in managing his wife's property, or a wife in representing her husband, is bound to use the same care as in his or her own affairs.

806.

The provisions of Arts. 654 and 655 apply correspondingly to the husband's management of his wife's property or the wife's representation of her husband.

807.

Such property as a wife or the husband of the head of a house had before the marriage, or acquires during the marriage in his or her own name, is his or her separate property.

Property as to which it is doubtful whether it belongs to the husband or to the wife is presumed to belong to the husband, or to the wife if she is the head of the house.

SECTION IV.

DIVORCE.

SUBSECTION I.

DIVORCE BY CONSENT.

808.

The husband and wife may effect a divorce by mutual consent.

809.

A person who has not reached the age of twenty five years, in order to effect a divorce by mutual consent, must obtain the consent of those persons whose consent according to Arts. 772 and 773 would be necessary to his contracting a marriage.

810.

The provisions of Arts. 774 and 775 apply correspondingly to a divorce by mutual consent.

811.

The registrar must not accept the application for the registration of a divorce, until he has ascertained that the divorce is not contrary to the provisions of Arts. 775, 2 and 809, or to other laws or regulations.

If the registrar accepts the application in contravention of the foregoing provisions, the validity of the divorce is not affected thereby.

812.

If a husband and wife have effected a divorce by

mutual consent, without determining to whom the custody of the children shall belong, it belongs to the father.

If the father in consequence of the divorce quits the house into which he married, the custody of the children belongs to the mother.

The provisions of the preceding two paragraphs do not change any rights and duties of the parents apart from the custody.

SUBSECTION II.

JUDICIAL DIVORCE.

813.

A husband or a wife, as the case may be, can bring an action for divorce only in the following cases :—

1. If the other party contracts a second marriage ;
2. If the wife commits adultery ;
3. If the husband is sentenced to punishment for an offence involving criminal carnal intercourse ;*
4. If the other party is sentenced to punishment for an offence greater than misdemeanour involving forgery, bribery, sexual immorality, theft, robbery, obtaining property by false pretences, embezzlement of goods deposited, receiving property obtained criminally, or any of the offencess specified in Arts. 175 or 260 of the Criminal Code,or is sentenced to a major imprisonment or more ;
5. If one party is so illtreated or grossly insulted by the other that it makes farther living together impracticable ;
6. If one party is deserted by the other ;

* That is, the offences specified in Art. 348 *et seq.* of the Criminal Code.

7. If one party is illtreated or grossly insulted by an ascendant of the other party;
8. If an ascendant of one party is illtreated or grossly insulted by the other party;
9. If it has been uncertain for three years or more whether the other party was alive or dead;
10. In the case of the adoption of a *mukoyōshi*, if the adoption is dissolved or in the case of the marriage of an adopted son with a daughter of the house, if the adoption is dissolved or cancelled.

814.

In the cases mentioned under Nos. 1-4 of the preceding article a husband or wife who has consented to the act of the other party cannot bring an action for divorce.

The same applies in the cases mentioned under Nos. 1-7 of the preceding article, if one party has condoned the act of the other or of the other's ascendant.

815.

A husband or a wife who is sentenced to punishment as specified in Art. 813, No. 4 cannot bring an action for divorce on the ground that the same is the case with the other party.

816.

An action for divorce cannot be brought for one of the causes mentioned in Art. 813, Nos. 1-8 after the lapse of one year from the time when the party entitled to sue had knowledge of the facts forming the cause for divorce. The same applies, if since the happening of such facts ten years have elapsed.

817.

An action of divorce for the cause mentioned in Art. 813, No. 9 cannot be brought after it has ceased to be uncertain whether the other party is alive or dead.

818.

If in the case mentioned in Art. 813, No. 10 an application for the dissolution or cancellation of the adoption is made, such application may be joined with an application for divorce.

An action of divorce for the cause mentioned in Art. 813, No. 10 cannot be brought after the expiration of three months from the time when the party concerned had notice of the dissolution or the cancellation of the adoption, or if he has renounced the right to apply for divorce.

819.

The provisions of Art. 812 apply correspondingly to a judicial divorce; but the court may in the interest of the children make different arrangements as to their custody.

CHAPTER IV.

PARENT AND CHILD.

SECTION I.

CHILDREN BY BIRTH.

SUBSECTION I.

LEGITIMATE CHILDREN.

820.

If a child is conceived by the wife during the

marriage, it is presumed to be the child of her husband.

If a child is born not less than two hundred days after the contracting of the marriage, or within three hundred days after its dissolution or cancellation, it is presumed to have been conceived during the marriage.

821.

If a woman who has contracted a new marriage in contravention of the provisions of Art. 767 bears a child, and the father of the child cannot be determined by means of the provisions of the preceding article, it is to be determined by the court.

822.

In the case of Art. 820 the husband may contest the legitimacy of the child.

823.

The right of contesting the legitimacy of the child is exercised by an action against the child or its legal representative. If the husband is the legal representative of the child, the court must appoint a special representative.

824.

The husband loses his right to contest the legitimacy of the child, if after its birth he acknowledges it as legitimate.

825.

The husband must bring the action to contest the legitimacy of the child within one year after he has notice of the child's birth.

826.

If the husband is a minor, the period specified in the preceding article is computed from his becoming of age; but this does not apply, if the husband had notice of the birth of the child only after attaining his majority.

If the husband is adjudged incompetent, the period prescribed in the preceding article is computed from the time when after the cancellation of the adjudication the husband had notice of the birth of the child.

SUBSECTION II.

SHOSHI AND NATURAL CHILDREN.

827.

The father or the mother can acknowledge a natural child.

A natural child acknowledged by the father becomes a *shoshi*.

828.

Even though the father or the mother is incapacitated, the consent of the legal representative is not required for the acknowledgment of a natural child.

829.

The acknowledgment of a natural child is made by a notification to the registrar.

An acknowledgment may also be declared in a will.

830.

The acknowledgment of a natural child who is of full age can be made only with his assent.

831.

A father may also acknowledge a child in the womb. In such case the assent of the mother is necessary.

The acknowledgment of a natural child by the father or mother can be made after the child's death only if he has left descendants. If the latter are of age, their assent must be obtained.

832.

The effects of an acknowledgment relates back to the time of birth, without prejudice, however, to rights already acquired by third persons.

833.

A parent who has made an acknowledgment cannot revoke it.

834.

The child or any person interested is entitled to allege facts opposed to the acknowledgment.

835.

A child or any of his descendants or the legal representative of any such person can demand acknowledgment from the father or the mother.

836.

By the marriage of his father and mother a *shoshi* acquires the status of a legitimate child.

A natural child who has been acknowledged by the parents after they have intermarried acquires the status of a legitimate child from that time.

These provisions apply correspondingly in the case when the child has already died.

SECTION II.

ADOPTED CHILDREN.

SUBSECTION I.

REQUISITES OF ADOPTION.

837.

A person of full age can adopt another person.

838.

An ascendant or a person older than the adopter cannot be adopted.

839.

If there is a male child who is a legal expectant heir, another male cannot be adopted ; but this does not apply to the adoption of a male for the purpose of his marrying a daughter of the house.

840.

A guardian cannot adopt his ward. The same

applies after the termination of the functions of a guardian so long as the account of the guardianship has not yet been rendered.

These provisions do not apply in the case mentioned in Art. 848.

841.

A husband or wife can enter into a relation of adoption only jointly with the other.

If a husband or wife adopts a child of the other, it is sufficient to obtain the consent of the other.

842.

If in the case of Art. 841, 1 a husband or wife is unable to express his or her intention, the other may enter into the relation of adoption in the name of both.

843.

If the person to be adopted has not yet attained the age of fifteen years, its parents belonging to the same house may act for him in the adoption.

If in such case a stepmother or a *chakubo* acts for him, the consent of the family council is required.

844.

If a child of full age is to adopt a person or a child of fifteen years or upwards is to be adopted, the consent of the parents belonging to the same house is necessary.

845.

If a person who has entered another house by adoption or marriage desires again to enter another house by

adoption, he must obtain the consent of his parents belonging to his original house; but this does not apply to a wife who follows her husband and enters another house with him.

846.

The provisions of Art. 772, 2 and 3 apply correspondingly in the case of the preceding three articles.

The provisions of Art. 773 apply correspondingly in the case of the preceding two articles.

847.

The provisions of Arts. 774 and 775 apply correspondingly to adoption.

848.

A person who desires to adopt a child may express his intention by will. In such case the executor of the will, the child to be adopted or any person who according to the provisions of Art. 843 acted for the child in the adoption must immediately after the will has taken effect make notification of the adoption, to the registrar with two witnesses of full age.

Such notification relates back to the time of the death of the adopter.

849.

The registrar must not accept the notification of the adoption, until he has ascertained that it is not contrary to the provisions of Arts. 741, 1, 744, 1 and 750, 1 or of the preceding twelve articles or to other laws or regulations.

The proviso of Art. 776 applies correspondingly.

850.

If an adoption is to take place between Japanese subjects in a foreign country, the notification of the adoption may be made to the Japanese minister or a Japanese consul stationed in such country. In such case the provisions of Arts. 775, 848 and 849 apply correspondingly.

SUBSECTION II.

THE INVALIDITY AND CANCELLATION OF AN ADOPTION.

851.

An adoption is invalid only in the following cases :—

1. If, because of a mistake as to the person or for some other reason, the intention to make an adoption between the parties does not exist ;
2. If the parties do not make notification of the adoption to the registrar. But the adoption is valid even though the notification is not in accordance with the conditions specified in Arts. 775, 2 and 848, 1.

852.

An adoption can be cancelled only under the provisions of the following seven articles.

853.

If an adoption is contrary to the provisions of Art. 837,

the adopter or his legal representative may apply to the court for the cancellation of the adoption; but this right ceases after six months from the time when the adopter comes of age, or if he ratifies the adoption after coming of age.

854.

If the adoption is contrary to the provisions of Art. 838 or 839, any of the parties, the head of any of their houses, any relative, or the public procurator may apply to the court for the cancellation of the adoption.

855.

If the adoption is contrary to the provisions of Art. 840, the adopted child or any of his original relatives may apply to the court for the cancellation of the adoption. This right, however, ceases, if after the account of the guardianship has been rendered the adopted child has ratified the adoption, or six months have elapsed.

A ratification by the adopted child is valid only if made after he has become of age or has recovered his capacity.

If the account of the guardianship is completed before the adopted child becomes of age or recovers his capacity, the period above mentioned is computed from the time when he comes of age or recovers his capacity.

856.

If the adoption is contrary to the provisions of Art. 841, the husband or wife who has not consented to it may apply to the court for its cancellation; but if six months have elapsed since the husband or wife had notice of the adoption, it is deemed to be ratified.

857.

If the adoption is contrary to the provisions of Arts. 844-846, any person whose consent was necessary for the adoption may apply to the court for its cancellation. The same applies, if the consent has been obtained by fraud or coërcion.

The provisions of Art. 784 apply correspondingly to the case mentioned in the preceding paragraph.

858.

In the case of the adoption of a *mukoyōshi* any of the parties concerned may apply to the court for the cancellation of the adoption on the ground of the invalidity or cancellation of the marriage. But this does not affect the right to join the application for the cancellation of the adoption with the application to have the marriage declared invalid or cancelled.

In the foregoing case the right to apply for the cancellation of the adoption ceases after six months from the time when the party concerned had notice of the invalidity or cancellation of the marriage, or if he has renounced his right.

859.

The provisions of Arts. 785 and 787 apply correspondingly to adoption; except that the period limited in Art. 785, 2 shall be six months.

SUBSECTION III.

THE EFFECT OF ADOPTION.

860.

The adopted child acquires from the day of the adoption the status of a legitimate child of the adopter.

861.

By adoption the child enters the house of the adopter.

SUBSECTION IV.

THE DISSOLUTION OF ADOPTION.

862.

The parties to an adoption may dissolve it by mutual consent.

If the adopted child has not reached his fifteenth year, the disssolution of adoption is effected by the mutual consent of the adopter and of the persons who would have the right to act in the adoption in the place of the child.

If the adopted child desires the dissolution of the adoption after the death of the adopter, he may dissolve it with the consent of the head of the house.

863.

If a party who has not reached the age of twenty five years is to effect a dissolution of adoption by mutual consent, the consent is required of those persons who would have the right of consent to an adoption according to Art. 844.

In such case the provisions of Arts. 772, 2, 3, and 773 apply correspondingly.

864.

The provisions of Arts. 774 and 775 apply correspondingly to a dissolution of adoption by mutual consent.

865.

The registrar must not accept the notification of a dissolution of adoption, until he has ascertained that it is not contrary to the provisions of Arts. 775, 2, 862 and 863 or to other laws or regulations.

If the registrar accepts the notification in contravention of the foregoing provisions, the dissolution of the adoption is nevertheless valid.

866.

Either party to the adoption, as the case may be, can bring an action to dissolve an adoption only in the following cases :—

1. If he is illtreated or grossly insulted by the other party ;
2. If he is deserted by the other party ;
3. If he is illtreated or grossly insulted by an ascendant of the adopter ;
4. If the other party is sentenced to major imprisonment of one year or more ;

5. If the adopted child commits a serious offence calculated to impair the honour of the house or to damage its property ;
6. If the adopted child absents himself and does not return within three years ;
7. If it is uncertain during not less than three years whether the adopted child is alive or dead ;
8. If the other party illtreats or grossly insults one of the ascendants of the complainant ;
9. In the case of the adoption of a *mukoyōshi*, if a divorce takes place, or in the case of the marriage of an adopted child to a daughter of the house, if a divorce takes place or the marriage is cancelled.

867.

So long as the adopted child is under fifteen years of age, an action to dissolve the adoption can be brought by any person who has a right to act for the child in respect to the adoption.

In that case the provisions of Art. 843, 2 apply correspondingly.

868.

In the cases of Art. 866, Nos. 1-6 an action to dissolve the adoption cannot be brought, if the party concerned has condoned the act of the other party or his ascendant.

869.

In the case of Art. 866, No. 4 an action to dissolve the adoption cannot be brought, if one party has consented to the act of the other party.

A party who has himself been sentenced to punish-

ment as specified in Art. 866, No. 4 cannot bring an action on the ground that the same is the case with the other party.

870.

An action to dissolve the adoption for the causes mentioned in Art. 866, Nos. 1-5. and 8 cannot be brought after one year from the time when the party entitled to sue had notice of the facts forming the cause of the dissolution. The same applies, if ten years have elapsed since the happening of such facts.

871.

An action to dissolve the adoption for the cause mentioned in Art. 866, No. 6 cannot be brought after one year from the time when the adopter had notice of the return of the adopted child, or after ten years from the time of the return.

872.

An action to dissolve the adoption for the cause mentioned in Art. 866, No. 7 cannot be brought after the uncertainty as to the adopted child's being alive or dead is removed.

873.

If in the case mentioned in Art. 866, No. 9 an application for divorce or the cancellation of the marriage is made, an application for the dissolution of the adoption may be joined with it.

An action to dissolve the adoption for the cause mentioned in Art. 866, No. 9 cannot be brought after six months from the time when the party concerned had notice of the divorce or the cancellation of the marriage, or if he renounces his right to demand the dissolution of the adoption.

874.

An adoption cannot be dissolved after the adopted child has become the head of the house ; but this does not apply after he has resigned the headship.

875.

On the dissolution of an adoption, the adopted child re-enters the status which he had in his own house ; but without prejudice to rights already acquired by third persons.

876.

If a husband and wife are adopted together, or if one adopted child marries another adopted child of the same person, and in consequence of the dissolution of the adoption the wife is to quit the house, the husband must dissolve either his adoption or the marriage at his option.

CHAPTER V.

THE PARENTAL POWER.

SECTION I.

GENERAL PROVISIONS.

877.

A child is subject to the parental power of his father belonging to the same house ; but this does not apply to a child who is of full age and has an independent livelihood.

If the father is unknown, is dead, has quit the house or is unable to exercise the parental power, it is exercised by the mother belonging to the same house.

878.

If a stepfather, a stepmother or a *chakubo* exercises the parental power, the provisions of the next chapter apply correspondingly.

SECTION II.

THE EFFECT OF THE PARENTAL POWER.

879.

A parent who exercises the parental power has the right and duty to take care of and to educate the minor child.

880.

A minor child must have his residence at the place which the parent exercising the parental power appoints for him; but this does not affect the application of the provisions of Art. 749.

881.

A minor child must have the permission of the parent who exercises the parental power for his application to enter the military service.*

882.

A parent who exercises the parental power may himself punish the child within the limits of necessity, or may place him in a correctional institution with the permission of the court.

The period for which a child may be placed in such an institution is determined by the court, but shall not exceed six months. Such period may at any time be shortened on the application of the parent.

* Military service includes service in the navy.

883.

A minor child can carry on an occupation only with the permission of the parent exercising the parental power. Such permission may be withdrawn or restricted in the case mentioned in Art. 6,2.

884.

The parent exercising the parental power has the management of the property of the minor child and represents him in all juristic acts relating to his property; but the consent of the child is necessary whenever an obligation would arise whose subject is an act to be done by the child.

885.

If a minor child has the management of the property of his or her wife or husband, such management is conducted in his place by the parent exercising the parental power.

886.

If a mother exercises the parental power, the consent of the family council is required for doing the following acts herself in the place of the minor child or for consenting to the child's doing them:—

1. Carrying on business;
2. Contracting a loan or giving security;
3. Any act whose object is the extinction of a right in an immovable or in a valuable movable;
4. Making a compromise or an agreement for arbitration in respect to an immovable or a valuable movable;
5. Refusing a succession;
6. Refusing a gift or a legacy.

887.

If the parent exercising the parental power does an act in excess of his authority or consents to an act of the child in contravention of Art. 886, he himself or the child may rescind such act. In that case the provisions of Art. 19 apply correspondingly.

By the foregoing provisions the application of Arts. 121-126 is not affected.

888.

In case of an act as to which the interests of a parent exercising the parental power and of a minor child conflict, the former must apply to the family council to appoint a special representative for the child.

If a parent exercises the parental power over several children, as to an act in which the interests of one of them conflict with those of another, the provisions of the preceding paragraph apply correspondingly for one side.

889.

A parent who exercises the parental power is bound to use the same care in the exercise of his right of management as in his own affairs.

Even though an act is done by a mother with the consent of the family council, she remains responsible for it, unless she is free from fault.

890.

After the child comes of age, the parent exercising the parental power must without delay render an account of his management. In such case, however, the expenses of the bringing up of the child and of the management of his property are deemed to be set off against the profits of the property of the child.

891.

The proviso of the preceding article does not apply to property which a third person has given to the child gratuitously with the expression of a contrary intention.

892.

If a third person has given property to a child gratuitously, expressing an intention that the parent exercising the parental power shall not manage it, such property does not fall under the parental management.

If in such case the third person has not designated a manager, a manager must be appointed by the court on the application of the child, of one of his relatives, or of the public procurator.

The same applies, if the powers of a manager designated by the third person cease, or a change of such manager becomes necessary, and the third person does not designate another manager.

In the case of the preceding two paragraphs the provisions of Arts. 27—29 apply correspondingly.

893.

In case of the management of the child's property by a parent, and in the case mentioned in the preceding article, the provisions of Arts. 654 and 655 apply correspondingly.

894.

Obligations arising between the parent who has exercised the parental power or a member of the family council and a child, from the management of the latter's property, are extinguished by prescription after five years from the time when the power of management ceased.

If the power of management ceases while the child is under age, the period above mentioned is computed from the time when the child comes of age or when a new legal representative has assumed his functions.

895.

The parent exercising the parental power exercises the right of the head of a house or the parental power in place of the minor child.

SECTION III.

THE EXTINCTION OF THE PARENTAL POWER.

896.

If a parent abuses the parental power or gives himself up to a grossly evil life, the court may on the application of a relative of the child or of the public procurator decree that the parental power be extinguished.

897.

If the parent exercising the parental power endangers the property of the child by bad management, the court may on the application of a relative of the child or of the public procurator decree that his right of management be extinguished.

If the court makes such a decree against the father, the mother belonging to the same house is to exercise the right of management.

898.

If the causes mentioned in the preceding two articles cease to exist, the court may on the application of the person concerned or of one of his relatives cancel its decree of extinguishment.

899.

If the mother exercises the parental power, she may renounce the management of the property.

CHAPTER VI.

GUARDIANSHIP.

SECTION I.

THE ARISING OF GUARDIANSHIP.

900.

A case for guardianship arises :—

1. When there is nobody who exercises parental power over a minor, or when the person exercising the parental power has not the right of management ;
2. When a person of full age has been adjudged incompetent.

SECTION II.

GUARDIANS AND SUPERVISORS.

SUBSECTION I.

GUARDIANS.

901.

The person who last exercises the parental power over a minor may designate a guardian by will, unless he has not the right of management.

If during the life of the father who exercises the parental power, the mother has renounced the management of the child's property beforehand, the father may designate a guardian in accordance with the provisions of the preceding paragraph.

902.

The parent exercising the parental power becomes the guardian of a person adjudged incompetent.

If a wife is adjudged incompetent, her husband becomes her guardian. If her husband does not become guardian, the provisions of the foregoing paragraph govern.

If a husband is adjudged incompetent, his wife becomes his guardian. If the wife does not become guardian, or if the husband is a minor, the provisions of the first paragraph govern.

903.

If there is no guardian for a member of a house according to the provisions of the preceding two articles, the head of the house becomes guardian.

904.

If there is no guardian according to the provisions of the preceding three articles, a guardian is appointed by the family council.

905.

If it becomes necessary to appoint a guardian, because the mother renounces the management of the property, or the guardian renounces his position or the person exercising the parental power quits the house or the head of the house resigns the headship, the parent or the guardian must without delay convene the family council or apply to the court to convene it.

906.

There cannot be more than one guardian.

907.

Except in the case of women, a guardian may decline to assume the guardianship only for one of the following causes :—

1. If he is in active military service.*
2. If he is a public official stationed outside of the *shi*† or *gun*‡ where the ward has his domicile ;

---

* This includes service in the navy.

† *Shi* comprises Tokio, Kyoto and Osaka.

‡ *Gun* is a small administrative district.

3. If in the case of a person who ought to be guardian in preference to him one of the causes specified in this and the following article had existed but has ceased to exist ;
4. In the case of a guardianship of a person adjudged incompetent, if he has been the guardian of such person for ten years or more ; but this does not apply to a husband or wife, a lineal relative or the head of the house ;
5. If any other sufficient cause exists.

908.

The following persons cannot be guardians :—

1. A minor ;
2. A person adjudged incompetent or quasi-incompetent ;
3. A person who has been deprived of public rights perpetually or for a time ;
4. A legal representative or a curator who has been removed by the court ;
5. A person who has been adjudged bankrupt ;
6. A person who is carrying on or has had a lawsuit against the ward, or the husband or wife or any lineal blood relative of such person ;
7. A person whose whereabouts is unknown ;
8. A person whom the court has ascertained to be unfit for the functions of a guardian, to have committed dishonest acts or to be addicted to a grossly evil life.

909.

The provisions of the preceding seven articles apply correspondingly to a curator.

As to an act in which the interests of the curator or of a person whom he represents and of the person under curatorship conflict, the curator must apply to the family council to appoint a special curator.

SUBSECTION II.

SUPERVISORS.

910.

A person who may designate a guardian may also designate by will a supervisor.

911.

If no supervisor is designated under the provisions of the preceding article, the legal or the designated guardian must, before he enters upon the duties of the guardianship, apply to the court to convene a family council for the purpose of appointing a supervisor. If he acts in contravention of these provisions, the family council may remove him.

If a family council appoints a guardian, it must at once also appoint a supervisor.

912.

If after a guardian has entered upon his duties the position of supervisor becomes vacant, the guardian must without delay have the family council convened

and a supervisor appointed. In such case the provisions of Art. 11,1 apply correspondingly.

913.

If the guardian is changed, the family council must also elect a new supervisor; but the former supervisor may be re-elected.

If the new guardian was not appointed by the family council, the supervisor must immediately have the family council convened and a new election made in accordance with the provisions of the foregoing paragraph. If he omits to do so, he is responsible jointly and severally for the acts of the guardian.

914.

A husband or wife, a lineal blood relative or a brother or sister of the guardian cannot be supervisor.

915.

The duties of a supervisor are as follows :—

1. To supervise the guardian in the performance of his functions;
2. In case of a vacancy in the guardianship, to call upon the person next in order to enter upon the duties of the guardianship, or if there is no such person, to have the family council convened and a guardian appointed;
3. To take necessary steps in case of any emergency;
4. To represent the ward as to acts where the interests of the guardian or of a person represented by him and of the ward conflict.

916.

The provisions of Arts. 644, 907 and 908 apply correspondingly to supervisors.

SECTION III.

THE FUNCTIONS OF A GUARDIAN.

917.

The guardian must without delay commence an examination as to the property of the ward and must within one month, finish it and make an inventory. Such period may, however, be extended by the family council.

The aforesaid examination and making of the inventory has no effect, unless done in the presence of the supervisor.

If the guardian omits to make an inventory according to the provisions of the preceding two paragraphs, the family council may remove him.

918.

Before the completion of the inventory the guardian can only do acts of urgent necessity; but this restriction cannot be set up against third persons acting in good faith.

919.

If an obligation exists in favour of the guardian

against the ward or in favour of the ward against the guardian, the latter must give notice thereof to the supervisor before commencing the examination of the property.

If the guardian knows that an obligation exists in his favour against the ward, and does not give notice thereof, he loses such obligation.

If the guardian knows that an obligation exists against him in favour of the ward, and does not give notice thereof, the family council may remove him.

920.

The provisions of the three preceding articles apply correspondingly, if the ward after the guardian has entered upon his duties acquires property by universal succession.

921.

The guardian of a minor has as to the matters mentioned in Arts. 879-883 and Art. 885 the same rights and duties as a parent exercising the parental power; but he must have the consent of the family council to change the manner of the bringing up of the ward or of his residence as established by the parent exercising the parental power, or to place the minor in a correctional institution, or to permit him to carry on business or to revoke or restrict such permission.

922.

The guardian of a person adjudged incompetent must provide for the care, support and custody of the ward according to the ward's pecuniary condition.

The guardian must determine with the consent of the family council whether a person adjudged incompetent shall be placed in an asylum or kept in a private house.

923.

The guardian manages the property of the ward and represents him in all juristic acts relating to it.

The proviso of Art. 884 applies correspondingly to the foregoing case.

924.

The guardian must immediately on his entering upon his duties determine provisionally with the consent of the family council the amount which shall be spent each year for the support and education or for the attendance and care of the ward, and for the management of his property.

The amount so fixed can be changed only with the consent of the family council; but this shall not prevent the expenditure of a larger amount in case of necessity.

925.

The family council may allow to the guardian a reasonable compensation out of the property of the ward, taking into consideration his pecuniary condition and that of the ward and other circumstances. But this does not apply, if the guardian is the husband or wife, a blood relative or the head of the house of the ward.

926.

The guardian may with the consent of the family council employ a paid manager of the ward's property; but this does not affect the application of Art. 106.

927.

The family council may determine at the time of the

guardian's entering upon his duties an amount, upon reaching which the guardian must deposit all money received by him for the ward.

If the guardian does not within a reasonable time deposit money received by him, although it has reached the amount determined by the family council, he must pay legal interest upon it.

The place of deposit of the money must be determined by the guardian with the consent of the family council.

928.

A designated or appointed guardian must make a report to the family council at least once a year as to the condition of the ward's property.

929.

A guardian must have the consent of the family council to carry on business or to do any of the acts specified in Art. 12,1 in the place of the ward or to consent to the ward's doing so; but this does not apply to the receiving of capital.

930.

If a guardian has acquired property of the ward or a right of a third person against the ward, the latter may rescind such acquisition. In such case the provisions of Art. 19 apply correspondingly.

The preceding provisions do not affect the application of the provisions of Arts. 121-126.

931.

A guardian can hire property of the ward only with the consent of the family council.

932.

If the guardian does not perform his duties, the family council may appoint a special manager and cause him to manage the ward's property on the guardian's responsibility.

933.

The family council may require the guardian to give proper security for the management and restoration of the ward's property.

934.

If the ward is the head of a house, the guardian exercises the functions of the head of the house in his place; but he must have the consent of the family council to expel a member of the house or to forbid his return, or to consent to the establishment of a branch house or the re-establishment of an abandoned or extinct house by a member of the house.

The guardian exercises the paternal power of a minor in his place. In that case the provisions of Arts. 917-921 and of the preceding ten articles apply correspondingly.

935.

When guardianship arises because the parent exercising the parental power has not the right of management of the property, the guardian has only such powers as relate to the property.

936.

The provisions of Arts. 644, 887, 889, 2 and 892 apply correspondingly to guardians.

SECTION IV.

TERMINATION OF THE GUARDIANSHIP.

937.

When the functions of a guardian cease, the guardian or his heir must within two months render an account of his management. Such time, however, may be extended by the family council.

938.

The account of the guardianship must be made up in the presence of the supervisor.

If the guardian is changed, the approval of the family council must be obtained to the account of the guardianship.

939.

If a minor after coming of age and before the completion of the guardian's account makes any contract with the guardian or his heir, he may rescind it. The same applies to a unilateral juristic act, which he does toward the guardian or his heir.

In such case the provisions of Arts. 19 and 121-126 apply correspondingly.

940.

A guardian is liable for interest upon any amount which he is bound to pay over to the ward, and the ward for interest upon any amount which he is bound to pay to the guardian, from the time of the completion of the account.

If the guardian has spent the ward's money for his own benefit, he must pay interest from the time of such spending. If the damage exceeds such interest, he is liable for such damage.

941.

The provisions of Arts. 654 and 655 apply correspondingly to a guardian.

942.

The prescription mentioned in Art. 894 applies correspondingly to all obligations arising out of the guardianship between the guardian, the supervisor or a member of the family council and the ward.

In case a juristic act has been rescinded according to the provisions of Art. 939, the period of prescription is computed from the time of rescission.

943.

The provisions of Art. 942, 1 apply correspondingly as between a curator and a person adjudged quasi-incompetent.

CHAPTER VII.

THE FAMILY COUNCIL.

944.

When according to this law or any other law or

regulation a family council is to be held, the court must convene it on the application of the person whose concern the subject to be discussed is, of the head of his house, of a relative, of the guardian, the supervisor or curator, of the public procurator or of any person interested.

945.

The family council must consist of at least three persons, appointed by the court from among the relatives of the person concerned or else from among persons connected with him or with his house.

A person who can designate a guardian is also entitled to appoint by will the members of the family council.

946.

If a person resides at a distant place, or if some other just cause exists, he may refuse to be a member of the family council.

The guardian, supervisor or curator cannot be a member of the family council.

The provisions of Art. 908 apply correspondingly to members of the family council.

947.

A resolution of the family council is passed by a majority of the members.

A member who is himself interested in a matter cannot vote on such matter.

948.

The person whose concern the matter under dis-

cussion is, the head of his house, his parents belonging to the house, his or her wife or husband, the head of the principal house or of a branch house, or his guardian, supervisor or curator may express his opinion in the family council.

If a family council is to be convened, notice thereof must be given to all the persons above mentioned.

949.

A family council established for an incapacitated person remains in existence until his incapacity ceases. With the exception of the first convening, this family council may be convened by the person concerned, his legal representative, the supervisor, the curator or by any one of the members of the family council.

950.

If there is a vacancy in the family council, the members must apply to the court to appoint a person to fill the vacancy.

951.

Any member of the family council or any of the persons mentioned in Art. 944 may within one month by means of an action complain against a resolution of the family council.

952.

If the family council is unable to pass a resolution, any of its members may apply to the court to make a judicial decree in place of the resolution.

953.

The provisions of Art. 644 apply correspondingly to the members of a family council.

CHAPTER VIII.

THE DUTY OF SUPPORT.

954.

Lineal blood relatives and brothers and sisters are bound to support each other.

The same applies as between a husband or wife and the ascendants of the other party belonging to the same house.

955.

If there are several persons bound to furnish support, the duty rests upon them in the following order :—

1. Husband or wife ;
2. Descendants ;
3. Ascendants ;
4. The head of the house ;
5. The persons specified in Art. 954, 2 ;
6. Brothers and sisters.

As among ascendants or as among descendants, the person nearest in degree is first bound to furnish support. The same applies as among the ascendants mentioned in Art. 954, 2.

956.

If several persons of the same degree are bound to furnish support, the burden is apportioned among them according to their respective pecuniary abilities; but as between those belonging to the house and those not belonging to it, the former are in the first instance bound to furnish support.

957.

If there are several persons entitled to support, and the person bound to furnish it is not able to support them all, he must support them in the following order:—

1. Ascendants;
2. Descendants;
3. Husband or wife;
4. The persons specified in Art. 954, 2;
5. Brothers and sisters;
6. Members of the house, not included in the foregoing classes.

In this case the provisions of Art. 955,2 apply correspondingly.

958.

If there are several persons of the same degree entitled to support, each is entitled to receive support according to his needs.

In this case the proviso of Art. 956 applies correspondingly.

959.

The duty to furnish support arises only when the person to be supported is unable to provide for himself

out of his own property or by his own labour, or to pay for his education out of his own property.

As between brothers and sisters the duty to furnish support arises only if the necessity for support has not been occasioned by the fault of the person to be supported.

960.

The extent of the duty of support is determined by the needs of the person to be supported and by the condition in life and the pecuniary condition of the person bound to furnish support.

961.

A person bound to furnish support must at his option either take the person to be supported into his own house and care for him or, without taking him into his house, furnish him with the means of living. But on application of the person to be supported, the court may, if a just cause exists, determine the manner of furnishing the support.

962.

If the extent or manner of the support has been determined by a judgment, and the facts upon which such judgment was based change, any person interested may apply for an alteration or cancellation of the judgment.

963.

A disposal of the right of support is invalid.

BOOK V.

SUCCESSION.

CHAPTER I.

SUCCESSION TO A HOUSE.*

SECTION I.

GENERAL PROVISIONS.

964.

A succession to a house occurs :—

1. When the head of the house dies, resigns the headship or loses his nationality ;
2. When the head of the house in consequence of the cancellation of a marriage or adoption quits his house ;
3. When a woman who is the head of a house marries a man who enters her house, or when such a marriage is cancelled or dissolved by divorce.

---

* That is, succession to the headship of a house and certain property appurtenant to the headship.

965.

The succession to a house occurs at the domicile of the ancestor.*

966.

The right of action to recover a succession to a house is extinguished by prescription, if it is not exercised for five years from the time when the heir to the house† or his legal representative had notice of the facts constituting a violation of his right as heir, or when twenty years have elapsed since the succession occurred.

967.

Expenses relating to the estate are paid out of the estate, unless they are caused by the fault of the heir.

A person entitled to a legal portion cannot be compelled to pay such expenses out of property obtained by him from the reduction of gifts.

---

* Ancestor means in this translation any person to whom another person succeeds as heir.

† See note to Art. 968.

SECTION II.

THE HEIR TO A HOUSE.*

968.

For the purposes of a sucession to a house a child in the womb is treated as if already born.

This provision does not apply, if the child is born dead.

969.

The following persons cannot be heir to a house: —

1. A person who has been sentenced to punishment for having intentionally caused or attempted to cause the death of the ancestor or of a person who had a prior right to the succession to the house;
2. A person who had knowledge of the murder of the ancestor and did not give information or institute an action for it; but this does not apply, if such person had not sufficient mental capacity to distinguish between right and wrong, or if the murderer was the husband, wife or a lineal blood relative of such person;
3. A person who by fraud or coërcion has prevented the ancestor from making, revoking or changing a will relating to the succession;
4. A person who by fraud or coërcion has caused

* The word heir is used to denote a person who succeeds to the headship of a house and the property connected with such position in case the former head ceases to be such, or to property of another deceased person.

the ancestor to make, revoke or change a will relating to the succession ;

5. A person who has falsified, forged, destroyed or concealed a will of the ancestor relating to the succession.

970.

Descendants of the ancestor being members of his house, become heir to the house according to the following provisions :—

1. As between persons of different degrees, the nearer has priority ;
2. As between persons of the same degree, a male has priority ;
3. As between males or as between females of the same degree, a legitimate descendant has priority ;
4. As between a legitimate descendant, a *shoshi* and a natural descendant of the same degree, the legitimate descendant and *shoshi*, even though females, have priority over a natural descendant ;
5. As between persons between whom none of the distinctions mentioned under 1-4 exists, the oldest has priority.

A person who according to the provisions of Art. 836 or by adoption has acquired the status of a legitimate child is deemed for the purposes of the succession to the house to have been born at the time when he acquired the status of a legitimate child.

971.

The application of Art. 736 is not affected by the provisions of the preceding article.

972.

A descendant who has become a member of the house under the provisions of Arts. 737 and 738 becomes heir to the house according to the order prescribed in Art. 966 only in case where there is no legitimate descendant or *shoshi*.

973.

The right of succession of a legal expectant heir to a house is not affected by the adoption of a person to be the husband of his sister.

974.

If a person who would be heir to a house according to the provisions of Arts. 970 and 972 dies or loses his right of succession before the succession occurs, leaving descendants, these become heir to the house in accordance with the order specified in Arts. 970 and 972, standing in the same rank in which their ascendant would have stood.

975.

If as to the legal expectant heir of a house one of the following causes arises, the ancestor may apply to the court to deprive him of his right of succession :—

1. If he illtreats or grossly insults the ancestor ;
2. If because of sickness or of his bodily or mental condition he would be unable to conduct the administration of the house ;
3. If he has been sentenced to punishment for any offense involving dishonour to the reputation of the house ;
4. If he is adjudged quasi-incompetent as a spendthrift, and there is no probability of his reform-

ation.

If any other just cause exists, the ancestor may with the consent of the family council apply to the court to have the legal expectant heir to the house deprived of his right of succession.

976.

If the ancestor has by his will expressed his intention that the expectant heir of the house shall be deprived of his right of succession, the executor of the will must without delay after the will takes effect apply to the court to have the expectant heir of the house deprived of his right. In such case the deprivation relates back to the time of the death of the ancestor.

977.

If the cause for which an expectant heir to a house has been deprived of his right of succession ceases to exist, the ancestor or the expectant heir himself may apply to the court to have the decree of deprivation cancelled. In the case of Art. 975, 1, No. 1 the ancestor may at any time apply for the cancellation of the deprivation.

The provisions of the foregoing two paragraphs do not apply after the succession has occurred.

The provisions of the preceding article apply correspondingly to the cancellation of the deprivation.

978.

When the succession occurs after an application has been made for the deprivation of the right of succession to the house or for the cancellation of such deprivation, but before the decree made on such application has

become finally binding,* the court may on the application of a relative, a person interested or the public procurator make any necessary orders for the exercise of the rights of the head of the house and for the administration of the estate. The same applies, if there is a will in which the deprivation of the expectant heir to the house is directed.

In case the court appoints an administrator, the provisions of Arts. 27-29 apply correspondingly.

979.

If there is no legal expectant heir to the house, the ancestor may designate an heir to the house. Such designation becomes invalid, if some other person becomes legal expectant heir to the house.

The designation of an heir to the house may be revoked.

These provisions apply only when the succession to the house takes place because of death or of the resignation of the headship.

980,

The designation or the revocation of the designation of an heir to the house takes effect upon its notification to the registrar.

981.

If the ancestor has expressed in his will his intention to designate or to revoke the designation of a person as heir to the house, the executor of the will must without delay after the will takes effect make notification thereof to the registrar. In such case the designation or the revocation of the

* That is, can no longer be reviewed or appealed from.

designation relates back to the time of the death of the ancestor.

982.

When there is neither a legal nor a designated heir to the house, the father of the ancestor, if in his house, or, if there is no such father or he is unable to express his intention, the mother, or if there are no parents or both are unable to express their intention, the family council, is to choose an heir to the house from among the members of the house according to the following order: —

1. The wife, if she is a daughter of the house;
2. The brothers;
3. The sisters;
4. The wife not falling under No 1;
5. The descendants of brothers or sisters.

983.

The persons who are to choose the heir to the house may deviate from the order specified in the preceding article or forbear from making any choice at all only if some just cause exists and with the permission of the court.

984.

If there is no heir to the house according to the provisions of Art. 982, that person among the ascendants belonging to the house who is nearest in degree, becomes heir to the house. Among persons of the same degree a male has preference.

985.

If there is no heir to the house according to the provisions of the preceding acticle, the family council must choose an heir to the house from among the

relatives of the ancestor, or from among the heads of branch houses or members of the principal house or branch houses.

If there is no person among those above mentioned who can become heir to the house, the family council must choose the heir from among other persons.

The family council may choose another person without regard to the provisions of the foregoing two paragraphs only if some just cause exists and with the permission of the court.

SECTION III.

THE EFFECT OF THE SUCCESSION TO A HOUSE.

986.

The heir to a house succeeds, from the time when succession occurs, to the rights and duties of the former head of the house, except so far as these are merely personal.

687.

The ownership of the house documents, of the articles used for the religious rites of the house and of the house burial place are rights specially pertaining to the succession to a house.

988.

A head of a house who resigns, or a woman marrying a man who enters her house, may reserve his or her property by a document having an authenticated date. But this cannot be done so as to contravene the

provisions relating to the legal portion of the heir to the house.

989.

If a succession to a house takes place because of a resignation of the headship or of the marriage of a woman who is the head of the house, the creditors of the former head of the house may demand performance from such former head.

If a succession to a house takes place because such marriage as aforementioned is cancelled or dissolved by divorce, the performance of obligations which have arisen while the husband was head of the house may still be demanded from him.

990.

A person who becomes heir to a house because the head of the house loses his nationality succeeds only to the headship and to the rights specially pertaining to the succession to the house. But by these provisions the succession to the legal portion and to such property as the former head of the house has specially designated as property pertaining to the succession to the house is not affected.

If the person who loses his nationality has rights which only a Japanese subject can hold, these fall to the heir of the house, unless the former head assigns them to a Japanese subject within one year.

991.

If a succession to a house takes place because the head of the house loses his nationality, the creditors of the former head may demand performance from the heir

of the house only up to the amount of the property received by him.

CHAPTER II.

SUCCESSION TO PROPERTY.

SECTION I.

GENERAL PROVISIONS.

992.

Succession to property occurs on the death of a member of a house.

993.

The provisions of Arts. 965-968 apply correspondingly to a succession to property.

SECTION II.

THE HEIR TO PROPERTY.

994.

Descendants of the ancestor become heirs to his property according to the following provisions :—

1. As between descendants in different degrees, the nearest has priority;
2. Descendants in the same degree become heirs to the property in the same rank.

995.

If any person who would be heir under the provisions of the preceding article has died or lost his right of succession before succession occurs, his descendants, if any, become heirs in his place, in accordance with the provisions of the preceding article, standing in the same rank.

996.

If there is no person who would become heir in accordance with the provisions of the preceding two articles, the order of the persons who are to become heirs to property is determined as follows:—

1. The husband or wife;
2. The ascendants;
3. The head of the house.

In the case mentioned under No. 2 the provisions of Art. 994 apply correspondingly.

997.

The following persons cannot become heirs to property:—

1. A person who has been sentenced to punishment for having intentionally caused or attempted to cause the death of the ancestor or of a person who has a prior or equal right to the succession to the property;
2. The persons mentioned in Art. 969, Nos. 2–5.

998.

If an expectant heir to property who is entitled to a legal portion illtreats or grossly insults the ancestor, the latter may apply to the court to deprive him of his right of succession.

999.

The ancestor may at any time apply to the court to cancel the deprivation of the right of succession to the property.

1000.

The provisions of Arts. 976 and 978 apply correspondingly to the deprivation of the right of succession to property.

SECTION III.

THE EFFECT OF SUCCESSION TO PROPERTY.

SUBSECTION I.

GENERAL PROVISIONS.

1001.

The heir to property succeeds from the time when the succession occurs to all the rights and duties pertaining to the property of the ancestor except so far as they are merely personal.

1002.

If there are several heirs, the property falls to them jointly.

1003.

Each co-heir succeeds to the rights and duties of the ancestor according to the proportion of his share in the succession.

SUBSECTION II.

PORTIONS.

1004.

If there are several heirs of the same rank, they succeed to equal portions; provided, however, that in case of descendants the portion of a "*shoshi*" or a natural child is only one half of that of a legitimate child.

1005.

The portion of a descendant who becomes heir according to the provisions of Art. 995 is what would have belonged to his ascendant. If there are several descendants, their shares in the portion which would have belonged to their respective ascendant are determined according to the provisions of the preceding article.

1006.

The ancestor may determine by will, without regard to the provisions of the preceding two articles, the respective portions of the co-heirs, or may entrust such determination to a third person ; but the ancestor or the third person must not contravene the provisions relating to legal portions.

If the ancestor has determined the portions of one or several only of the co-heirs, or has entrusted the doing so to a third person, the portions of the other co-heirs are determined according to the provisions of the preceding two articles.

1007.

If one of the co-heirs has received from the ancestor a legacy, or if he has received a gift for the purpose of a marriage or adoption, of the establishment of a branch house or the re-establishment of an abandoned or extinct house or as a fund for his livelihood, the property which the ancestor had at the time when the succession occurred is deemed to be the property to be succeeded to, and the portion of such person consistsin the amount remaining after subtracting the amount of the legacy or gift from what would have been his portion computed according to the provisions of the preceding three articles.

If the amount of the legacy or gift is equal to or exceeds the amount of the portion, the legatee or donee cannot receive any portion.

If the ancestor has expressed an intention different from the provisions of the foregoing two paragraphs, such intention is valid so far as it does not contravene the provisions relating to legal portions.

1008.

Even though property forming the subject of a gift as mentioned in the preceding article has been destroyed or its value lessened by the act of the donee, it is treated as if it existed in its original condition at the time when the succession occurs, and the amount of the gift determined accordingly.

1009.

If one of the co-heirs assigns his portion to a third person before partition, the other co-heirs may acquire such portion on repaying the amount of it and expenses.

This right must be exercised within one month.

SUBSECTION III.

THE PARTITION OF THE PROPERTY SUCCEEDED TO.

1010.

The ancestor may by will determine the manner of partition or entrust such determination to a third person.

1011.

The ancestor may by will forbid the partition for a period of not more than five years from the time when the succession occurs.

1012.

The partition of the property succeeded to relates back to the time when the succession occurred.

1013.

Each co-heir warrants in proportion to his portion as if he was a seller to the other co-heirs in regard to circumstances existing before the succession occurred.

1014.

Each co-heir is in regard to an obligation which another co-heir receives by the partition responsible in proportion to his portion to such other co-heir for the solvency of the debtor at the time of partition.

As to an obligation not yet due or subject to a condition precedent, each co-heir is responsible for the solvency of the debtor at the time when performance is to be made.

1015.

If any co-heir who is responsible under the provisions of the preceding two articles has not the means to make reimbursement, the amount which he is unable to reimburse is apportioned among the person entitled to reimbursement and the other co-heirs in proportion to their portions. If, however, the person entitled to reimbursement is in fault, he cannot claim such apportionment as against the other co-heirs.

1016.

The provisions of the preceding three articles do not

apply, if the ancestor has expressed by his will a different intention.

CHAPTER III.

THE ACCEPTANCE AND REFUSAL OF A SUCCESSION.

SECTION I.

GENERAL PROVISIONS.

1017.

An heir must within a period of three months after he has notice that succession in his favour has occurred accept it absolutely or qualifiedly or refuse it. Such period, however, may be extended by the court on the application of a person interested or of the public procurator.

The heir has a right to investigate the condition of the estate before accepting or refusing the succession.

1018.

If an heir dies without having accepted or refused the succession, the period specified in Art. 1017, 1 is computed from the time when his heir has notice that succession in his favour has occurred.

1019.

If an heir is incapacitated, the period specified in Art. 1017,1 is computed from the time when his legal representative had notice that succession had occurred in favour of the person incapacitated.

1020.

The legal heir to a house has no right of refusal. But this does not apply to the persons mentioned in Art. 984.

1021.

An heir must manage the estate with the same care as his own affairs; but this does not apply to the time after acceptance or refusal has been declared.

The court may at any time on the application of a person interested or of the public procurator order any measures necessary for the preservation of the estate to be taken.

If the court appoints a manager, the provisions of Arts. 27-29 apply correspondingly.

1022.

An acceptance or refusal cannot be rescinded even within the period mentioned in Art. 1017,1.

This does not affect the right of rescission of an acceptance or refusal according to the provisions contained in Books I and IV. But such right of rescission is extinguished by prescription, if not exercised for six months from the time when ratification becomes possible. The same applies, if ten years have elapsed since the acceptance or refusal.

SECTION II.

ACCEPTANCE.

SUBSECTION I.

ABSOLUTE ACCEPTANCE.

1023.

If the heir accepts absolutely, he succeeds to the rights and duties of the ancestor without limitation.

1024.

In the following cases the heir is deemed to have accepted absolutely. :—

1. If he disposes of the estate wholly or partly but this does not apply to acts done for the preservation of the estate or to contracts of letting for not longer than the period specified in Art. 602 ;
2. If he does not accept qualifiedly or refuse within the period specified in Art. 1017,1 ;
3. If, although he has accepted qualifiedly or refused, he conceals property belonging to the estate or consumes it for his own benefit or intentionally omits to enter it in the inventory ; but this does not apply after a person who has become heir in consequence of his refusal, has declared his acceptance.

SUBSECTION II.

QUALIFIED ACCEPTANCE.

1025.

An heir may accept so as to be bound to perform the obligations and legacies of the ancestor only to the extent of the property obtained by the succession.

1026.

If an heir desires to accept qualifiedly, he must within the period fixed in Art. 1017,1 make an inventory and present it to the court with a declaration that he accepts qualifiedly.

1027.

If an heir accepts qualifiedly, the rights and duties existing between him and the ancestor are deemed not to be extinguished.

1028.

A person who accepts qualifiedly must manage the estate with the same care as his own affairs.

The provisions of Arts. 645, 646, 650, 1 and 2 and 1020, 2 and 3 apply correspondingly in the case of the foregoing paragraph.

1029.

An heir who accepts qualifiedly must within five days after his declaration of acceptance give public notice thereof to all creditors of the estate and

legatees, and must notify them to present their claims within a specified time, which must not be less than two months.

The provisions of Art. 79,2 and 3 apply in such case correspondingly.

1030.

An heir who accepts qualifiedly may, until the end of the period specified in Art. 1029, 1, refuse performance to creditors of the estate or legatees.

1031.

An heir who accepts qualifiedly must, after the expiration of the period specified in Art. 1029, 1 perform out of the estate all obligations due to those creditors who have presented their claims during such period or of whom he has knowledge, in proportion to the amounts of their respective obligations. But the rights of creditors who have rights of priority cannot be impaired thereby.

1032.

An heir who accepts qualifiedly must also perform such obligations as are not yet due, according to the provisions of the preceding article.

Conditional obligations and those whose duration is uncertain must be performed according to a valuation made by experts appointed by the court.

1033.

An heir who accepts qualifiedly must perform legacies only after performance has been made to all the creditors according to the provisions of Arts. 1031 and 1032.

1034.

If, in order to make any performance required to be made by the preceding three articles, a sale of the estate is necessary, the heir must make such sale by public auction ; but he may prevent the sale of the whole or a part of the estate by performing up to a proportional amount as fixed by a valuation made by experts appointed by the court.

1035.

A creditor of the estate or a legatee may at his own cost intervene in any proceeding had for the purpose of the sale or valuation of the estate. In such case the provisions of Art. 260,2 apply correspondingly.

1036.

If an heir who accepts qualifiedly omits to give the public notice or notification mentioned in Art. 1029, or if within the period there specified he performs to a creditor or legatee and thereby becomes unable to perform to any other creditor or legatee, he is liable for all damage arising therefrom. The same applies, if he makes performance in contravention of the provisions of Arts. 1030-1033.

By these provisions the right of recourse of a creditor or legatee against another creditor or legatee who with knowledge of the facts has improperly received performance is not affected.

The provisions of Art. 724 apply correspondingly in the case of the preceding two paragraphs.

1037.

A creditor or legatee who has not presented his claim

within the time specified in Art. 1029,1, and who was not known as such to the heir who accepts qualifiedly, can exercise his right only against such property as remains; but this does not apply to those creditors who have a special security upon the property.

SECTION III.

REFUSAL.

1038.

A refusal of a succession must be declared to the court.

1039.

A refusal relates back to the time when the succession occurred.

If one of several heirs to property refuses the succession, his portion falls to the other heirs in proportion to their respective portions.

1040.

The party refusing must continue to manage the estate with the same care as his own affairs, until the person who becomes heir in consequence of the refusal can assume the management.

In this case the provisions of Arts. 645, 646, 650,1 and 2, 1021,2 and 3 apply correspondingly.

CHAPTER IV.

THE SEPARATION OF THE PROPERTY.

1041.

A creditor of the estate or a legatee may within three months from the time when the succession occurs apply to the court for a separation of the estate from the property of the heir. The same applies even after the expiration of such period, so long as the estate and the property of the heir have not been mingled.

If the court upon such an application orders a separation of the property, the applicant must within five days thereafter give public notice of such separation to the creditors of the estate and the legatees, and notify them to intervene in the distribution within a specified time, which must not be less than two months.

1042.

The applicant and the persons who have intervened according to the provisions of Art. 1041,2 are entitled to receive performance out of the estate in preference to the creditors of the heir.

1043.

If an application for separation is made, the court may order all steps necessary for the management of the estate.

If the court appoints a manager, the provisions of Arts. 27-29 apply correspondingly.

1044.

If an application for separation is made after the heir

has accepted absolutely, the latter must henceforth manage the estate with the same care as his own affairs, unless the court appoints a manager.

In the case of the foregoing paragraph the provisions of Arts. 645-647 and 650,1 and 2 apply correspondingly.

1045.

As to immovables the separation of the estate can be set up against third persons only if it has been registered.

1046.

The provisions of Art. 304 apply correspondingly in the case of the separation of the property.

1047.

An heir can refuse performance to creditors of the estate or legatees until the expiration of the period specified in Art. 1041,1 and 2.

In case of an application for separation, the heir must after the expiration of the period mentioned in Art. 1041,2 make performance from the estate to those creditors or legatees who have made such application and to those who have intervened in the distribution; but the rights of those creditors who have rights of precedence must not be impaired.

In that case the provisions of Arts. 1032 and 1036 apply correspondingly.

1048.

The applicant and those persons who have intervened in the distribution can exercise their rights against the property of the heir only so far as they have not received full performance out of the estate. In such

case the creditors of the heir are entitled to receive performance in preference to the persons before mentioned.

1049.

An heir may prevent the application for separation or avoid its effect by making performance to the creditors of the estate and the legatees from his own property or by giving them proper security. But this does not apply, if the creditors of the heir object and prove that they would suffer damage thereby.

1050.

The creditors of the heir may demand separation so long as the heir still has the power to accept qualifiedly, or the estate and his property have not been mingled.

In such case the provisions of Arts. 304, 1027, 1029-1036, 1043-1045 and 1048 apply correspondingly, except that the public notice and the notification provided for in Art. 1029, must be made by the creditor who has applied for separation.

CHAPTER V.

THE ABSENCE OF AN HEIR.

1051.

If it is uncertain whether there is an heir, the estate is a juridical person.

1052.

In the case of the preceding article the court must on the application of a person interested or of the public procurator appoint a manager of the estate.

The appointment must be published by the court without delay.

1053.

The provisions of Arts. 27-29 apply correspondingly to the manager of an estate.

1054.

Upon the demand of a creditor of the estate or of a legatee the manager must make a report to him as to the condition of the estate.

1055.

When the heir is ascertained, the juridical person is deemed not to have come into existence; but the validity of the acts done by the manager within his powers is not affected thereby.

1056.

The right of representation of the manager is extinguished, as soon as the heir has accepted the succession.

In such case the manager must without delay render an account of his management to the heir.

1057.

If within two months after the publication prescribed in Art. 1052,2 the heir is not yet ascertained, the manager

must without delay give public notice to all the creditors of the estate and the legatees to present their claims within a period specified, which must not be less than two months.

In such case the provisions of Arts. 79, 2 and 3 and 1030-1037 apply correspondingly, except the proviso contained in Art. 1034.

1058.

If even after the expiration of the period mentioned in Art. 1057, 1 the heir is not ascertained, the court may on the application of the manager orof the public procurator issue a public notification summoning any person who is heir to assert his right within a specified period, which shall not be less than one year.

1059.

If within the period mentioned in the preceding article no person asserts his right as heir, the estate falls to the State. In such case the provisions of Art. 1056,2 apply correspondingly.

Creditors or legatees cannot exercise their rights against the State.

CHAPTER VI.

WILLS.

SECTION I.

GENERAL PROVISIONS.

1060.

A will can be made only in the forms prescribed by this law.

1061.

A person who has completed his fifteenth year can make a will.

1062.

The provisions of Arts. 4, 9, 12, 14 do not apply to a will.

1063.

A testator must at the time of making the will have capacity for doing so.

1064.

A testator may dispose of the whole or of a part of his property by a universal or singular title, provided that he must not contravene the provisions of law relating to legal portions.

1065.

The provisions of Arts. 968 and 969 apply correspondingly to legatees.

1066.

A will made by a ward in favour of his guardian or of the husband or wife or a descendant of the guardian, before the guardianship account has been rendered, is void.

The foregoing provisions do not apply, if the guardian is a lineal relative, the husband or wife or a brother or sister of the ward.

SECTION II.

THE FORMS OF A WILL.

SUBSECTION I.

ORDINARY FORMS.

1067.

A will must be made by a holograph document, by a public document or by a secret document; unless an exceptional form is allowed.

1068.

If a will is to be made by a holograph document, the testator must write with his own hand the whole text of

the document and the date, and must with his own hand sign his name and affix his seal.

If any erasure, addition or other alteration is made in such will, it is valid only if the testator adds a written note specifying the place and the fact of the change, signs it separately and also affixes his seal at the place of change.

1069.

If a will is to be made by a public document, the following forms must be observed :—

1. There must be at least two witnesses present at the same time ;
2. The testator must orally declare the contents of the will to a notary ;
3. The notary must write down such declaration of the testator and read it to the latter and to the witnesses ;
4. The testator and the witnesses must, after having acknowledged the correctness of the writing, sign their names and affix their seals. If the testator, however, is not able to sign his name, the notary may instead thereof certify the reason for his not doing so ;
5. The notary must certify under his hand and seal that the will has been made in compliance with the forms specified under Nos. 1-4.

1070.

If a will is to be made by a secret document, the following forms must be observed :—

1. The testator must sign his name on the document and affix his seal ;

2. He must close up the document and put at the place of closure the same seal which he has used in the document;
3. He must produce the closed document before a notary and at least two witnesses, and declare to them that it contains his last will, and must state the name and domicile of the draftsman of the document;
4. After the notary has written down upon the cover of the document the date of the production and the declaration of the testator, he, the testator and the witnesses must sign their names and affix their seals.

The provisions of Art. 1068,2 apply correspondingly to a will made by a secret document.

1071.

In case a will made by a secret document is insufficient as to the forms specified in the preceding article, it may still be valid as a holograph will, if it complies with the provisions of Art. 1068.

1072.

If a person who is unable to speak desires to make his will by a secret document, he must in place of the declaration required in Art. 1070,1, No. 3 write with his own hand in the presence of the notary and of the witnesses upon the cover of the document a statement that the enclosed document is his will, and add the name and the domicile of the draftsman of the document.

The notary instead of writing on the cover the declaration of the testator, must certify thereon that

the testator has complied with the requirements of the preceding paragraph.

1073.

If a person who has been adjudged incompetent desires to make a will in a lucid interval, he must do so in the presence of two physicians.

The physicians present at the making of such a will, must add a certificate under their hands and seals that the testator at the time of making it was not in a mentally unsound state. In the case of a will made by a secret document the physicians must make the above mentioned certificate upon the cover under their hands and seals.

1074.

The following persons cannot act as witnesses or assistants at the making of a will :—

1. Minors ;
2. Persons adjudged incompetent or quasi-incompetent ;
3. Persons who have been deprived permanently or temporarily of their public rights ;
4. The husband or wife of the testator ;
5. Expectant heirs or legatees and their husbands or wives or lineal blood relatives ;
6. Persons who are in the same house with the notary or his lineal blood relatives, and his clerks and servants.

1075.

Two or more persons cannot make their wills by a single document.

SUBSECTION II.

EXCEPTIONAL FORMS.

1076.

A person who from sickness or other cause is in danger of death may make his will by declaring its contents orally in the presence of at least three witnesses to one of them. The witness to whom the declaration is made must commit it to writing and read it to the testator and the other witnesses, and thereupon all of the witnesses, after having acknowledged the correctness of the writing, must add their signatures and seals.

A will so made loses its validity, unless within twenty days it is confirmed by the court upon the application of a witness or a person interested.

The court must grant the confirmation only after it is satisfied that the document contains the true will of the testator.

1077.

A person who is in a place with which intercourse is suspended by the order of the administrative authorities because of the prevalence of an infectious disease may make a will in writing in the presence of a police official and at least one witness.

1078.

A person in military service or any other person connected with the military force may while at the place of war make a will in writing in the presence of

an officer or of a military official having the rank of an officer and at least two witnesses. In case there is no such officer or official having the rank of an officer, an acting officer or a non-commissioned officer may take his place.

If such testator because of sickness or wounds is in a hospital, a physician of the hospital may take the place of such officer or military official.

1079.

If a person in the military service or connected with the military force during war is in danger of death because of sickness, wounds or other cause, he may make his will orally in the presence of at least two witnesses.

Such will is not valid, unless the witnesses commit its contents to writing and sign and seal the document, and some one of them or any person interested without delay has it confirmed by the military judge-advocate.*

In the preceding case the provisions of Art. 1076,3 apply correspondingly.

1080.

A person on shipboard can make a will in writing: if on a man of war or any other vessel belonging to the navy, in the presence of a naval officer or some person having the rank of a naval officer and at least two witnesses; if on any other vessel, in the presence of the master or an officer of the vessel and at least two witnesses.

---

* The judge-advocates, 理事 riji, 主理 shuri, are permanent legal officers attached to the army and navy.

If there is no such officer or person, an acting naval officer or non-commissioned naval officer may take his place.

1081.

The provisions of Art. 1079 apply correspondingly in the case of danger on shipboard. But if a person not belonging to the navy has made his will on shipboard, confirmation by the court is required.

1082.

In the cases mentioned in Arts. 1077, 1078 and 1080 the testator, the draftsman, the persons called as assistants and the witnesses must all sign and seal the document containing the will.

1083.

If in the cases mentioned in Arts. 1077-1081 a person is unable to write his name or to affix his seal, the assistants or witnesses must add a note in writing, stating the reason why it was not done.

1084.

The provisions of Arts. 1068,2 and 1073-1075 apply correspondingly to a will made according to the provisions of the preceding eight articles.

1085.

A will made in any of the forms described in the preceding nine articles becomes invalid, if the testator lives for six months from the time when he might have made a will in the ordinary form.

1086.

If a Japanese who is in a place where a Japanese consul is stationed desires to make his will by a public or secret document, the consul performs the functions of a notary.

SECTION III.

THE EFFECT OF A WILL.

1087.

A will takes effect at the death of the testator.

If a condition precedent is annexed to a will, and the condition happens only after the death of the testator, the will takes effect from the time of the happening.

1088.

A legatee may at any time after the death of the testator declare his refusal of the legacy.*

The refusal relates back to the time of the death of the testator.

1089.

The person bound by the legacy or any other person interested may notify the legatee to accept or refuse

---

* Any disposition of either movable or immovable property by will is in this translation called a legacy.

the legacy within a reasonable time fixed by the notifier. If the legatee does not express his intention to the person bound by the legacy, the legacy is deemed to be accepted.

1090.

If a legatee dies without having accepted or refused the legacy, his heirs may within the limits of their right of succession, accept or refuse it. But if the testator has expressed a different intention in the will, such intention is to govern.

1091.

An acceptance or refusal of a legacy cannot be revoked.

The provisions of Art. 1022,2 apply correspondingly to the acceptance and refusal of legacies.

1092.

A universal legatee has the same rights and duties as an heir to property.

1093.

A legatee may require the person bound on the legacy to give him security for it for so long as it is not yet performable. The same applies to a legacy to which a condition precedent is attached, for the time during which the condition is pending.

1094.

A legatee is entitled to the fruits from the time when

he can demand performance of the legacy; but if the testator has expressed a different intention in his will, such intention is to govern.

1095.

If the person bound on the legacy has after the death of the testator made expenditures upon the thing which is the subject of the legacy, the provisions of Art. 299 apply correspondingly.

For ordinary necessary expenditures which he has made for the purpose of securing the fruits, he may demand compensation up to the value of the fruits.

1096.

A legacy lapses, if the legatee dies before the testator.

The same takes place in case of a legacy subject to a condition precedent, if the legatee dies before the condition happens. But if the testator has expressed a different intention in his will, such intention is to govern.

1097.

If a legacy does not take effect at all, or if it by reason of refusal ceases to have effect, whatever the legatee ought to have received falls to the heir. But if the testator has expressed a different intention in his will, such intention is to govern.

1098.

If the right which forms the subject of the legacy does not belong to the estate at the time of the death of the testator, the legacy is void. This, however, does not apply, if it appears that such right has been made the

subject of the legacy without regard to whether it belongs to the estate or not.

1099.

If a legacy, the subject of which is a right not belonging to the estate, takes effect according to the proviso of the preceding article, the person bound by the legacy must acquire the right and transfer it to the legatee. If such acquisition is impossible, or is possible only at an unreasonable expense, the person bound by the legacy must pay the value of it to the legatee; but if the testator has expressed a different intention in his will, such intention is to govern.

1100.

If in the case of a legacy of a non-specific thing the thing delivered in performance is reclaimed from the legatee by a third person, the person bound by the legacy warrants as if he were a seller.

If in the case of a legacy of a non-specific thing the thing delivered is defective, the person bound on the legacy must furnish in its place a thing free from defects.

1101.

If the testator has a right to claim pecuniary compensation against a third person for the destruction or alteration of the thing forming the subject of the legacy or for the loss of its possession, it is presumed that such right forms the subject of the legacy.

If the thing forming the subject of the legacy is

attached to or mixed with another thing, and the testator under the provisions of Arts. 243-245 has become sole owner or co-owner of the whole resulting thing, it is presumed that such ownership or co-ownership forms the subject of the legacy.

1102.

If the thing or the right forming the subject of a legacy is subject, at the time of the testator's death, to any right of a third person, the legatee cannot require the person bound on the legacy to extinguish such right, unless the testator has expressed a contrary intention in his will.

1103.

When an obligation forms the subject of a legacy, if the testator has received performance and the thing received in performance still remains in the estate, such thing is presumed to be the subject of the legacy.

If in such case the subject of the obligation was a sum of money, the value of the obligation is presumed to be the subject of the legacy, even though there is not a corresponding sum of money in the estate.

1104.

A person who has received a legacy subject to a charge, is required to perform the duty with which he is charged only up to the value of the subject of the legacy.

If the legatee refuses the legacy, the holder of the charge can become himself legatee; but if the testator has expressed a different intention in his will, such intention is to govern.

1105.

If the amount of a legacy which is subject to a charge is reduced, because the heir has only accepted qualifiedly, or because an action has been brought for the recovery of a legal portion, the legatee is freed from the charge proportionately; but if the testator has expressed a different intention in his will, such intention is to govern.

SECTION IV.

THE CARRYING INTO EXECUTION OF A WILL.

1106.

As soon as the custodian of a document containing a will has notice of the occurrence of the succession, he must without delay present the will to the court and ask for its probate. If there is no custodian, the heir has the same duty as soon as he finds the document.

The preceding provisions do not apply to a will made by a public document.

A will closed with a seal can be opened only by the court in the presence of the heir or his representative.

1107.

A person who omits to present a will to the court as prescribed in the last article, or who carries it out without asking for its probate, or who opens a will

closed with a seal without the co-operation of the court, shall be punished by a fine of not more than two hundred yen.

1108.

A testator may by his will appoint one or more executors or commit such appointment to a third person.

A third person to whom such an appointment is committed must without delay make the appointment and notify the heirs thereof.

If a third person to whom the appointment is committed desires to refuse such commission, he must without delay give notice thereof to the heirs.

1109.

An executor of a will must after he has declared his willingness to accept the position, begin at once the performance of his duties.

1110.

Any heir or any other person interested may fix a reasonable time within which the executor must declare whether he will accept or not. If the executor does not make a declaration to the heirs within the time fixed, he is deemed to have accepted.

1111.

An incapacitated person or a person who has been adjudged bankrupt cannot be an executor.

1112.

If there is or afterwards comes to be no executor,

the court may on the application of any person interested appoint an executor.

An executor so appointed can refuse to accept the position only for a just cause.

1113.

An executor must without delay make an inventory of the estate and deliver it to the heirs.

If demanded by an heir, the executor must make such inventory in his presence or have it made by a notary.

1114.

An executor has the right and duty to do all acts necessary for the management of the estate and the carrying into execution of the will.

The provisions of Art. 644-647 and 650 apply correspondingly to executors.

1115.

If there is an executor, the heirs must not dispose of the estate or do any other acts interfering with the carrying into execution of the will.

1116.

If the will relates to particular parts of the testator's property, the provisions of the preceding three articles apply only as to such parts.

1117.

An executor of a will is deemed to be the representative of the heirs.

1118.

An executor can commit the performance of his duties to a third person only in case of necessity, unless the testator has expressed a contrary intention in his will.

If the executor has committed the performance of his duties to a third person in accordance with the proviso of the foregoing paragraph, his responsibility to the heirs is as specified in Art. 105.

1119.

If there are several executors, the manner of performing their duties is decided by a majority vote; but if the testator has expressed a different intention in his will, such intention is to govern.

The provisions of the preceding paragraph notwithstanding, each executor has the right to do acts of preservation.

1120.

An executor is entitled to remuneration only if it is so provided in the will.

If the court appoints an executor, it may grant him a remuneration according to the circumstances of the case.

If an executor is entitled to remuneration, the provisions of Arts. 648,2,3, apply correspondingly.

1121.

Any person interested can apply to the court for the removal of an executor, if he neglects his duties, or for any other just cause.

An executor even after assuming his position may resign it for any just cause.

1122.

When the duties of an executor have come to an end, the provisions of Arts. 654 and 655 apply correspondingly.

1123.

The expenses of the carrying into execution of a will fall upon the estate; but legal portions must not be diminished thereby.

SECTION V.

THE REVOCATION OF A WILL.

1124.

A testator may at any time revoke his will wholly or partly by complying with the form provided for the making of a will.

1125.

If an earlier and a later will conflict, the earlier will is deemed to be revoked by the later one as to the parts in which they conflict.

These provisions apply correspondingly to a conflict between a will and a disposition *inter vivos* or another juristic act made after the making of the will.

1126.

If a testator intentionally wholly or partly destroys the document containing his will, the latter is deemed to be revoked as to the part destroyed. The same applies, if the testator intentionally destroys a thing forming the subject of a legacy.

1127.

A will which has been revoked according to the provisions of the preceding three articles, does not recover its validity, if the act of revocation is itself revoked or becomes invalid. But this does not apply, if the act of revocation is caused by fraud or coërcion.

1128.

The right to revoke a will cannot be renounced.

1129.

If a person who has received a legacy subject to a charge does not perform the duty imposed upon him, the heir may fix a reasonable time and require him to perform within that time. If he does not perform within such time, the heir may apply to the court to cancel the legacy.

CHAPTER VII.

LEGAL PORTIONS.

1130.

A descendant who is the legal heir to the house is

entitled to one half of the estate as his legal portion.

Any other heir to the house is entitled to a third of the estate as his legal portion.

1131.

A descendant who is heir to property is entitled to one half of the estate as his legal portion.

A husband or wife or an ascendant who is heir to property is entitled to one third of the estate as his legal portion.

1132.

In determining the amount of a legal portion, to the property which the ancestor had at the time when the succession occurred is to be added the amount of any property of which he has disposed by gift, and from the sum so found the whole amount of his obligations is to be subtracted.

The value of a conditional right or one which is uncertain in its duration, is to be fixed by a valuation to be made by experts appointed by the court.

In determining the amount of a legal portion, the value of a right pertaining to the special rights of succession to a house is not to be taken into account.

1133.

The amount of a gift is to be taken into account according to the provisions of Art. 1132 only if the gift was made within one year before the succession occurred; but even though made before one year, a gift shall be taken into account, if at the time of making it all the parties concerned knew that it would cause damage to the person entitled to a legal portion.

1134.

A person entitled to a legal portion or his successor may demand the reduction of legacies or of gifts coming under the provisions of the preceding article, so far as is necessary for the protection of his portion.

1135.

If the subject of a gift or legacy is a conditional right or one whose duration is uncertain, and such legacy or gift is to be partly reduced, the person entitled to a legal portion must pay without delay to the donee or legatee the amount of the remaining part according to the value of the right as determined in compliance with the provisions of Art. 1132,2.

1136.

Gifts shall be reduced only after legacies.

1137.

Legacies shall be reduced in proportion to the value of their subjects. If, however, the testator has expressed a different intention, such intention is to govern.

1138.

The reduction of gifts begins with the latest and proceeds in the order of time to the earliest.

1139.

In addition to the property to be restored the donee must also restore its fruits from the day when the claim for reduction was made.

1140.

Any loss arising from the fact that the donee from whose gift the reduction is to be made has not the means of restoring falls upon the person entitled to the legal portion.

1141.

As to a gift subject to a charge, reduction can be demanded only in respect to that part which remains after deducting the amount of the charge from the amount of the gift.

1142.

A juristic act done upon consideration, if the consideration is inadequate, is deemed to be a gift only if all the parties concerned knew that it would cause damage to the person entitled to a legal portion. If in such case the person entitled to a legal portion demands reduction, he must restore the consideration.

1143.

If the donee has assigned to another the subject of the gift which is to be reduced, he must pay its value to the person entitled to a legal portion. If, however, the assignee at the time of assignment knew that such a transfer would cause damage to the person entitled to a legal portion, the latter may claim reduction against the assignee.

These provisions apply correspondingly, if the donee has created a right in the subject of the gift.

1144.

A donee or legatee can free himself from the duty

of restoration by paying to the person entitled to the legal portion the value of the gift or legacy to the extent of the reduction to be made.

These provisions apply correspondingly in the case of the proviso contained in Art. 1143,1.

1145.

The right to demand reduction is extinguished by prescription, if the person entitled to a legal portion does not exercise it for one year after the occurrence of the succession and the existence of the gift or legacy subject to reduction has become known to him. The same applies, if since the occurrence of the succession ten years have elapsed.

1146.

The provisions of Arts. 995, 1004, 1005, 1007 and 1008 apply correspondingly to legal portions.

LAW CONCERNING THE APPLICATION OF LAWS IN GENERAL.

1.

A law takes effect after twenty days from the day of its promulgation, unless a different time has been specified by law.

In Formosa, Hokkaido, Oginawaken and in the islands,* the time when a law shall take effect may be specially fixed by Imperial Ordinance.

2.

A custom not contrary to the public welfare or to good morals has the force of law, provided it is recognized by some law or regulation, or relates to matters for which no provision is made by law or regulation.

3.

The capacity of a person is governed by the law of his nationality.

If a foreigner does a juristic act in Japan for which he would not have capacity under the law of his nationality, he is deemed notwithstanding the foregoing provision to have capacity for it, so far as he would have it under the law of Japan.

---

* The main islands Hondō, Shikoku and Kyūshū are not included in he expression *tochi* 島地 used in this article.

The provisions of the preceding paragraph, however, do not apply to juristic acts done under the provisions of the law of family or succession or to juristic acts relating to immovables situated in a foreign country.

4.

The causes for which a person may be adjudged incompetent are determined by the law of his nationality, the effect of such adjudication by the law of the country in which it is made.

If as to a foreigner having his domicile or residence in Japan a cause for such adjudication exists according to the law of his nationality, the court may make such adjudication, unless the Japanese law does not recognize such cause.

5.

The provisions of the preceding article apply correspondingly to quasi-incompetent persons.

6.

If it is uncertain whether a foreigner is living or dead, a court may make an adjudication of disappearance according to Japanese Law; but only in regard to property in Japan or to such legal relations as are subject to Japanese law.

7.

The question as to what law is applicable in regard to the existence or effect of a juristic act is determined by the intention of the parties to it.

If such intention cannot be ascertained, the law of the place where the act was done applies.

8.

The forms necessary for a juristic act are determined by the law by which its effect is determined.

Notwithstanding the foregoing provisions, the forms are sufficient, if they comply with the law of the country where the act was done; but this rule does not apply to juristic acts relating to the creation or disposal of real rights* or rights for which registration is required.

9.

As to an expression of intention made to a person who is in a place having a different law, the place from which the communication is sent is deemed to be the place of the act.

As to the existence or effect of a contract, the place from which the communication of the offer is sent is deemed to be the place of the act. If at the time when the person to whom an offer is made accepts it, the place from which the communication of the offer was sent is not known, the domicile of the offerer is deemed to be the place of the act.

10.

Rights in movables and immovables and rights for which registration is required, are governed by the law of the place where the things subject to such rights are situated.

The acquisition or loss of such rights is governed by the law of the place where the thing is situated when

---

* See Art. 175 *et seq.* of the Civil Code.

the facts forming the cause of such acquisition or loss are completed.

11.

The existence and the effect of an obligation arising from business management,* unjust enrichment or a wrongful act are governed by the law of the place where the facts forming the cause of such obligation come into existence.

The foregoing provisions as to wrongful acts do not apply to facts which came into existence in a foreign country but are not wrongful according to Japanese law.

Even though facts arising in a foreign country are wrongful according to Japanese law, the injured party cannot claim damages or remedies other than those allowed by Japanese law.

12.

The effect as to third persons of the transfer of an obligation is governed by the law of the domicile of the debtor.

13.

The requisites of a marriage are governed as to each party by the law of his or her nationality. As to its forms, however, the law of the country where it is celebrated governs.

The provisions of the preceding paragraph do not affect the application of Art. 777 of the Civil Code.

---

* *Negotiorum gestio.* See Civil Code, Art. 697 *et seq.*

14.

The effect of a marriage is governed by the law of the husband's country.

If a foreigner marries a woman who is the head of a house, at the same time entering her house, or if he becomes the *mukoyōshi* of a Japanese subject, the effect of such a marriage is governed by Japanese law.

15.

The matrimonial property is governed by the law of the nationality to which the husband belonged at the time when the marriage was contracted.

If a foreigner marries a woman who is the head of a house, at the same time entering her house, or if he becomes the *mukoyōshi* of a Japanese subject, the matrimonial property is governed by Japanese law.

16.

Divorce is governed by the law of the nationality to which the husband belongs at the time when the facts forming the cause of divorce arise; but the court cannot decree a divorce, unless the cause of divorce is recognized as such by Japanese law.

17.

The legitimacy of a child is determined by the law of the country to which the husband of the mother belongs at the time when the child is born. If such husband dies before the child is born, it is determined

by the law of the country to which he last belonged.

18.

The requisites of the acknowledgment of a natural child are governed as to the father or the mother by the law of the country to which he or she belongs at the time of acknowledgment, as to the child by the law of the country to which the child belongs at the time of acknowledgment.

The effect of an acknowledgment is determined by the law of the nationality of the father or the mother.

19.

The requisites of adoption are governed as to each person concerned by the law of his nationality.

The effect of adoption and the dissolution of it are governed by the law of the nationality of the adopter.

20.

The legal relations between parent and child are governed by the law of the nationality of the father, or if there is no father, by that of the nationality of the mother.

21.

The duty of support is governed by the law of the nationality of the person bound to furnish support.

22.

Except in the cases specified in the preceding nine articles, family relations and rights and duties arising

therefrom are governed by the law of the nationality of the persons concerned.

23.

Guardianship is governed by the law of the nationality of the ward.

The guardianship of a foreigner domiciled or residing in Japan is governed by Japanese law only in the case where a cause for such guardianship exists according to the law of his country, but there is no person to exercise it, or where an adjudication of incompetency has been made in Japan.

24.

The provisions of the preceding article apply correspondingly to a curator.

25.

Succession is governed by the law of the nationality of the ancestor. *

26.

The existence and the effect of a will are governed by the law of the nationality to which the maker of the will belongs at the time of its making.

The revocation of a will is governed by the law of the nationality of the maker at the time of revocation.

Notwithstanding the provisions of the preceding two paragraphs the law of the place where the act is done may be followed as to the forms of a will.

---

* See Book V of the Civil Code.

27.

If in the case of a person who has two or more nationalities, the law of the nationality is to govern, such law is determined by the nationality last acquired; provided that if any of them is the Japanese nationality, the Japanese law is to govern.

As to a person who has no nationality, the law of his domicile is deemed to be the law of his nationality, or if his domicile is not known, the law of the place of his residence governs.

If a person belongs to a country of which the law is different according to the locality, the law of the locality to which he belongs governs.

28.

When the law of the domicile of the person concerned is to govern and such domicile is not known, the law of the place of his residence governs.

The provisions of Art. 27, 2 and 3 apply correspondingly to a case where the law of the domicile is to govern.

29.

When the law of the nationality of a person concerned is to govern and according to its provisions the Japanese law is to govern, the latter governs.

30.

If a foreign law which would govern is contrary to the public welfare or good morals, it shall not govern.

DRAFT OF THE LAW AS TO THE AMENDEMENT OF THE DECREE NO. 103 OF THE SIXTH YEAR OF MEIJI.

The decree No. 103 of the sixth year of Meiji is amended as follows:

1.

A Japanese, in order to adopt an alien or a Japanese woman who is the head of a house, in order to marry an alien, must obtain the permission of the Minister of the Home Department.

2.

The Minister of the Home Department may give the permission mentioned in the preceding article, if the following requisites exist as to the alien:—

1. He must have had his domicile or residence for at least one full year in Japan;
2. He must be a person of honest behaviour.

DRAFT OF THE LAW CONCERNING NATIONALITY.

1.

A child is a Japanese subject, if at the time of his birth his father is such. The same applies, if the father, having died before the child's birth, was a Japanese subject at the time of his death.

2.

If the father before the birth of the child loses his Japanese nationality by divorce or by a dissolution of adoption, the provisions of the preceding article apply with relation back to the beginning of the pregnancy.

The provisions of the foregoing paragraph do not apply, if both parents quit the house, unless the mother returns to the house before the birth of the child.

3.

When the father is unknown or has no nationality, the child is a Japanese subject, if the mother is such.

4.

If both parents of a child born in Japan are unknown or have no nationality, the child is a Japanese subject.

5.

An alien acquires Japanese nationality in the following cases:—

1. By becoming the wife of a Japanese;

2. By becoming the husband of a Japanese woman who is the head of a house, at the same time entering her house;
3. By being acknowledged by his father or mother who is a Japanese subject;
4. By adoption by a Japanese subject;
5. By naturalization.

6.

The requisites for an alien's acquiring Japanese nationality by acknowledgment are as follows:—

1. The child must be a minor according to the law of his nationality;
2. The child must not be the wife of an alien;
3. The parent who first acknowledges the child must be a Japanese subject;
4. If both parents acknowledge the child at the same time, the father must be a Japanese subject.

7.

With the permission of the Minister of the Home Department an alien may be naturalized on the following conditions:—

1. He must have had his domicile in Japan for five consecutive years;
2. He must be at least twenty years old and a person of full capacity by the law of his nationality;
3. He must be a person of honest behaviour;
4. He must have either property or working ability sufficient for an independent livelihood;
5. He must have no nationality or must lose his nationality on acquiring Japanese nationality.

8.

A wife of an alien can be naturalized only together with her husband.

9.

An alien who has at the time his domicile in Japan can be naturalized, even though the conditions specified in Art. 7, No. 1 do not exist, in the following cases:—

1. If one of his parents is or has been a Japanese subject;
2. If his wife is or has been a Japanese subject;
3. If he was born in Japan;
4. If he has resided in Japan for ten consecutive years.

The persons mentioned in the preceding paragraph under Nos. 1-3 can be naturalized only if they have resided in Japan for three consecutive years; but this does not apply, if a parent of a person mentioned in No. 3 was born in Japan.

10.

If a parent of an alien is a Japanese subject and such alien has his domicile at the time in Japan, he may be naturalized, even though the conditions specified in Art. 7, Nos. 1,2 and 4 do not exist.

11.

The Minister of the Home Department may with the sanction of the Emperor permit the naturalization of an alien who has done specially meritorious services to Japan, without regard to the provisions of Art. 7.

12.

Public notice of a naturalization must be given.

A naturalization can be set up against a third person acting in good faith only after such notice.

13.

The wife of a person who acquires Japanese nationality acquires it together with her husband, unless she expresses a contrary intention within one month from the time when she had notice of her husband's acquisition of Japanese nationality.

These provisions do not apply, if the law of the wife's nationality provides to the contrary.

14.

If the wife of a person who has acquired Japanese nationality did not herself acquire it according to the provisions of the preceding article, she may be naturalized even though the conditions specified in Art. 7 do not exist as to her.

15.

A child of a person who acquires Japanese nationality acquires it together with the parent, if the child is a minor according to the law of his nationality.

This provision does not apply, if the law of the child's nationality provides to the contrary.

16.

A person naturalized, a person who as being the child of a naturalized person has acquired Japanese nationality, or a person who has become the adopted child of a

Japanese or the husband of a Japanese woman who is the head of the house has not the following rights:—

1. The right to become a Minister of State, a Minister of the Imperial Household or Keeper of the Privy Seal;
2. The right to become president, vice-president or a member of the Privy Council;
3. The right to hold the position of a general or admiral;
4. The right to become president of the Supreme Court, of the Board of Accounts or of the Administrative Litigation Court;
5. The right to hold the position of Court Councillor;
6. The right to be elected as or to vote for a member of the Imperial Diet.

17.

The Minister of the Home Department with the sanction of the Emperor may except from the restrictions of the preceding article a person who has been naturalized under the provisions of Art. 11, after five years from the time when he acquired Japanese nationality, or any other person after ten years.

18.

A Japanese woman who marries an alien loses thereby her nationality.

19.

A person who by marriage or adoption has acquired Japanese nationality loses it on divorce or the dissolu-

tion of the adoption only in case he thereby acquires a foreign nationality.

20.

A person who voluntarily acquires a foreign nationality loses thereby his Japanese nationality.

21.

The wife or child of a person who loses his Japanese nationality, loses the Japanese nationality on acquiring the nationality of such person.

22.

The provisions of the preceding article do not apply to the wife or child of a person who loses his Japanese nationality by divorce or the dissolution of adoption, unless the wife in case of the dissolution of adoption of her husband does not procure a divorce, or the child quits the house following his father.

23.

If a child who is a Japanese subject acquires by acknowledgment a foreign nationality, he loses his Japanese nationality; but this does not apply to a person who has become the wife of a Japanese subject, the husband of a Japanese woman being the head of the house, or the adopted child of a Japanese subject.

24.

Notwithstanding the provisions of the preceding five articles, a male person of the age of seventeen years or

upwards loses his Japanese nationality only if he has already performed his service in the army or navy or is not bound to perform such service.

25.

A person who holds a civil or military position can lose his Japanese nationality only on obtaining the permission of his official chief.

A person who has lost Japanese nationality by marriage, but after the dissolution of such marriage has a domicile in Japan may by the permission of the Minister of the Home Department recover Japanese nationality.

26.

If a person who has lost Japanese nationality according to the provisions of Arts. 20 or 21 has a domicile in Japan, he may with the permission of the Minister of the Home Department recover Japanese nationality; but this does not apply to a person mentioned in Art. 16, who has lost the Japanese nationality.

27.

The provisions of Arts. 13-15 apply correspondingly to the cases mentioned in the preceding two Articles.

28.

The time when this law shall take effect shall be determined by Imperial Order.

明治三十一年六月十二日印刷
明治三十一年六月二十日發行

著者兼翻譯者　東京市本郷加賀屋敷八番
ドクトル、ルードウイツヒ、レンホルム

發行者　東京市下谷區練塀町三十二番地
長嶋鷲太郎

印刷者　東京京橋區宗十郎町十五番地
今井健次

印刷所　東京京橋區宗十郎町十五番地
國文社

發行所　東京日本橋區通三丁目
丸善書籍株式會社

ERRATA.

Page 198 Art. 754 for *must* read *may*.
,, 202 ,, 768 for *punished* read *sentenced to punishment*.
,, 206 ,, 784, No. 3 for *three years* read *two years*.
,, 220 ,, 838 for *ascendants* read *relatives in the ascending line*.
,, 238 ,, 907, Note 2 add: *and other large towns separated from the gun*.
,, 244 ,, 925 for *blood relatives* read *lineal blood relatives*.
,, 258 ,, 972 for *Art. 966* read *Art. 970*.